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*MEMBER OF CA, NV, OR & WA BAR

Via Email at PAGAfilings@dir.ca.gov and Certified U.S. Mail—Return Receipt Requested

June 21, 2019

Attention: Paga Administrator
Acting Agency Secretary
**California Labor & Workforce
Development Agency**
Pagafilings@Dir.Ca.Gov

Birrieria Chito
106 Rita Ct.,
Modesto, CA 95351

Birrieria Chito
C/O Jessica Aguilar, Georgina Pedroza
1238 Crows Landing Road,
Modesto, CA 95351

Birrieria Chito
500 7th. Street, Suite D
Modesto, CA 95354

Birrieria Chito
201 Primo Way,
Modesto, CA 95358

Birrieria Chito
1313 Picardy Drive,
Modesto, CA 95351

RE: Labor Code §2699 Notice by Aggrieved Employee *Maria Polvos*

Dear PAGA Administrator and All Entities and Persons listed herein:

This constitutes statutory notice pursuant to Labor Code § 2699.3(a)(1) for purposes of bringing a claim under the Private Attorneys General Act, Cal. Labor Code § 2699, *et seq.* Please consider

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this a request for the California Labor & Workforce Development Agency (“LWDA” or “Agency”) to take action against Juan Aguilar, now deceased, Georgina Pedroza, Jessica Aguilar, Rocio Aguilar, Juana Aguilar, and Alexander (Unknown Last Name) dba “Birreia Chito” AKA “Birreria Chito” AKA “Birria Chito”, AKA “Birricia Chito #2”, AKA “Birrieria Chito”, AKA “Birrin Chito”, and AKA “Chito”; Affiliated Companies, and their agents, managers and supervisors – including but not limited to owner(s) and managers Georgina Pedroza, Jessica Aguilar, Rocio Aguilar, Juana Aguilar, and Alexander (Unknown Last Name), for violations of the California Labor Code described below. I am writing on behalf of Maria Polvos, Aggrieved Employee, who is represented by this law firm (hereinafter “Aggrieved Plaintiff”) who seek to assert a PAGA claim on behalf of the State of California and all other current or former employees who have been employed by Georgina Pedroza, Jessica Aguilar, Rocio Aguilar, Juana Aguilar, and Alexander (Unknown Last Name) dba “Birreia Chito” AKA “Birreria Chito” AKA “Birria Chito”, AKA “Birricia Chito #2”, AKA “Birrieria Chito”, AKA “Birrin Chito”, and AKA “Chito”; Affiliated Companies, and their agents, managers and supervisors in California (collectively hereafter refer as “Birrieria Chito”).

Birrieria Chito is a food truck company located in Modesto that sells birria, a Mexican dish. Aggrieved Plaintiff worked there as a full-time cook, non-exempt employee. Birrieria Chito is a family-run food truck business that employs under 10 people (excluding family members that work in the business) located in Modesto, California. Aggrieved Plaintiff worked for Birrieria Chito from approximately July 11, 2017 to February 2019 as food preparator and cook. Aggrieved Plaintiff alleges that most of the food preparation occurred at a private house located at [REDACTED], and the food was sold out of a food-truck generally parked at a parking lot located at 1238 Crows Landing Road in Modesto. According to Birrieria Chito’s Facebook page, it is generally open to the public six days a week from 8:00 a.m. to 10:00 p.m.

Aggrieved Plaintiff was responsible for all the food preparation required by the popular food-truck, including preparing and marinating the meat, making tortilla dough, chopping onions, cilantro, and slicing limes, among many other responsibilities in the kitchen; she also cleaned after everything had been cooked. She was paid in cash, and the employer did not have a time-keeping system for Aggrieved Plaintiff or other aggrieved employees to record their actual hours worked. Generally, Aggrieved Plaintiff worked split shifts ranging from 9 to 14 hours per day, and she was paid less than minimum wage for all hours worked during her employment. Aggrieved Plaintiff never received itemized wage statements. Birrieria Chito failed to compensate Aggrieved Plaintiff for the split-shift premium as prescribed under Wage Order 5 section 4©.

