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November 29, 2023

**VIA ONLINE SUBMISSION on November 29, 2023**

Labor Workforce Development Agency
PAGA Administration

**VIA U.S. CERTIFIED MAIL on November 29, 2023**

***Annavee Inc. dba***
***Chang's Garden***
***627 W Duarte Rd***
***Arcadia, CA 91007***

***Annavee Wingyi Wong Kim***
[redacted]

***Re: Qing Yao- §2699 Violations Against Annavee Inc, dba Chang's Garden and Annavee Wingyi Wong Kim as an Individual Pursuant to § 558.1***

To Private Attorneys General Act Administrator:

This office represents Qing Yao ("Ms. Yao") in an employment dispute against Annavee Inc. dba Chang's Garden ("Employer") and Annavee Wingyi Wong Kim as an individual ("Owner") pursuant to California Labor Code § 558.1. We ask that all further communication about this matter be directed to this office and that no communication be made directly to any former employee.

A copy of this letter has been sent to Employers' agents for service of process. Employers' labor code violations are representative of all or most employees at Employers.

Ms. Yao plans to pursue civil penalties, attorney's fees, costs, and other applicable remedies for California Labor Code violations, which can be obtained under sections 2698 and onwards, also known as the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Chen is seeking relief both in her individual capacity and on behalf of the State of California. This communication adheres to the notice and reporting prerequisites outlined in California Labor Code section 2699.3

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## I. Summary of Claims

In 2006, Ms. Yao joined the team at Chang's Garden, where she consistently showcased her good performance. Her skills became instrumental in ensuring the successful daily operations of Chang's Garden. However, it was apparent that Ms. Yao did not receive equitable treatment from her employer.

Ms. Yao asserts that she did not receive her entitlements as per the employment agreement, including but not limited to meal breaks, and was not compensated accurately for tips as the servers pool tips were shared with the manager and owner. Apart from this, they were not allowed to see the tip logs for the distribution of their tips every 5th and 20th of the month.

Her breaks were NOT off-duty and there were hours which were not compensated where she was asked to continue working after she already clocked out on a regular and consistent basis. When she reported these violations, she faced retaliation and they reduced her working hours to give more hours to train younger employees. Her work and break schedules were as follows:

| DAY | TIME | BREAKS |
|---|---|---|
| Wednesday | 11:00am - 1:30pm<br>3:30pm - 9:30pm | 20 minutes without a meal break |
| Sunday | 11:00am - 1:30pm<br>3:30pm - 9:30pm | 20 minutes without a meal break |
| Friday | 4:00pm-9:30pm | 10 minutes without a meal break |

On Wednesdays and Sundays, where she worked an extra half-hour (0.5), she was not compensated for overtime pay. This was supposed to be at a rate of one and one-half (1.5) times her regular rate of pay for all hours worked in excess of eight hours. Her employment finally ended on July 23, 2023.

On August 11, 2023, we dispatched a Notice of File Preservation in Anticipation of Litigation to both the employer and the owner individually. Regrettably, they did not respond to this request. Consequently, we sent another notice, extending the employer's deadline for delivering Ms. Yao’s personnel records to September 20, 2023. However, as of September 21, 2023, the specified deadline had passed without any compliance.

Subsequently, on October 10, 2023, we issued a Notice of Deadline Extension. To date, there has been no adherence to these requests. (Notice enclosed for your reference)

## I. Labor Code Violations

Ms. Yao contends that the Employer/Owner violated the following sections of the Cal. Labor Code, including, but not limited to the following:

1. **§ 510 and 1198** – For not paying overtime compensation.

Sections **§510** and **§1198** of the California Labor Code mandate that employers compensate employees who work beyond eight (8) hours in a day at a rate of one-and-a-half (1½) times their regular pay for all additional hours worked.

2. **§ 510** – Failure to pay Ms. Yao at a rate of one-and-one-half times (1.5X) her regular rate of pay for the first eight hours of work performed on the seventh day of work in a week.

Before COVID-19, her employer required Ms. Yao to work eleven hours daily and was not compensated at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours

3. **§ 226.7, 512(a), and 1198** – Failure to provide Ms. Yao with the appropriate amount of timely, duty-free meal periods of not less than thirty (30) minutes per five (5) hours worked and rest breaks of not less than ten (10) minutes per four (4) hours worked

4. **§ 558** – Civil Penalties. - Under California Labor Code 558, employers breaching wage and hour regulations face civil penalties, starting at $50 for initial violations and increasing to $100 for subsequent infractions. These penalties are separate from any owed back wages to affected employees.

5. **§ 226(a)** – Failed to furnish Ms.Yao an accurate, itemized wage statement each time she was paid.

