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VIA ELECTRONIC FILING **August 27, 2025**

California Labor & Workforce Development Agency (LWDA)
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

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

MILLER ENTERPRISES
1253 Garnet Ave., Suite A
San Diego, CA 92109

TOWER 23, L.P.
REGGIE BORKUM
1253 GARNET AVENUE, SUITE A
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MARIO BELTRAN JR. v. MILLER ENTERPRISES; TOWER 23, L.P.

RE: AMENDED PRIVATE ATTORNEYS GENERAL ACT NOTICE

CASE NO. LWDA-CM-1118174-25

To Whom It May Concern:

Please be informed that our client, Mr. Mario Beltran Jr. (hereinafter "Mr. Beltran" or "our client") seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid California employees ("aggrieved employees") who worked for MILLER ENTERPRISES dba Eat Drink and Sleep and TOWER 23, L.P. (hereinafter collectively referred to as "TOWER 23") **at all of their locations in the State of California** during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA"). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same. MILLER ENTERPRISES and TOWER 23, L.P. are considered "joint employers" in that they each controlled Mr. Beltran's and other employees' wages, hours, and/or working conditions. Moreover, the entities are considered an integrated enterprise. The integrated enterprise test sets forth four factors for assessing whether two entities are considered a single entity for purposes of liability: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership or financial control. Even though one does not have to show proof of all factors to prevail on an integrated enterprise claim,

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here the factors are unequivocally met as all companies and entities have the same ownership and management. Furthermore, there is centralized control of labor relations and there is interrelation of operations considering the fact that employees from one business also worked for the other business.

Mr. Beltran started working for TOWER 23 approximately in 2025 in the maintenance department. Mr. Beltran was classified as an hourly, non-exempt employee and his latest rate of pay was $25/hour. During his employment tenure, Mr. Beltran worked for both the corporate office and at Tower 23 Hotel in San Diego, California. Mr. Beltran's employment was terminated on or around July 25, 2025.

<u>It is our position that due to personally suffering the below violations, Mr. Beltran can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees who worked for TOWER 23 anywhere in the state of California (at all different locations) during the relevant PAGA period.</u>

It is our position that TOWER 23 has violated the following Labor Code Sections against Mr. Beltran and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for TOWER 23 at their various locations in the State of California during the relevant PAGA period.

TOWER 23 violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay our client and other similarly situated aggrieved employees California's statutory minimum wage for all hours worked and for "off the clock" work. Mr. Beltran did not receive compensation for all hours worked in that Mr. Beltran would be asked to complete tasks while he was "off the clock". For instance, Mr. Beltran was asked to move couches to the basement level while he was "off the clock". Moreover, and to the extent that meal periods were interrupted, this also constitutes "off the clock" work and is a minimum wage violation. Moreover, TOWER 23 had a policy and practice of rounding down hours worked and "time shaving" to the detriment of employees. TOWER 23 also failed to provide reporting time pay to its employees. In addition, pursuant to California Industrial Welfare Commission Order No. 4-2001/5-2001, Section 8(B), "When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." TOWER 23 unequivocally required its employees, including Mr. Beltran, to provide their own hand tools for the performance of their job duties in the maintenance department. As such, TOWER 23 violated the aforementioned IWC Wage Order in that TOWER 23 required its laborers, including Mr. Beltran, to provide and maintain hand tools and equipment customarily required by the trade but

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did NOT compensate Mr. Beltran and other employees at least two (2) times the minimum wage at all times. Mr. Beltran's wage rate of $25.00 per hour was not close to twice the minimum wage. Due to the above "off the clock" violations and time shaving, TOWER 23 violated Labor Code §510 because it failed to pay our client and other similarly situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. In addition, TOWER 23 failed to include bonus payments or incentive payments/shift differential payments in calculating employees' regular rate of pay for purposes of deciphering their overtime rate of pay. As such, Mr. Beltran and others are entitled to overtime compensation.