Furthermore, Aggrieved Plaintiff was the only cook for Birrieria Chito and due to the popularity and high-demand for their unique food, Aggrieved Plaintiff was prevented from taking rest and meal breaks without interruption or as prescribed by law. In spite of this, Birrieria Chito failed to compensate Aggrieved Plaintiff and other aggrieved employees for the premium pay earned for each meal or rest break missed in any given shift. In addition, Aggrieved Plaintiff did not

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waive her second meal break for shifts longer than 10 hours within a work day, nor did she receive an opportunity to take an off-duty meal period, nor receive premium pay.

From approximately November 2017 to approximately August 2018, Aggrieved Plaintiff resided in one of the bedrooms at the house in which the food for the food-truck was cooked. Essentially, Birrieria Chito became her landlord during this period of time. Because Aggrieved Plaintiff never received a lease agreement, itemized wage statements, or any other document indicating the rent charges, Aggrieved Plaintiff does not know how much she was charged in rent per month. Accordingly, Birrieria Chito engaged in unlawful deductions from Aggrieved Plaintiff's wages at an unknown rent amount per month. Furthermore, Aggrieved Plaintiff noticed an increase in the number of hours she had to work when she moved into this property, as Birrieria Chito expected her to be available at any time during the day, including during her splits and after work-hours. Birrieria Chito forced Aggrieved Plaintiff to contact them, using her own personal cell phone, each time she had to leave the house, even when she was off-the-clock, as the food-truck relied on her labor as being the only cook employed to respond to the demands of their customers. The living conditions became unbearable for Aggrieved Plaintiff because she felt "like a slave" during this period of time as she was not permitted to leave the house without the employer's knowledge and permission.

Aggrieved Plaintiff's expenses also increased when she moved into this house as she was responsible for buying cleaning products, such as soap and bleach to clean the kitchen after the numerous hours of cooking. Because the employer failed to supply the necessary cleaning chemicals and tools to clean the kitchen, Aggrieved Plaintiff estimates that she incurred over \$20.00 per month in out-of-pocket expenses for which she never received reimbursement from Birrieria Chito. Furthermore, Aggrieved Employee was not reimbursed for the percentage of the cell phone use for the benefit of the employer, even though she was required to use her own cell phone to be contacted by Birrieria Chito.

The mistreatment Aggrieved Employee received led to Birrieria Chito not taking seriously her injuries at work. For example, in or around May 2018, Aggrieved Plaintiff had an accident, which resulted in a long cut that stretched across her right palm, while using the mill to make the corn dough for tortillas. In spite of the severe laceration that Aggrieved Plaintiff had in her right hand, the employer prevented her from taking any time-off, including sick-time, which she was entitled to receive under the law. Instead, the employer put crazy-glue inside the wound to seal the cut and forced Aggrieved Plaintiff to continue working. To this date, Aggrieved Plaintiff still experiences tenderness and pain in her hand. Moreover, in or around August 2018, Aggrieved Plaintiff got married and the Birrieria Chito requested her to move out of the house as they did not want her to live there with anyone else. She ended up moving into another house owned or managed by Birrieria Chito for which she was charged \$1,000 per month in rent. However, the employer continued to engage in the same unlawful business practices, such as compensating Aggrieved Plaintiff less than minimum wage for her hours worked.

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PLEASE TAKE NOTICE THAT THIS IS ALSO A GENERAL LITIGATION

PRESERVATION NOTICE to preserve all documents relating to all employees, including but not limited to all timekeeping and payroll records in paper form, native electronic form and any other format in which they are generated and maintained in the regular course of business; all databases and computer or electronic systems that are used for timekeeping and payroll; all records and evidence in any way related to the facts and claims asserted in this letter; all records and evidence in any way related to claims of Aggrieved Plaintiff, the state and other current or former employees under the California Labor Code Private Attorney General (including underlying Labor Code and IWC orders), the California Government Code, and the Equal Employment Opportunity Act. These documents include but are not limited to all schedules (both current and former) all timekeeping records, all rest and meal period records, all duty and responsibility records, all records with employee signatures or initials, all payroll records, all state or federal withholding records, all personnel files and other employment records, all records concerning the payment or non-payment of wages, or provision or non-provision of state mandated labor code protections, as well as all documents pertaining to harassment or discrimination against employees, all communications relating to these records and documents, and all emails relating to these records and documents.

