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September 8, 2025

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION SECTIONS 2698 *ET SEQ.*

VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency
Private Attorneys General Act – Filing

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Re: ALEXANDRA ISABEL GUTIERREZ v. BLACK EIGHT FOODS LLC, et al.

To Whom It May Concern:

The office represents ALEXANDRA ISABEL GUTIERREZ (“Claimant”) with respect to her claims against BLACK EIGHT FOODS LLC; BYC, INC.; BROKEN YOLK CAFÉ – BUENA PARK; BROKEN YOLK CAFÉ – CARMEL MOUNTAIN; BROKEN YOLK CAFÉ – CORONA; BROKEN YOLK CAFÉ – COSTA MESA; BROKEN YOLK CAFÉ – DEL MAR; BROKEN YOLK CAFÉ – EASTLAKE-CHULA VISTA; BROKEN YOLK CAFÉ – EL CENTRO; BROKEN YOLK CAFÉ – FULLERTON; BROKEN YOLK CAFÉ – GASLAMP; BROKEN YOLK CAFÉ – GLENDORA; BROKEN YOLK CAFÉ – IRVINE CROSSROADS; BROKEN YOLK CAFÉ – LA-COSTA CARLSBAD; BROKEN YOLK CAFÉ – LA QUINTA; BROKEN YOLK CAFÉ – LA VERNE; BROKEN YOLK CAFÉ – MIRA MESA; BROKEN YOLK CAFÉ – MISSION VALLEY; BROKEN YOLK CAFÉ – MISSION VIEJO; BROKEN YOLK CAFÉ – OCEANSIDE; BROKEN YOLK CAFÉ – ORANGE; BROKEN YOLK CAFÉ – PACIFIC BEACH; BROKEN YOLK CAFÉ – PALM SPRINGS; BROKEN YOLK CAFÉ – PLAZA BONITA; BROKEN YOLK CAFÉ – POINT LOMA; BROKEN YOLK CAFÉ – RANCHO CUCAMONGA; BROKEN YOLK CAFÉ – RANCHO SAN DIEGO-EL CAJON; BROKEN YOLK CAFÉ – SAN MARCOS; BROKEN YOLK CAFÉ – SANTEE; BROKEN YOLK CAFÉ – SDSU; BROKEN YOLK CAFÉ – TEMECULA; BRENDA HERNANDEZ (collectively, “Employer”) for violations of the California Labor Code and IWC Wage Orders. This letter is being sent simultaneously to Employer via certified mail. The above-named Employer engaged Claimant and Aggrieved Employees, as there was sufficient control over wages, hours, and working conditions, whether directly or indirectly. Employer is a corporation doing business in the State of California. Employer employed Claimants as non-exempt/hourly employees.

Employer employed or currently employs other Aggrieved Employees in California.

Claimant intends to seek penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 (“PAGA”). Claimant is seeking penalties on behalf of themselves and in a representative



capacity on behalf of the State of California and all current and former non-exempt employees of any of the Employer (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employer violated several of California’s wage and hour laws during Claimant’s employment, including but not limited to violations of California Labor Code §§ 98.6, 98.7, 201, 202, 203, 204, 226(a), 226.3, 226.7, 227.3, 510, 512(a), 558, 558.5, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the Industrial Welfare Commission Wage Orders (“IWC Wage Order”). The claims made on behalf of Claimant and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION.

Employer has engaged in numerous unlawful practices which resulted in the failure to pay Claimant and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

First, Employer regularly required Claimant and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Claimant and Aggrieved Employees to: respond to Employer and work-related requests and perform work while clocked out for purported meal breaks. Claimant and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Claimant and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Claimant and Aggrieved Employees to perform work off-the-clock without compensation, Employer also failed to accurately record the actual time worked by Claimant and Aggrieved Employees, which resulted in a failure to pay Claimant and Aggrieved Employees for all hours worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employer failed to pay overtime to Claimant and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employer has failed to pay Claimant and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employer violated the applicable IWC Wage Order and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198. Claimant and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys’ fees and costs.