TOWER 23 violated Labor Code §§ 512 and 226.7 as well as the relevant Industrial Welfare Commission Wage Order (no. 4/5) because it failed to provide our client and other similarly situated aggrieved employees the requisite 30-minute, timely, <u>uninterrupted</u> meal periods for every five (5) hours of work throughout their employment, and our client did not validly waive said meal periods. TOWER 23 did not completely relieve our client of all duty during said meal periods. TOWER 23 did not pay to our client one additional hour of pay at our client's regular rate of compensation for each workday that one or more statutory meal periods was not provided. Mr. Beltran's meal breaks would often be late and/or interrupted due to work obligations. In fact, and despite the fact that Mr. Beltran would start his shifts at 7am, he would sometimes receive his meal breaks at 2pm, which is 7 hours after his start time. Moreover, there were occasions wherein Mr. Beltran's meal period would be interrupted due to management having questions for Mr. Beltran. The culture and work environment at TOWER 23 was not conductive to employees such as Mr. Beltran taking timely, uninterrupted meal periods wherein they were relieved of all work duty. Second meal breaks were also not enforced for shifts 10 hours or longer. Consequently, it was the normal practice and custom of TOWER 23 not to authorize, permit, and enforce complete, timely statutory meal periods. If TOWER 23 had our client sign a meal period waiver, it would not be valid and enforceable since our client and others generally worked more than a 5-hour shift. **Furthermore, under California law, however, employees must make an affirmative decision <u>every day</u> regarding whether to waive their meal periods. August 13, 2003 DLSE Opinion Letter ("The decision to forego a meal period may not, therefore, be based on a specific requirement of the employer or on a policy or practice which could reasonably be perceived to be a condition of employment. Therefore, blanket "waivers" of meal periods ...whether written or oral, will not be considered valid.").** If TOWER 23 had our client sign an on-duty meal period agreement wherein our client agreed to work through the meal periods, it would be invalid and unenforceable because the nature of our client's job does not and did not prevent him from taking a meal period and the company could have hired "breakers" to relieve Mr. Beltran of his maintenance job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for our client to revoke such an agreement even if it was signed. As such, our client and others did not always receive statutory, timely meal periods during their employment. To the extent that TOWER 23 argues that employees

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did in fact receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at TOWER 23 was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments/shift differentials.

TOWER 23 violated Labor Code § 226.7 as well as the relevant Industrial Welfare Commission Wage Order (no. 4/5) because it failed to provide our client and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. TOWER 23 did not completely relieve our client of all duty during said rest periods. TOWER 23 did not pay to our client one additional hour of pay at our client's regular rate of compensation for each workday that one or more statutory rest periods was not provided. Rest breaks were simply not enforced and not part of the company policy or culture. Mr. Beltran never received timely, uninterrupted statutory rest breaks multiple times per day wherein he was relieved of his work duties. Like meal breaks, the culture and environment at TOWER 23 was not conducive to employees such as Mr. Beltran taking timely, uninterrupted rest periods wherein he was relieved of all work duty.

Furthermore, during the relevant time period, and due all of the aforementioned violations, TOWER 23 failed to pay Mr. Beltran and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204 in that Mr. Beltran is still owed compensation for his "off the clock" work and due to not receiving proper and complete meal and rest break premiums. TOWER 23 was also in violation of California Labor Code section 226(a), by failing to include pertinent information on the wage statements, including but not limited to, all hours worked (regular and overtime), gross wages earned, all deductions, net wages earned, premium pay for missed meal and rest breaks, the correct start and end of the pay period, all identifying employee information, the correct name and address of the legal employer, and all applicable hourly rates, among other items. As such, TOWER 23 did not provide Mr. Beltran and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

TOWER 23 violated Labor Code § 203 because it willfully failed to pay our client and other similarly situated aggrieved employees earned and due wages upon separation of employment,

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either immediately upon involuntary termination, or within 72 hours of resignation. After our client's employment at TOWER 23 ended, TOWER 23 failed and refused to pay all wages earned and due immediately upon separation. These earned but unpaid wages include the unpaid minimum wages, overtime wages, meal/rest period compensation described above, and business expense reimbursement.

During the relevant time period, TOWER 23 also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Mr. Beltran and other aggrieved employees pursuant to California Labor Code sections 1174(d).

During the relevant time period, Mr. Beltran and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by TOWER 23. These costs include, but are not limited to, use of personal cell phones for business-related purposes and use of hand tools to effectuate his job duties as a maintenance person. In addition, Mr. Beltran would have to use his personal vehicle for work purposes and was not reimbursed for his mileage. In fact, towards the end of his employment, Mr. Beltran was owed reimbursement for 336 miles. Accordingly, TOWER 23 was in violation of California Labor Code sections 2800 and 2802.

Furthermore, TOWER 23 did not provide proper and correct/accurate sick pay (inclusive of all bonuses/incentive/shift differential payments) that was also delineated on employee pay stubs and also failed to provide proper sick leave in violation of Labor Code sections 233 and 246. Moreover, there were no suitable seating/rest break facilities for the employees pursuant to Wage Order no. 4-2001/5-2001.

It is also important to note that Mr. Beltran's employment was abruptly and wrongfully terminated in July 2025 after Mr. Beltran had specifically complained about not receiving proper mileage reimbursement under Labor Code Section 2802 for use of his personal vehicle.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, Mr. Beltran also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by TOWER 23.

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If you have any questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Very Truly Yours,

Harout Messrelian, Esq.