6. **§ 1174** – Failed to keep payroll records showing total hours worked and wages paid to Employers' employees. During the relevant time period, and in violation of Labor Code Section 1174(d), Employer willfully failed to maintain accurate payroll records for Ms. Yao.

7. **§ 1199** – Unlawfully required Ms.Yao to work hours in excess of eight (8) in a day and forty (40) in a week before the pandemic.

8. **§1197.5**- For paying Ms. Yao for less wage than other employees for substantially the same amount of work.

9. **§ 201, § 202, § 203, § 256** – Failure and willful failure to comply and pay all wages due at termination. The employer knowingly neglected to remunerate Ms. Yao for all her earned wages, encompassing overtime pay, minimum wages, additional compensation for meal and rest periods, and reporting time pay. This failure occurred either upon termination or within seventy-two (72) hours from her last day worked, contravening California Labor Code Sections 201, 202, and 203.

10. **§ 2802** – Failure to reimburse Ms. Yao for all expenses. California Labor Code Section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of her job.

10. Employer is also liable for any attorney's fees and costs of suit incurred by Ms. Yao in pursuit of her claims.

## II. <u>The Labor Code Private Attorney's General Act – PAGA</u>

The Labor Code Private Attorneys General Act of 2004 ("PAGA"), is actually a series of statutes codified in Sections 2698 through 2699.6 of the California Labor Code that "authorizes aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California for Labor Code violations." The employee suing under PAGA acts "as the proxy or agent" of California's labor law enforcement agency, the Labor and Workforce Development Agency (LWDA), in policing Labor Code violations. The PAGA confers a private right of action to individuals to prosecute Labor Code violations. PAGA incentivizes this type of lawsuit by authorizing the aggrieved employee to keep 25% of any civil penalties collected while 75% must go to the state. (Cal. Lab. Code § 2699(f)). PAGA also requires the employer to fully pay and compensate for the aggrieved employee's attorney's fees and costs.

PAGA penalties are assessed per pay period for each violation of any code section enumerated in Labor Code section 2699.5. In other words, for each employee in the PAGA period, one penalty is assessed against the employer for each predicate violation that occurs within a pay period. Accordingly, each predicate violation is entitled to its own PAGA penalty calculation.

The PAGA applies a default penalty of $100.00 for initial violations and $200.00 for subsequent violations unless the predicate Labor Code section that has been violated expressly provides for a different civil penalty. (Lab. Code, § 2699, subd. (f)(2).) Some of the common predicate violations subject to the default PAGA penalty include failure to provide meal and/or rest break *premiums*, failure to pay all wages owed *during* employment and failure to reimburse necessary business expenses. Failure to pay overtime, failure to provide meal breaks and failure to provide rest breaks carry an initial PAGA penalty of $50.00, and a subsequent penalty of $100.00. (Lab. Code, § 558, subds. (a)(1)-(2).) Failure to pay minimum wages *during* employment gets $100.00 for the initial penalty and $250.00 for subsequent violations. (Lab. Code, § 1197.1, subds. (a)(1)-(2).) Wage statement violations arguably are calculated at a rate of $250.00 for the initial violation, and $1,000.00 for every subsequent violation thereafter (Lab. Code, § 226.3; *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 680.).

The formula used to calculate PAGA penalties is therefore the same regardless of the predicate violation: *(Initial violation penalty x total number of employees in the one-year period) + (subsequent violation penalty x [total number of pay periods in the one-year period – total number of employees in the one-year period])*. This formula assumes that the predicate violation occurs at least once per pay period. If the employer's violation rate is anything less than once per pay period, you should modify the formula to reflect your estimated violation rate. For example, if the predicate violation occurs every other pay period, decrease the total penalty amount for subsequent violations by half.

## III. Letter to Exhaust Pre-Litigation Requirements of PAGA

Please take notice that this letter is intended to exhaust the pre-litigation requirements set forth under California Labor Code §§ 2699, *et seq.* By law, an employee alleging a violation of one of the above-referenced sections must notify his employer and the Labor and Workforce Development Agency (LWDA) before he can invoke the provisions of §§ 2699, *et seq.* in a civil action. (Cal. Labor Code. §2699.3(a)(1)).

Please contact this office within sixty (60) calendar days of the date of this letter and advise whether Labor and Workforce Development Agency will investigate. If the agency chooses not to pursue the matter, we plan on pursuing a § 2699 claim through civil action, on or about sixty-five (65) calendar days after this letter is postmarked.

We write this letter without waiver of our client's rights and remedies, all of which we expressly reserve. This letter is not an express statement of all facts and circumstances concerning this matter.

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Sincerely,

**WEST THEMIS LAW, PC**

Sally S. Chan, Esq.