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Attorneys for Plaintiff,
VIRIDIANA RAMIREZ PANIAGUA on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

VIRIDIANA RAMIREZ PANIAGUA, an
individual, on behalf of herself, all aggrieved
employees, and the State of California as a
Private Attorneys General,

Plaintiff,

vs.

DOS STARS, INC. dba OLD TOWN
MEXICAN CAFE, a California Corporation
and DOES 1-50, inclusive,

Defendant.

Case No.: 37-2023-00017772-CU-0E-CTL

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

1 Plaintiff VIRIDIANA RAMIREZ PANIAGUA brings this PAGA representative action
2 complaint on behalf of herself, all aggrieved employees, and the State of California as a Private
3 Attorneys General, and alleges as follows:

4 **NATURE OF THE ACTION**

5 1. Plaintiff VIRIDIANA RAMIREZ PANIAGUA worked as an employee for Defendant
6 DOS STARS, INC. dba OLD TOWN MEXICAN CAFE and Does 1-50 (collectively
7 “Defendant”). Defendant is a corporation which owns and operates restaurants in and around San
8 Diego, California, where Plaintiff worked as a server. Plaintiff VIRIDIANA RAMIREZ
9 PANIAGUA worked for Defendant as an hourly, non-exempt employee until January 5, 2023.
10 Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal.
11 Labor Code §2698 *et seq.*, on a representative basis. All current and former employees of
12 Defendant within one year of serving notice on the LWDA to the present are aggrieved employees.

13 2. Defendant failed to comply with California Labor Code requirements due to erroneous,
14 willful and intentional employment practices and policies. Plaintiff brings this representative
15 action on behalf of herself, all other similarly situated aggrieved employees, and the State of
16 California, based upon the claims articulated below. Plaintiff provided notice of her claims
17 pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as
18 illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The
19 LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice
20 period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
21 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

22 3. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
23 worked, including overtime hours worked; (2) failing to pay wages due upon termination; (3)
24 failing to provide rest breaks; (4) failing to provide uninterrupted meal breaks and second meal
25 breaks; (5) failing to provide suitable seating; (6) failing to provide safe working conditions; (7)
26 failing to reimburse for required business expenses; and (8) failing to provide accurate itemized
27 wage statements and violating record keeping requirements. Defendant is therefore liable for civil
28

1 penalties under the Cal. Labor Code, including the Private Attorney General Act (“PAGA”), Labor
2 Code §2698 *et seq.*, as described more fully herein.

3 **THE PARTIES**

4 7. Plaintiff VIRIDIANA RAMIREZ PANIAGUA is a resident of the State of California
5 and worked for Defendant as an hourly, non-exempt employee until January 5, 2023.

6 8. Defendant DOS STARS, INC. dba OLD TOWN MEXICAN CAFE is a California
7 corporation authorized to do business and doing business in California with the capacity to sue and
8 to be sued, and doing business, in the county of San Diego, State of California.

9 9. Plaintiff is unaware of the true names, capacities, relationships, and extent of
10 participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is
11 informed and believes and thereon alleges that said Defendant is legally responsible for the
12 wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff
13 will amend this complaint when their true names and capabilities are ascertained.

14 10. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
15 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
16 of the representative class, and exercised control over their wages, hours, and working conditions.
17 Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects
18 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
19 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
20 to the other Defendants.

21 **JURISDICTION AND VENUE**

22 11. Venue is proper in this judicial district because Defendant conducts business in this
23 county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees
24 in this case that arose in this county.

25 12. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of
26 the Superior Court and will be established according to proof at trial. Based on information,
27 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
28

1 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars
2 (\$25,000).

3 13. The California Superior Court has jurisdiction in this matter because Plaintiff is a
4 resident of California and Defendant is qualified to do business in California and regularly conduct
5 business in California. Further, there is no federal question at issue as the claims herein are based
6 solely on California law.

7 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

8 14. During the relevant time-period, Defendant committed various violations of the
9 California Labor Code as alleged below in more detail. Defendant enforces multiple policies that
10 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

11 15. This representative action represents over one hundred current and former aggrieved
12 employees.

13 16. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
14 to the present, Defendant engaged in unlawful employment practices that resulted in violations of
15 numerous Labor Code sections, as set forth more fully below.

16 17. Plaintiff and all current and former employees within one year of filing this action to
17 the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor
18 code §2699(c).)