Further, pursuant to California Labor Code §§ 210, 558, 558.1, 1197.1, 2699(f) and other provisions of the Labor Code, please consider this a notice to Juan Aguilar, now deceased, Georgina Pedroza, Jessica Aguilar, Rocio Aguilar, Juana Aguilar, and Alexander (Unknown Last Name) dba “Birreia Chito” AKA “Birreria Chito” AKA “Birria Chito”, AKA “Birricia Chito #2”, AKA “Birrieria Chito”, AKA “Birrin Chito”, and AKA “Chito”; Affiliated Companies, and their agents, managers and supervisors, and the employer who caused to be violated any provision of the California Labor Code or Wage Orders governing hours and days of work. Birreria Chito and its affiliated companies have complete authority to implement and carry out the illegal payroll policies at issue herein.

This investigation request and notice of California Labor Code violations concerns the systematic failure by Birreria Chito and its Affiliated Companies and managers to pay current and former California non-exempt employees in conformance with the California Labor Code and Wage Orders. At the core of Birreria Chito and its affiliated companies and managers, is a policy of failing to pay for substantial portions of the work day – in particular, Birrieria Chito did not provide proper paid rest breaks and failed to compensate Aggrieved Plaintiff for all hours worked. Birrieria Chito also failed to maintain accurate time and payroll records including not keeping track of hours for actual unpaid time; requiring, suffering or permitting employees to perform unpaid work; failing to pay premium wages for all hours worked in excess of the overtime thresholds set forth in the Labor Code and Wage Orders; refusing to authorize and permit paid rest periods or to provide premium wages in lieu thereof; failing to provide timely, complete and uninterrupted meal periods free of duty; failing to pay rest period premiums to which employees are entitled for being denied paid rest periods; failing to reimburse Aggrieved Plaintiff for supplies purchased out-of-her-own pocket necessary for work; unlawfully deducting

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money from earned wages; failing to provide accurate wage statements and failing pay of all wages owed including split-shift premiums and premiums earned in lieu of rest and meal breaks upon separation from employment. These violations are a uniform policy applied to all non-exempt workers at Birrieria Chito and its affiliated companies, and managers.

Liability under the Private Attorneys General Act (Cal. Labor Code §§ 2698 *et seq.*) (“PAGA”) may be based on a wide variety of Labor Code predicate provisions, including but not limited to §§ 201, 202, 203, 210, 216, 218, 218.6, 221, 223, 224, 225, 226, 226.7, 246, 248.5, 510, 512, 6400, 6401, 6401.7, 6402, 6403, 6404, 1174, 1175, 1194, 1194.2, 1197, 1197.1 1199 and 2673.1(a), IWC wage orders, 2699 *et seq.* and all of the provisions listed in Labor Code 2699.5 (including the penalty provisions related to these predicate provisions), among others. Any violation of these or any other Labor Code provisions serves as the basis for a PAGA claim by an aggrieved employee on behalf of themselves and other current and former employees and pursuant to the underlying PAGA.

In particular, the policies described above, and the violations set forth below relate to all the non-exempt employees employed by Georgina Pedroza, Jessica Aguilar, Rocio Aguilar, Juana Aguilar, and Alexander (Unknown Last Name) dba “Birreia Chito” AKA “Birreria Chito” AKA “Birria Chito”, AKA “Birricia Chito #2”, AKA “Birrieria Chito”, AKA “Birrin Chito”, and AKA “Chito”; Affiliated Companies, and their agents, managers and supervisors in California, and include:

1. Failure to pay non-exempt employees all wages earned in violation of Cal. Labor Code §§ 201, 202, 221, 510, 1194, 558, 1197.1 and the Wage Orders. The failure to compensate for all hours worked stems from practices involving the inaccurate keeping of time records; the inaccurate maintenance of wage records; requiring, suffering or permitting employees to work without compensation; and failure to properly compensate for overtime resulting from the unpaid time.

