



May 17, 2025

NOTICE VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency (LWDA)
Attn: PAGA Administrator
<https://dir.tfaforms.net/308>

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Tri Valley Food Services, Inc.
Derek Hui
c/o James Shum, Agent
2224 Sixth Street
Berkeley, CA 94710

**Re: Fabiola Laguna Fonesca/Tri Valley Food Services, Inc.
Private Attorneys General Act**

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA"), Ms. Fabiola Laguna Fonesca (hereafter "Fonesca") provides notice on behalf of herself and of all individuals currently and formerly employed in California as non-exempt or hourly paid employees (hereafter the "Aggrieved Employees"), by Tri Valley Food Services, Inc. and Derek Hui (hereafter collectively "TRI VALLEY FOOD"), of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558, 558.1, 1102.5, 1174, 1194, 1197, 1198, and 2802. Derek Hui is being included in this PAGA notice pursuant to Labor Code Section 558.1 as he was or is an owner/director/managing agent of Tri Valley Food Services, Inc., was involved in the day-to-day operations of the business, and as such, controlled the wages, hours, and working conditions of Fonesca and the other Aggrieved Employees. On behalf of herself and all other Aggrieved Employees, Fonesca hereby provides this notice to the Labor & Workforce Development Agency and TRI VALLEY FOOD and its agents and representatives.

At all relevant times, TRI VALLEY FOOD has employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Fonesca and the Aggrieved Employees are "employees" within the meaning of Wage Order 5-2001 (hereafter "the Wage Order") § 2, subdivision (F) and "Aggrieved Employees" within the meaning of Labor Code § 2699, subdivision (c).

It is our position that due to personally suffering the below violations, Fonesca can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees who worked for TRI VALLEY FOOD anywhere in the state of California (at all different locations) during the relevant PAGA period.

STATEMENT OF FACTS

TRI VALLEY FOOD began to employ Fonesca in or around December 2024 to work at its Popeyes Louisiana Kitchen restaurant located at 10 San Pablo Towne Center, San Pablo, CA 94806. During her employment tenure, Fonesca's job duties included food preparer, server and cashier. Fonesca generally worked six days a week and her schedule always varied.

At all relevant times, TRI VALLEY FOOD has issued wages to Fonesca and all of the other Aggrieved Employees on a weekly basis and paid her by the hour. At all relevant times, TRI VALLEY FOOD has classified Fonesca and all of the other Aggrieved Employees as a non-exempt employee entitled to the protections of the Labor Code and the Wage Order. Fonesca's latest rate of pay was approximately \$20.00 per hour.

It is our position that TRI VALLEY FOOD has violated numerous Labor Code Sections against Fonesca and the other Aggrieved Employees.

TRI VALLEY FOOD has failed to pay Fonesca and the other Aggrieved Employees for all time worked or subject to its control. For example, during Fonesca's training, management would ask Fonesca to stay to keep learning how to do certain tasks after Fonesca had already clocked out for the end of her shift (which management was aware of). Moreover, to the extent Fonesca and the Aggrieved Employees have worked through their meal periods and those meal periods were interrupted, they were not compensated for that time, which would be akin to a minimum wage violation.

TRI VALLEY FOOD failed to pay Fonesca and the Aggrieved Employees properly-calculated overtime wages even though they worked more than 8 hours per day and/or 40 hours per week throughout their employment. Fonesca's and the Aggrieved Employees' actual work hours (including the "off the clock" hours mentioned above) entitled them to overtime compensation. However, TRI VALLEY FOOD did not compensate Fonesca and the Aggrieved Employees with the correct amount of overtime. It was not company policy to keep accurate track of all hours worked and to pay employees the accurate amount of overtime, especially since the "off the clock" work was not factored into the equation. Furthermore, any incentive payments and/or bonus payments were not factored into the employees' regular rate of pay for purposes of deciphering the correct overtime rate of pay. In addition, any bonus and/or incentive payments were not factored into the correct meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

In addition, the Aggrieved Employees were not given accurate tips to which they were entitled in violation of California Labor Code Section 351 and 353.

TRI VALLEY FOOD has failed to provide all compliant meal periods and authorize and permit all compliant rest periods to which Fonesca and the other Aggrieved Employees were entitled. Fonesca is entitled to take off-duty, uninterrupted 30-minute meal periods before the fifth hour of work and to take uninterrupted 10-minute rest periods for every four hours or major fraction

thereof worked. Due to the press of business, Fonesca and the other Aggrieved Employees would not be able to take timely, uninterrupted meal periods before the 5th hour worked. For example, even though Fonesca would start her work shift at 9:00 a.m., at times Fonesca would not be able to take a meal break until 2:30 p.m. or later. It is important to note that Fonesca and the other employees would have to wait for a manager to allow them to go on their meal break or rest break and there was designated break room for employees. When employees tried to take a meal period, TRI VALLEY FOOD management, including Supervisor Belinda (last name unknown), Manager Sandra (last name unknown) or the other staff would interrupt them with requests for assistance or questions about work related matters. Similarly, TRI VALLEY FOOD did not authorize Fonesca to take two 10 minute rest breaks. Compliant meal and rest breaks were definitively not part of TRI VALLEY FOOD's culture, especially in a fast-paced restaurant environment. In fact, management would instruct Fonesca to take her rest break and meal break together. On information and belief, TRI VALLEY FOOD did not provide premium wages to Fonesca for these meal and rest break violations; if TRI VALLEY FOOD did provide premium wages, they were not paid at the correct rate, as explained above.