19 18. Defendant, and each of them, have committed the following violations of the California
20 Labor Code:

21 **Failure to Pay For All Hours Worked, Including Overtime Hours Worked**

22 (Cal. Labor Code §§204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197,
23 1197.1, 1198, 2698 *et seq.*, Wage Order 5)

24 19. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
25 incorporate said paragraphs herein by reference.

26 20. Section 2(K) of Wage Order 5 defines "hours worked" as "the time during which an
27 employee is subject to the control of an including all the time the employee is suffered or permitted
28 to work, whether or not required to do so." Defendant has been engaged in many unlawful

1 employment practices which resulted in underpayment for hours worked each pay period,
2 including rounding timecard entries, requiring off-the-clock work, and unlawful withholding and
3 pooling tips.

4 21. Failure to Pay Overtime at the Regular Rate of Pay. Plaintiff and aggrieved employees
5 were underpaid for overtime hours worked because Defendant failed to include all remuneration,
6 including tips, in the regular rate of pay for purposes of calculating overtime wages due.

7 22. Tip and Tip Pooling Violations. Plaintiff and aggrieved employees were required to
8 work while off the clock, including pre and post-shift activities, and while clocked out for lunch.
9 Plaintiff explains that employees were often required to clock out for lunch and continue working
10 due to the press of work and Defendant's failure to adequately staff its workforce. Plaintiff and
11 aggrieved employees were not paid for this time worked, resulting in failure to pay wages,
12 including overtime and minimum wages. Defendant has violated Labor Code §§510 1194, 1194.2,
13 1197, 1198, 1199 and Wage Order 5. Defendant is liable for civil penalties pursuant to Labor Code
14 §2698 *et seq.*

15 23. Off-the-Clock Hours Worked. Defendant failed to pay Plaintiff and aggrieved
16 employees for all hours worked as a result of Defendant's practices described above. Based on
17 Defendant's unlawful conduct described above, and because Plaintiff and the aggrieved employees
18 were paid at or near minimum wage, Defendant's failure to pay for all hours worked, including
19 overtime, resulted in a payment of less than the minimum wage for all hours worked in violation
20 of Labor Code §1197, 1197.1, 1199 and Wage Order 5-2001 4(B). Defendant is liable for civil
21 penalties pursuant to Labor Code §§558 and 2699 *et seq.*

22 24. Failure to Pay Wages- Required Minimum Wage. Defendant failed to pay Plaintiff and
23 aggrieved employees for all hours worked as a result of Defendant's practices described herein.
24 Based on Defendant's unlawful conduct described above, and because Plaintiff and the aggrieved
25 employees were paid at or near minimum wage, Defendant's failure to pay for all hours worked,
26 including overtime, resulted in a payment of less than the minimum wage for all hours worked, in
27 violation of Labor Code §1197, 1197.1, 1199 and Wage Order 5-2001 4(B). Defendant is liable
28 for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

1 25. Failure to Pay All Wages Owed Twice Per Month. Defendant was required to pay
2 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant to
3 Labor Code §204(a). Defendant failed to pay all wages earned to employees as a result of the
4 unlawful employment policies and practices discussed herein. As a result of these practices,
5 Plaintiff and aggrieved employees were underpaid for hours worked, including overtime and
6 penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.
7 Due to this failure, Defendant is liable under Labor Code §210 for failure to pay wages as required
8 by law.

9 **Failure to Pay Wages Due Upon Termination**

10 (Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

11 26. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
12 incorporate said paragraphs herein by reference.

13 27. An employee who is discharged must be paid all of his or her wages, including accrued
14 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set
15 forth above, Defendant knowingly and willfully failed to pay all compensation due and owing to
16 Plaintiff at the time employment terminated. Defendant willfully failed to pay employees who are
17 no longer employed by it all compensation due upon termination of employment as required by
18 Cal. Lab. Code §§201 and 202.

19 28. Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30)
20 days pay as waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties
21 pursuant to Cal. Lab. Code § 2698 *et. seq.*

22 **Failure to Provide Rest Breaks**

23 (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

24 29. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
25 incorporate said paragraphs herein by reference.

26 30. Defendant has failed to maintain a compliant rest period policy and practice that
27 provides its employees with off-duty rest periods as required by California law. Plaintiff reports
28 that she rarely received rest periods as a result of Defendant's staffing and business practices, and

1 that rest breaks were not scheduled into daily shifts. Defendant has a facially noncompliant rest
2 period policy.