Birreria Chito and its Affiliated Companies required Aggrieved Employee to work for no pay, or when paid, she received less than minimum wage for the hours worked. Overtime provisions of the Labor code and IWC Wage Orders were violated by inaccurately keeping records of actual hours worked and wages earned by requiring, suffering or permitting employees to work without compensation, by not compensating workers for all hours worked, including overtime hours and proper overtime pay and by not compensating for off-the-clock time, not compensating for certain activities such as pre and post-shift activities, and failing to pay for all hours worked within the meaning of the IWC Wage Orders.

Specifically, Aggrieved Employee was not paid all of her hours worked as Birrieria Chito failed to maintain a time-keeping system to accurately record all actual hours worked by an

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employee, including the time it took to prepare food and clean the kitchen after the food preparation was completed.

2. Failure to pay proper premium/overtime wages at one and one half the regular rate of pay for shifts greater than eight (8) hours in a work day and/or forty (40) hours in a workweek, and failure to pay proper premium/double-time wages at double the regular rate of pay for shifts greater than twelve (12) hours in a day and/or eight (8) hours on any seventh consecutive work day of a workweek, in violation of Labor Code § 510 and the IWC Wage Orders.

Specifically, it was the common practice for Birrieria Chito to deny employees wage payment for all hours worked at their proper rate in accordance with California wage and hour laws because Birrieria Chito failed to account for every hour that Aggrieved Plaintiff was required or permitted to work. Aggrieved Plaintiff was required to be available at all times, seven days a week, and she was not paid at an overtime rate for hours worked in excess of eight in a workday or double the minimum wage rate of pay for hours worked in excess of twelve in a workday. Similarly, Aggrieved Plaintiff was denied double time pay for hours worked in excess of eight in the seventh consecutive workday. In fact, Birrieria Chito maliciously withheld Aggrieved Plaintiff's wages by only compensating her an arbitrary piece-rate amount per week replacing of the actual number of hours required or permitted to work for the benefit of the employer.

3. Failure to properly provide/authorize and permit all proper rest breaks to which non-exempt employees are entitled, and failure to pay premium rest period wages in lieu of rest breaks, in violation of Cal. Labor Code §§ 226.2, 226.7, 512 and Wage Orders and California case law. Aggrieved Employee was generally denied all rest breaks within a regular 8-hour shift, or longer. Specifically, Aggrieved Plaintiff was the only cook at Birrieria Chito, accordingly, she was expected to attend phone calls made by her supervisors at any time during the day to receive further orders and instructions, which prevented her from being relief from all duties as required by law.
4. Failure to provide timely, uninterrupted, and off-duty meal breaks of at least thirty (30) minutes for every five (5) hours of work, and failure to provide all meal breaks to which workers are entitled for shifts greater than ten (10) and twelve (12) hours, without compensation and without a valid written meal-break waiver; and failure to pay meal break premiums for late, incomplete, missed, and/or on-duty meal breaks, in violation of California Labor Code §§ 226.7, 512 and the IWC Wage Orders.

In this present matter, Birrieria Chito expected Aggrieved Plaintiff to be available at all times, seven days per week, to meet the demands of the food truck. Accordingly, Birrieria Chito failed to provide Aggrieved Plaintiff with a genuine opportunity to be relief from all duties in any given workday as she was the only cook for Birrieria Chito during the

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relevant time period. Aggrieved Plaintiff alleges that her supervisors, including, Ms. Georgina Pedroza, called her personal cell phone to make demands at any time during the day, and she was expected to immediately respond without objections, or else Ms. Georgina Pedroza yelled and threatened to terminate her employment at Birrieria Chito, which was tied to her housing arrangements. Therefore, Aggrieved Plaintiff felt more pressure to comply with all of the demands made by her employer for fear of rendering homeless.

5. According to Wage Order-5, an employee is owed one hour of regular pay at the corresponding minimum wage for each work day scheduled a split shift, except as to the periods of time when the employee resides at the place of employment. In this case, Aggrieved Plaintiff did not reside at the same place of employment from in or around September 2018 to February 2019, and she was scheduled from around 4:30 am to 12:00 p.m. and then from 5:00 p.m. to 12:00 a.m. on the same work day, nonetheless, she was not paid an additional hour at the corresponding minimum wage during the relevant time period, which represented her split-shift premium, in violation to the corresponding Wage Order.
6. Failure to provide wage statements with accurate information as to the following:

Gross wages earned; total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; net wages earned; the inclusive dates of the period for which the employee is paid; the name and address of the legal entity that is the employer and sick hours available and taken, among other issues.

