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VIA PAGA ONLINE FILING ONLY

California Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
https://dir.tfaforms.net/308

Re: Celia Berenice Torres Alvarez *v.* Third Cancun Juice Inc.

Notice of Private Attorneys General Act Claim

Dear PAGA Administrator:

This office has been retained by aggrieved employee Celia Berenice Torres Alvarez ("Plaintiff") concerning a representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq*. ("PAGA") against Third Cancun Juice Inc. (including any and all affiliates, subsidiaries, parents, directors, officers, managing agents, and executive employees) (collectively referred to as "Defendants") for violations of California wage and hour laws. Plaintiff seeks civil penalties for violations of the Labor Code and all other remedies available under PAGA.

Plaintiff seeks these remedies on behalf of the State of California and "aggrieved employees," as defined herein. This letter is sent in compliance with the notice requirements of Labor Code § 2699.3.

Defendants own and operate Mexican food restaurant. Defendants operate throughout Southern California. Defendants employed Plaintiff as an hourly-paid, non-exempt employee from approximately April 2, 2024 through May 30, 2025. The "aggrieved employees" that Plaintiff seeks civil penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California.

Based on the following facts and theories, Defendants violated and/or continue to violate, among other provisions of the Labor Code and applicable wage law, California Labor Code §§ 204, 210, 226, 226.3, 226.7, 245 et seq., 246, 510, 512, 558, 558.1, 1174, 1174.5, 1185, 1194, 1194.2, and 1199, and IWC Wage Orders including Wage Order 4-2001.

Labor Code § 1194 authorizes an employee paid less than the legal minimum wage or overtime to recover the unpaid balance, interest, and reasonable attorneys' fees and costs, and § 1194.2 entitles an employee who proves a minimum-wage underpayment to liquidated damages equal to the unpaid minimum wages plus interest. The applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." *See* §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work.

During the relevant time period, Defendants failed to pay Plaintiff and other aggrieved employees for all hours worked, including hours worked in excess of eight hours per day and forty hours per week.

Labor Code § 510 provides that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. During the relevant time period, Defendants provided Plaintiff and other aggrieved employees with nondiscretionary free meals as compensation for hours worked during their shifts. These free meals were tied to services rendered and/or a shift worked, as employees did not receive free meals when they were not working a shift. However, Defendants failed to incorporate the value of these free meals into the calculation of the regular rate of pay for purposes of calculating overtime compensation. As a result, Plaintiff and other aggrieved employees were paid overtime at an artificially low rate that did not include all remuneration as required by law.

Labor Code § 226.7 provides that an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. It further provides that if an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided. During the relevant time period, Defendants maintained a uniform policy and practice that prevented Plaintiff and other aggrieved employees from taking compliant meal and rest breaks. Specifically, Plaintiff and other aggrieved employees regularly worked over eight hours per day but were not authorized and/or permitted to take compliant meal breaks or rest breaks. Their meal breaks were either late, short, not taken, or interrupted, and their rest breaks were either shorter than 10 minutes, not taken at all, or were interrupted due to Defendant's common policy and practice. Additionally, when meal and rest period premiums were paid, if at all, Defendants failed to include the value of nondiscretionary free meals in the regular rate of pay for purposes of calculating meal and rest period premiums. As a result, Plaintiff and other aggrieved employees were paid meal and rest premiums at an artificially low rate that did not include all remuneration as required by law.

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, Defendants failed to pay Plaintiff and other aggrieved employees all wages due to them within any time period specified by Labor Code §§ 201 and 202, including unpaid overtime wages calculated at the correct regular rate of pay including the value of nondiscretionary free meals, premium pay for meal and rest periods that were not provided or were deficient calculated at the correct regular rate of pay, and sick pay calculated at the correct regular rate of pay.

Labor Code § 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. Labor Code § 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Defendants failed to pay Plaintiff and other aggrieved employees all wages due to them within any time period specified by Labor Code § 204, including earned and unpaid overtime wages, meal and rest period premiums, and sick pay, all of which should have been calculated using a regular rate of pay that included the value of nondiscretionary free meals provided to employees.

Labor Code § 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Defendants did not provide Plaintiff and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Defendants were in violation of Labor Code § 226(a). The violations include, but are not limited to, the failure to include the correct regular rate of pay, all hours worked, premium pay for non-compliant meal and rest breaks, and the correct sick pay rate, as the wage statements omitted remuneration for nondiscretionary free meals. These omissions prevented Plaintiff and other aggrieved employees from learning of Defendant's unlawful pay practices.

Labor Code 246 provides that paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. Labor Code § 246 also requires employers to provide sick pay balances on wage statements. During the relevant time period, Defendants provided nondiscretionary free meals to Plaintiff and other aggrieved employees as remuneration for hours worked. However, Defendants failed to include the value of these free meals in the regular rate of pay for purposes of calculating sick pay premiums. Additionally, Defendants omitted sick pay balances from wage statements. As a result, Plaintiff and other aggrieved employees were paid sick pay at an artificially low rate that did not include all remuneration as required by law, and were unable to determine their available sick leave balances.

Defendants failed to keep accurate time and wage records as required by Labor Code § 1174, including failing to maintain records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary free meals and other forms of remuneration, and the total amount of compensation of their employees.

Therefore, on behalf of all aggrieved employees, Plaintiff seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the LWDA, for violation of the Labor Code pursuant to PAGA. Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this letter) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA and employer an opportunity to investigate the claims and/or take any action they deem appropriate. If the LWDA and Defendants elect not to take any action with respect to any of the foregoing claims, Plaintiff will seek these penalties in a civil action on behalf of all aggrieved employees within one year of the date of this letter as allowed by law.

If you have any questions, please contact me at the phone number or address above.

Very truly yours,

Sent via Certified Mail to:

2302 S. BRISTOL STREET

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SANTA ANA, CA 92704