TRI VALLEY FOOD has failed to reimburse Fonesca and the other Aggrieved Employees for the business expenses they incurred in direct consequence of the discharge of their duties. During her employment, TRI VALLEY FOOD required Fonesca and the other Aggrieved Employees to use their own personal cell phones to communicate with management concerning work matters and scheduling. In addition, Fonesca had to purchase marking pencils to mark the food trays with the dates the food was prepared. TRI VALLEY FOOD management specifically instructed Fonesca that she had to purchase these pencils herself. However, TRI VALLEY FOOD did not reimburse Fonesca and the other Aggrieved Employees for these mobile phone and supplies expenses. Accordingly, TRI VALLEY FOOD was in violation of California Labor Code sections 2800 and 2802.

TRI VALLEY FOOD has failed to pay Fonesca and the other Aggrieved Employees all wages due to them within any time period specified by California Labor Code section 204, including the minimum wages and overtime as described above as well as meal/rest break premiums.

TRI VALLEY FOOD has not provided Fonesca and the other Aggrieved Employees accurate, itemized wage statements. Wage statements must include all hours worked, overtime hours worked, all applicable hourly rates, the correct legal name and correct address of employer entity, gross wages earned, all deductions, net wages earned, reimbursement for business expenses, the correct start and end of the applicable pay period, the employee ID numbers or social security numbers, among other items. Labor Code § 226(a)(2). TRI VALLEY FOOD issued wage statements that inaccurately reflected total hours worked, gross and net wages earned, and the number of hours worked at each hourly rate because of TRI VALLEY FOOD's failure to properly pay wages as explained herein. Labor Code §§ 226(a)(1), (2), (5), (9).

TRI VALLEY FOOD has also violated Labor Code section 558 and engaged in business practices which violate Business and Professions Code Section 17200.

Moreover, Fonesca would have individual causes of action against TRI VALLEY FOOD for retaliation in violation of Labor Code Section 1102.5. In or around March 2025, Fonesca reported Efrain's hostile and harassing behavior towards her to management. In response, TRI VALLEY FOOD retaliated against Fonesca and reduced Fonesca's work schedule.

For the reasons herein, on behalf of herself and the Aggrieved Employees, Fonesca alleges that TRI VALLEY FOOD committed the following violations of the California Labor Code and the Wage Order: 1) failed to pay wages for all time worked or subject to TRI VALLEY FOOD's control, including minimum wages and correctly-calculated overtime wages; 2) failed to provide meal periods or pay correctly-calculated premium wages in lieu thereof; 3) failed to authorize and permit rest periods or pay correctly-calculated premium wages in lieu thereof; 4) failed to reimburse reasonably necessary business expenses; 5) failed to provide compliant wage statements; 6) failed to maintain accurate records; and 7) failed to timely pay all wages owed during and upon separation of employment. Accordingly, Fonesca now seeks civil penalties on behalf of herself and the Aggrieved Employees based on TRI VALLEY FOOD's alleged violations of the California Labor Code and the Wage Order.

THE WAGE ORDER

The Wage Order applies to "all persons employed in the public housekeeping industry," where "Public Housekeeping Industry" includes "Restaurants." (*Id.*, §§ 1 & 2(P)(1).)

At all relevant times during the applicable limitations period, TRI VALLEY FOOD operated a restaurant. Accordingly, Fonesca and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

FAILURE TO PAY WAGES FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

Labor Code §§ 510, 558, 1194, 1197, and 1198

Labor Code sections 510, 1194, and 1197 require employers to pay the wages agreed to and at least minimum wages for all time under the employer's control, overtime wages for hours worked over eight per day or forty per week at one and one-half times the employee's regular rate of pay, and double-time wages for hours worked over twelve in one day or for the first eight hours of work on the seventh consecutive day of work at two times the employee's regular rate of pay. Labor Code section 558 establishes a civil penalty for violation of Labor Code section 510. Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

TRI VALLEY FOOD failed to pay all minimum, regular, and overtime wages to Fonesca and the other Aggrieved Employees because TRI VALLEY FOOD did not pay for off-the-clock work, and failed to pay overtime wages based on correct regular rates of pay.