3 31. Rest periods were either less than ten minutes, not provided, interrupted or late, “on
4 duty”, or not scheduled before and after a meal period for shifts greater than six hours, as
5 prescribed by California law because Defendant: (1) did not account for all hours worked that were
6 unaccounted for on their timecard; (2) did not adequately inform and train employees about their
7 rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately
8 inform and train employees about when, where and how to take timely and uninterrupted ten-
9 minute rest breaks; (4) because Defendant did not staff enough people to schedule all timely and
10 uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting
11 all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest
12 break policy.

13 32. Defendant did not authorize or permit all of its hourly employees to take at least a ten
14 minute rest period in which they were relieved of all duties, for every 4 hours of work, or major
15 fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 11(A). When
16 breaks were missed Defendant failed to pay the 1-hour penalty, as required. Because Defendant
17 violated the Wage Order, Defendant is liable under Labor Code §1198. As a result of these
18 violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq*

19 **Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks**

20 (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*)

21 33. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
22 incorporate said paragraphs herein by reference.

23 34. During Plaintiff’s employment, Defendant failed to maintain a compliant meal period
24 policy and practice. Defendant’s policy is facially noncompliant with California law. Defendant
25 failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute
26 meal period. Labor Code §512 provides, “[a]n employer may not employ an employee for a work
27 period of more than five hours per day without providing the employee with a meal period of not
28 less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee

1 to work during any meal... period mandated by an applicable order of the Industrial Welfare
2 Commission.” Paragraph 11(A) of the Wage Orders provides, in pertinent part, “[u]nless an
3 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
4 considered an ‘on duty’ meal period and counted as time worked.” Labor Code 1198 states that
5 any violation of a wage order is a violation of the Labor Code.

6 35. Plaintiff and aggrieved employees were frequently required to clock out but to continue
7 working straight through their shifts without an actual meal period. When meal breaks were
8 received, they were late, short, or interrupted. Full, uninterrupted, off-duty, thirty-minute meal
9 periods were not provided because Defendant: (1) did not account for all hours worked that were
10 unaccounted for on their timecard; (2) did not adequately inform and train employees about their
11 rights to meal periods and premium payments for non-compliant meal periods; (3) did not
12 adequately inform and train employees about when, where and how to take timely and
13 uninterrupted thirty-minute meal periods; (4) because Defendant did not staff enough people to
14 schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management
15 at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce
16 a lawfully compliant meal period policy. Plaintiff and aggrieved employees were not paid a
17 premium payment, paid as an hour’s wage when meal periods were not given to them in
18 compliance with California law.

19 **Failure To Provide Suitable Seating**

20 **(Lab. Code section 1198 and Wage Order 5 Section 14)**

21 36. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
22 incorporate said paragraphs herein by reference.

23 37. Labor Code section 1198 states, in pertinent part, “The employment of any employee...
24 under conditions of labor prohibited by the [Wage Order] is unlawful.”

25 38. Section 14 of Wage Order 5 provides that:

- 26 a. All working employees shall be provided with suitable seats when the nature of the
27 work reasonably permits the use of seats.
28

- 1 b. When employees are not engaged in the active duties of their employment and the
2 nature of the work requires standing, an adequate number of suitable seats shall be
3 placed in reasonable proximity to the work area and employees shall be permitted
4 to use such seats when it does not interfere with the performance of their duties.

5 39. At all relevant times, Defendant failed to provide Plaintiff and aggrieved employees
6 with suitable seating during their employment as required by section 14 of the applicable Wage
7 Order. Plaintiff and other aggrieved employees were not provided with adequate seating when they
8 were working in positions, such as the hostess, where many required tasks can reasonably and
9 successfully be accomplished while seated.

10 **Failure to Provide Safe Working Conditions**

11 (Cal. Labor Code §1198, Wage Order 5)

12 40. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
13 incorporate said paragraphs herein by reference.

14 41. Defendant's workplaces would get unsafely hot in the kitchen and food prep area, up
15 to 100 degrees indoors. Many aggrieved employees are required to work with no air circulation,
16 ventilation or cooling mechanism. Defendant does not have proper climate control and Plaintiff
17 and her coworkers worked in unbearable heat.

18 42. As stated above, Section 15 of Wage Order 5 provides that:

- 19 a. The temperature maintained in each work area shall provide reasonable comfort
20 consistent with industry-wide standards for the nature of the process and the work
21 performed
22 b. If excessive heat or humidity is created by the work process, the employer shall
23 take all feasible means to reduce such excessive heat or humidity to a degree
24 providing reasonable comfort.