Birrieria Chito and its affiliated companies did not provide time records with the accurate and proper representation of all actual hours worked by Aggrieved Plaintiff and other employees. Given the above described violations, Birrieria Chito failed to keep accurate time records and failed to provide accurate wage statements that reflect the actual hours worked and amounts earned, in violation of Labor Code sections 226, 1174 and the Wage Orders.

Specifically, Aggrieved Plaintiff was informed that she will be paid weekly on Wednesdays. However, Birrieria Chito never provided her with an itemized wage statement during her employment, and the wages she actually received during the claim period were late and incomplete. Ms. Georgina Pedroza and all other managers and supervisors in charge of payroll made unlawful deductions from her wages to cover excessive and unreasonable amounts in rent. In addition, at all times during aggrieved

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Plaintiff's employment, Birrieria Chito failed to furnish Aggrieved Plaintiff with itemized wage statements for each pay period she was employed.

7. Failure to reimburse for supplies necessary for work in violation of Labor Code § 2802.

Aggrieved Plaintiff had to purchase out-of-her-own pocket soap, mops, and bleach, among other cleaning supplies. In addition, she used her own personal cell phones to be contacted by her employer without getting reimbursement for a percentage of her cell phone bill based on the use she designated for purposes of her employment at Birrieria Chito. Aggrieved Plaintiff throughout her employment with Birrieria Chito was never reimbursed for the expenses she incurred in violation of California Labor law.

8. Unlawful wage deductions that resulted from the undisclosed amounts charged against Aggrieved Employee' wages in rent, which is against the current allowable deductions under the Labor Code sections 221 and 224. Even if the rent deductions had been consensual, the amounts were greater than the limits prescribed by the applicable Wage Orders.

9. Failure to permit Aggrieved employee from taking any time off when required by sickness in violation of the Labor Code section 248.5 et seq.

Because the food preparation took place at her own home, Aggrieved Plaintiff worked around the clock, even when she was not scheduled to work. In addition, she was the only cook for Birrieria Chito during the relevant claim period, which prevented her from taking any days off after she severely cut her hand with the dough maker. Aggrieved Plaintiff requested time off to heal from the large laceration she suffered when preparing the corn dough to make tortillas, but Birrieria Chito denied her reasonable request as they did not have anyone else available to cover for her shifts. Instead, Ms. Georgina Pedroza put "crazy-glue" on the fresh wound because she indicated that "soldiers cure their wounds with crazy-glue."

10. Given the numerous violations indicated above, Birrieria Chito did not pay all wages owed to the Aggrieved Employee upon termination in violation of the Cal. Lab. Code section 203.

The above provisions do not include all of the derivative penalties associated with these said provisions, which are listed throughout the Labor Code and are PAGA penalties.

Aggrieved Plaintiff who worked as a cook for Birrieria Chito may be contacted through our office: Mallison & Martinez, Attorneys at Law, 1939 Harrison Street, Suite 730, Oakland, California 94612.

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If no action is taken within 65 days, we will assume that we may pursue this action under the theories described above against the Georgina Pedroza, Jessica Aguilar, Rocio Aguilar, Juana Aguilar, and Alexander (Unknown Last Name) dba "Birreia Chito" AKA "Birreria Chito" AKA "Birria Chito", AKA "Birricia Chito #2", AKA "Birrieria Chito", AKA "Birrin Chito", and AKA "Chito"; Affiliated Companies, and their agents, managers and supervisors in California and other liable persons and entities (pursuant to § 210, 558, 1197.1, 2699(f) (and other provisions)).

Sincerely,

Two handwritten signatures are shown side-by-side. The signature on the left is a stylized, cursive 'M' followed by a horizontal line, representing Stan Mallison. The signature on the right is a stylized, cursive 'L' followed by a horizontal line, representing Liliana Garcia.

Stan Mallison, Esq.

Liliana Garcia, Esq.

MALLISON & MARTINEZ