Factual Summary: Claimant and Aggrieved Employees were not properly compensated for all hours worked. Claimant was paid entirely in cash with no paystubs or payroll records, depriving her of any means to verify hours worked or wages earned. Similarly, Claimant and Aggrieved Employees were required to clock in and then immediately clock out to take a “break” before their shift began, an unlawful practice. By paying in cash without wage statements, manipulating time entries, and forcing off-the-clock practices, Employer violated multiple provisions of the Labor Code and deprived Claimant and Aggrieved Employees of their earned wages.



2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS.

Employer failed to provide Claimant and Aggrieved Employees with legally compliant 30-minute meal periods. On the occasions that Claimant and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short. Furthermore, Employer's supervisors and managers observed Plaintiff and Aggrieved Employees work through meal periods without legal compensation.

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to premium wages for non-compliant meal periods; (5) Employer failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employer required Claimant and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to in-person verbal interruptions; and (7) Employer's policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Accordingly, Employer violated the applicable IWC Wage Order and California Labor Code sections 226.7(a), 512(a) and 1198. Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of the IWC Wage Orders penalties pursuant to California Labor Code California Labor Code sections 558 and 1199; and attorneys' fees and costs.

Factual Summary: Claimant and Aggrieved Employees were routinely denied lawful meal periods. Claimant was forced to take her meal break only two hours into her shift—well before the fifth hour—reflecting Employer's lack of any compliant policy to provide timely, duty-free breaks. Many days, meal breaks were entirely non-existent; employees were made to clock out for a "meal period" before work even began, eliminating the possibility of receiving a genuine, uninterrupted 30-minute break. Claimant and Aggrieved Employees were neither relieved of duties nor provided additional meal periods when shifts extended. No meal premiums were ever paid.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS.

Employer failed to authorize and permit Claimant and Aggrieved Employees to take legally complaint 10-minute rest periods. Employer required Claimant and Aggrieved Employees to work through rest periods. Claimant and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimant and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare



event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimant and Aggrieved Employees were never completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employer failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer required Claimant and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to in person verbal interruptions; and (7) Employer's policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Claimant and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods, which were not provided to them in compliance with California law. Accordingly, Employer violated the applicable IWC Wage Orders and California Labor Code sections 226.7(a), and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of the applicable IWC Wage Order; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

Factual Summary: Claimant and Aggrieved Employees were not authorized or permitted to take lawful rest breaks. In fact, rest breaks were non-existent, as employees were never relieved of duties or informed of their entitlement to 10-minute rest periods every four hours. Instead, Employer ignored statutory requirements, leaving workers to push through shifts without relief. No rest period premiums were ever paid.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT.

As a result of the foregoing, as to each pay period, Employer has failed to timely pay all wages earned because Claimant and Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight time wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code section 204(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS.

As a result of the practices described herein, the wage statements provided to Claimant and Aggrieved Employees never included the actual hours worked, the name and address of the legal



employing entity, and the correct rates of pay. Accordingly, Employer violated California Labor Code section 226(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code §§ 226, 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS.

As a result of the practices described herein, Employer failed to maintain accurate records relating to Claimant and Aggrieved Employees' work periods, meal periods, shifts, total daily hours worked, and total hours worked per payroll period. Accordingly, Employer violated section 7 of the applicable IWC Wage Order(s) and California Labor Code sections 1198.5 and 1174(d).

7. FAILURE TO PAY VACATION TIME & SICK PAY.

Pursuant to California Labor Code section 227.3, ". . . whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off her vested vacation time, all vested vacation shall be paid to her as wages at her final rate in accordance with such contract of employment or employer policy respecting eligibility or time served."

As a result of the practices described herein, during the relevant time period, Employer failed to pay Claimant and other Aggrieved Employees for all earned and unused and accrued vacation time and sick pay at their final rate of pay at the time of termination of their employment or upon accrual of sick or vacation pay or calculated the incorrect sick or vacation pay. Accordingly, Employer has violated California Labor Code section 227.3.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order(s); California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

Sincerely,

ZAGHI & CHRZAN, LLP

Zachary T. Chrzan

Zachary T. Chrzan, Esq.

cc: BLACK EIGHT FOODS LLC and BYC, INC (via U.S. Certified Mail).