25 43. The work environment created by Defendant was unsafely hot and Defendant failed to
26 take required reasonable steps to provide adequate climate control for employees.

1 **Failure to Reimburse for Required Business Expenses**

2 (Cal. Labor Code §§1198, 2802, 2699 *et seq*)

3 44. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

5 45. Labor Code §2802 requires employers to indemnify employees for necessary
6 expenditures or losses incurred by employees in direct consequence of the discharge of duties.

7 46. Plaintiff and aggrieved employees are required to use their personal cell phones for
8 work related communications, although Defendant did not reimburse them in any way for the
9 expense of their personal cell phone use as required by the Labor Code. Plaintiff and her coworkers
10 were also required to purchase specific apparel to wear on the job which was also unreimbursed.
11 Accordingly, Defendant is liable for civil penalties under PAGA §2699 *et seq*.

12 **Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping**
13 **Requirements**

14 (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq*.)

15 47. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
16 incorporate said paragraphs herein by reference.

17 48. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
18 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
19 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
20 aggrieved employees, and the records maintained by Defendant, have not accurately reflected
21 actual gross wages earned, including pay for all hours worked, and overtime.

22 49. Such failures caused injury to Plaintiff and others, by, among other things, impeding
23 them from knowing the total hours worked and the amount of wages to which they are and were
24 entitled and from identifying the true legal employer for purposes of asserting wage and hour
25 claims. Defendant knowingly and intentionally failed to itemize the gross wages earned, net wages
26 earned, and total hours worked. Defendant is liable for civil penalties pursuant to Labor Code §
27 2698 *et seq*.
28

1 50. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and aggrieved
2 employees to sign employment related contracts and documents that contained unlawful terms of
3 employment.

4 **FIRST CAUSE OF ACTION**

5 **Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)**

6 **(California Labor Code §2698 *et seq.*)**

7 51. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
8 incorporate said paragraphs herein by reference.

9 52. Plaintiff is an “aggrieved employee” under PAGA, as she was employed by Defendant
10 during the applicable statutory period and suffered one or more of the Labor Code violations set
11 forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and
12 former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable
13 attorneys’ fees and costs.

14 53. Plaintiff seeks to recover the PAGA civil penalties through a representative action
15 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
16 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

17 54. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
18 Code provisions:

- 19 a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal.
20 Labor Code §§204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 558, 1194,
21 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 5);
- 22 b. Failure to Pay Wages Due Upon Termination (Cal. Lab. Code §§201, 202, 203, 256
23 and 2698 *et seq.*);
- 24 c. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198,
25 2698 *et seq.*);
- 26 d. Failure to Provide Uninterrupted Meal Breaks and Second Meal Breaks (Cal. Labor
27 Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*)
- 28

- e. Failure to Provide Suitable Seating (Cal. Labor Code §§1198, Wage Order 5 Section 14).
- f. Failure to Provide Safe Working Conditions (Cal. Labor Code §§1198, Wage Order 5).
- g. Failure to Reimburse for Required Business Expenses (Cal. Labor Code §§1198, 2802, 2699 et seq.).
- h. Failure to Provide Accurate Itemized Wage Statements and Violation of Record Keeping Requirements (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 et seq.).

55. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code §226(a).

56. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid.

57. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

58. Plaintiff and the other current and former employees of Defendant are aggrieved employees. They were or are employed by Defendant, and each of them, and the violations alleged herein were committed against them. Plaintiff brings this action on behalf of herself and all other current and former aggrieved employees.

59. At the time of each violation, Defendant employed one or more employees.

60. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be determined at trial, pre-judgment interest, costs and attorneys' fees.

61. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and Workforce Development Agency (“LWDA”) and served by certified mail upon Defendant, Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions that Defendant has violated. The LWDA did not respond to Plaintiff’s Notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue her PAGA claims in this action on behalf of aggrieved employees and the State of California.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for judgement against Defendant as follows:

1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be determined at trial, but at least the jurisdictional amount of this Court;
2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;

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- 1 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
2 law;
3 4. Pre-judgement and post-judgement interest as provided by law; and
4 5. Such other and further relief that the Court may deem just and proper.
5

6 DATED: April 27, 2023

KOUL LAW FIRM

MAJARIAN LAW GROUP, APC

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10 BY: Nazo Koulloukian, Esq.
11 Attorneys for Plaintiff VIRIDIANA RAMIREZ
12 PANIAGUA, and all aggrieved employees
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

February 21, 2023

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Dos Stars, Inc. dba Old Town Mexican Café
3969 Harney Street
San Diego, CA 92110

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Viridiana Ramirez Paniagua
Employer: Dos Stars, Inc. dba Old Town Mexican Cafe

Dear Sir or Madam:

Claimant Viridiana Ramirez Paniagua has retained Nazo Koulloukian, Esq. of the Koull Law Firm and Sahag Majarian, II, and Garen Majarian of the Majarian Law Group to represent her, and all other aggrieved employees, for wage and hour claims against her former employer, Dos Stars, Inc. dba Old Town Mexican Cafe (hereafter “Employer”).