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FAILURE TO PROVIDE MEAL PERIODS

Labor Code §§ 226.7, 512, and 1198

Employers must provide employees a 30-minute, uninterrupted meal period after no more than five hours of work, and a second such meal period after no more than 10 hours work. Labor Code § 512(a); IWC Wage Order(s) §§ 11(A)-(B); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. If an employer fails to provide an employee a meal period in accordance with California law, the employer must pay the employee one hour of pay at the employee's regular rate for each work day the meal period is not provided. Lab. Code § 226.7(c); IWC Wage Order(s), § 11(D); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

TRI VALLEY FOOD failed to provide Fonesca and the other Aggrieved Employees with compliant meal periods and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

Labor Code § 226.7 & 1198

The Rest Period section of the applicable Wage Order provides: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof." IWC Wage Order(s), § 12(A). If an employer fails to provide an employee a rest period in accordance with California law, the employer must pay the employee one hour of pay at the employee's regular rate for each work day a rest period is not provided. IWC Wage Order(s), § 12(B); Labor Code § 226.7(c); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

TRI VALLEY FOOD failed to authorize and permit Fonesca and the other Aggrieved Employees to take compliant rest periods and failed to pay one hour of correctly-calculated premium pay for each day such a rest period was not provided.

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

Labor Code §§ 226

California employers are required to provide itemized wage statements showing, among other things, "gross wages earned," "total hours worked by the employee," "net wages earned," and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Labor Code §§ 226(a)(1), (2), (5), (9).

TRI VALLEY FOOD did not provide itemized wage statements accurately reflecting Fonesca's and the other Aggrieved Employees' gross wages earned, total hours worked, net wages earned, and all applicable hourly rates and the number of hours worked at each rate.

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FAILURE TO PROVIDE ACCURATE RECORDS

Labor Code §§ 1174, 1174.5, 1198; IWC Wage Order(s), § 7

An employer must maintain payroll records showing hours worked daily by, and wages paid to, its employees, in accordance with rules established by the Industrial Welfare Commission. Labor Code §1174. An employer must also maintain time records showing when each work period, and meal period, begins and ends. IWC Wage Order(s), § 7.

Because TRI VALLEY FOOD did not record off-the-clock work and interrupted employees' meal periods, TRI VALLEY FOOD failed to maintain accurate records as to the hours worked daily by employees and as to when each work period and meal period began and ended.

FAILURE TO REIMBURSE FOR EXPENSES

Labor Code §§ 1198, 2802, and 2804

An employer must reimburse its employees for their reasonable business-related expenses. Labor Code § 2802. The right to reimbursement cannot be waived. Labor Code § 2804.

TRI VALLEY FOOD failed to reimburse Fonesca and the other Aggrieved Employees for their reasonable business-related expenses, including use of their own personal cell phones and marking pencils in effectuating their job duties.

TIP VIOLATIONS

Lab. Code §§ 351 and 353

Labor Code § 351 prohibits an employer or agent of the employer from collecting, taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deducting any amount from wages due an employee on account of a gratuity, or requiring an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Labor Code § 353 requires every employer to keep accurate records of all gratuities it receives, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise.

TRI VALLEY FOOD failed to provide the Aggrieved Employees accurate tips to which they were entitled in violation of California Labor Code Section 351 and 353.

**FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT
& UPON SEPARATION**

Labor Code §§ 201-204

An employer must pay “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment...twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Labor Code § 204. An employer must pay all wages owed to terminated employees at the time of termination, or within 72 hours

to employees who quit. Labor Code §§ 201-202. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days, until paid. Labor Code § 203.

As a result of its failure to pay all wages earned, as described above, TRI VALLEY FOOD failed to pay all final wages due to Fonesca and the other Aggrieved Employees and violated Labor Code Sections 201-204.

RETALIATION

Labor Code § 1102.5

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties. Lab. Code § 1102.5(b).

Fonesca complained to management regarding the hostile environment and harassment she was experiencing at the workplace. Because of her complaints, TRI VALLEY FOOD retaliated against Fonesca and reduced her work hours in violation of California Labor Code § 1102.5(b).

Fonesca seeks civil penalties under California Labor Code § 1102.5(f) in an amount not to exceed \$10,000 for each violation by TRI VALLEY FOOD of California Labor Code § 1102.5(b), as well as attorney's fees and costs under Labor Code §§ 1102.5(j) and 2699(g).

PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES LABOR CODE

Labor Code § 558.1

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

At all relevant times, Derek Hui was an employer of Fonesca and all of the other Aggrieved Employees, and/or "owner," "managing agent," and/or "officer" of Tri Valley Food Services, Inc. Derek Hui directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of Fonesca and the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On

behalf of herself and all of the other Aggrieved Employees, Fonesca seeks the same civil penalties against Derek Hui on the same grounds for which she seeks civil penalties against Tri Valley Food Services, Inc.

CONCLUSION

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that Fabiola Laguna Fonesca will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Maralle Messrelian".

Maralle Messrelian, Esq.
maralle@mmlawapc.com