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Via E-filing:

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

Via Certified U.S. Mail:

Viking River Cruises, Inc.
5700 Canoga Ave, #200
Woodland Hills, CA 91367

Viking River Cruises, Inc.
c/o CSC Lawyers Incorporating Services
2710 Gateway Oaks Drive
Sacramento, CA 95833

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Danny Rodriguez
Employer: Viking River Cruises, Inc.

Dear Sir or Madam:

Claimant Danny Rodriguez has retained Nazo Koulloukian, Esq. of the Koul Law Firm and Sahag Majarian, II, and Garen Majarian of the Majarian Law Group, APC, to represent him, and all other aggrieved employees, for wage and hour claims against his former employer, Viking River Cruises, Inc. (hereafter “Employer”). Claimant worked for Employer as a Customer Service employee on an hourly, non-exempt basis from June 2016 through May 30, 2022.

Employer violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under 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 Labor 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.*, IWC Wage Order)

Off the Clock Hours Worked and Unpaid Overtime. The Wage Order 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.” Although Claimant and many aggrieved employees worked from home, they were required to log into their work system using the computer equipment provided to them by Employer. Prior to starting work, Claimant and other remote workers had to spend time off the clock uploading their computers and apps prior to each shift before clocking in. Employees were also required to pack and return Employer’s equipment at the end of employment without being paid for these required tasks.

Failure to Include Bonus Pay in Regular Rate of Pay for Calculating Overtime. Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” Employer fails to include nondiscretionary bonuses into the regular rate of pay for purposes of calculating overtime. In addition to bonuses, Claimant and aggrieved employees are paid wages and various rates of pay. For example, Claimant is paid an “on call” rate that is higher than his base hourly rate.

It is well established that non-discretionary bonuses retroactively increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code §207) The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee’s regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employer has failed to properly calculate and pay overtime compensation, making no adjustment to overtime rates reflected in any of Claimant or aggrieved employees’ paystubs. Claimant and other employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay

overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order.

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 practice of requiring employees to work off the clock. 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 the Wage Order.

Failure to Properly Calculate and Pay Sick Leave Wages

(Cal. Labor Code §246)

Employers must calculate paid sick leave for non-exempt employees in one of two ways:

- (1) 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; [or]
- (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

Labor Code § 246 (l)

Claimant and aggrieved employees were paid sick leave wages at their base hourly rates of pay, which is less than required under either of the two alternative methods of calculation provided by Labor Code section 246(l). As described above, Claimant and aggrieved employees receive bonuses and pay at various rates, which should increase the regular rate of pay for purposes of paying sick leave wages.

Failure to Pay All Wages Owed Twice Per Month

(Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

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 this underpayment resulted in a failure to pay all wages owed twice per month.

Due to these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* 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 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 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 discharge of duties. Here, Claimant and other aggrieved employees had to supply their own equipment for work purposes and were not adequately reimbursed for such expenses. For example, Claimant was required to use his personal cell phone, wifi service, electricity, and stock his office with a desk, chair, paper, pens, and other supplies. Claimant was reimbursed only a minimal amount not nearly sufficient to reimburse him for his out of pocket expenses associated with remote work. Other aggrieved employees of Employer experienced these same conditions and requirements. Accordingly, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

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

(Cal. Labor Code §§ 226, 246, 248, 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).

Employer's wage statements contained facial 226 violations. Every other wage statement shows the total hours and total hours worked. Wage statements in between show just total hours which frequently states the incorrect hours. Additionally, total hours worked often includes sick wages and vacation wages which are not hours actually worked. Moreover, the overtime rate of pay listed is frequently incorrect. For example, Claimant's base rate is \$23.09 but his overtime was listed at \$34.00 instead of \$34.63 resulting in both underpayment of wages and incorrect wage statements and records.

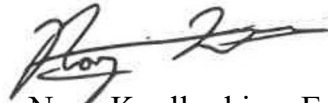
As a derivative claim, both the wage statements and the records maintained by Employer fail to reflect the actual hours, including overtime hours, worked by employees. Wage statements also fail to state reimbursements for business expenses, and the number of Covid-19 supplemental sick leave available during the relevant statutory time period, including throughout 2022.

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. Employer knowingly and intentionally failed to list all the items described above. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq*.

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 him if it does not intend to investigate these violations so that he may pursue these claims as a representative action in civil court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a stylized flourish at the end.

Nazo Koulloukian, Esq.
Attorneys for Claimant

Cc:

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