Employer is a corporation which owns and operates restaurants in and around San Diego, California, where Claimant worked as a server. Claimant’s proposed PAGA representative action would represent numerous aggrieved employees. Claimant worked for Employer as an hourly, non-exempt employee until January 5, 2023.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 5)

Section 2(K) of Wage Order 5 defines “hours worked” as “the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including rounding timecard entries, requiring off-the-clock work, and unlawful withholding and pooling tips.

Failure to Pay Overtime at the Regular Rate of Pay

Claimant and aggrieved employees were underpaid for overtime hours worked because Employer failed to include all remuneration, including tips, in the regular rate of pay for purposes of calculating overtime wages due.

Tip and Tip Pooling Violations.

In violation of Labor Code §351, Employer required employees to pool tips yet failed to develop or implement a fair or reasonable allocation procedure. There was no impartial nor rational system concerning the distribution of pooled tips. Aggrieved employees were sometimes underpaid and late paid all tip compensation owed. Tips were not included in the regular rate of pay for purposes of calculating overtime or penalty wages.

Off-the-Clock Hours Worked

Claimant and aggrieved employees were required to work while off the clock, including pre and post shift activities, and while clocked out for lunch. Claimant explains that employees were often required to clock out for lunch and continue working due to the press of work and Employer’s failure to adequately staff its workforce. Claimant and aggrieved employees were not paid for this time worked, resulting in failure to pay wages, including overtime and minimum wages. Employer has violated Labor Code §§510 1194, 1194.2, 1197, 1198, 1199 and Wage Order 5. Employer is liable for civil penalties pursuant to Labor Code §2698 *et seq.*

Failure to Pay Wages- Required Minimum Wage

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer’s practices described herein. Based on Employer’s unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, Employer’s failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197,

1197.1, 1199 and Wage Order 5-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.

Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that she rarely received rest periods as a result of Employer's staffing and business practices, and that rest breaks were not scheduled into daily shifts. Employer has a facially noncompliant rest period policy.

Rest periods were either less than ten minutes, not provided, interrupted or late, "on duty", or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 11(A). When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer's policy is facially noncompliant with California law. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked." Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Claimant and aggrieved employees were frequently required to clock out but to continue working straight through their shifts without an actual meal period. When meal breaks were received, they were late, short, or interrupted. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law.

Failure To Provide Suitable Seating

(Lab. Code section 1198 and Wage Order 5 Section 14)

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 14 of Wage Order 5 provides that:

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

At all relevant times, Employer failed to provide Claimant and aggrieved employees with suitable seating during their employment as required by section 14 of the applicable Wage Order. Claimant and other aggrieved employees were not provided with adequate seating when they were working in positions, such as the hostess, where many required tasks can reasonably and successfully be accomplished while seated.

Failure to Provide Safe Working Conditions

(Cal. Labor Code §1198, Wage Order 5)

Employer’s workplaces would get unsafely hot in the kitchen and food prep area, up to 100 degrees indoors. Many aggrieved employees are required to work with no air circulation, ventilation or cooling mechanism. Employer does not have proper climate control and Claimant and her coworkers worked in unbearable heat.

As stated above, Section 15 of Wage Order 5 provides that:

- (A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.
- (B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

The work environment created by Employer was unsafely hot and Employer failed to take required reasonable steps to provide adequate climate control for employees.

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties.

Claimant and aggrieved employees are required to use their personal cell phones for work related communications, although Employers did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code. Claimant and her coworkers were also required to purchase specific apparel to wear on the job which was also unreimbursed. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked, and overtime.

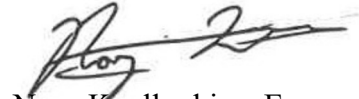
Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled and from identifying the true legal employer for purposes of asserting wage and hour claims. Employer knowingly and intentionally failed to itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment related contracts and documents that contained unlawful terms of employment.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', written over a horizontal line.

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