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Attorneys for Plaintiff Evelyn Guerra

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MERCED
UNLIMITED JURISDICTION

EVELYN GUERRA, an individual,

Plaintiff,

v.

BLACK BEAR DINER LOS BANOS, L.P., a
California limited partnership; and BLACK
BEAR DINER SAN JOAQUIN VALLEY
CORPORATION, a California corporation;
and DOES 1-25, inclusive,

Defendants.

Case No. 23CV-02643

FIRST AMENDED COMPLAINT FOR:

**(1) FAILURE TO PAY WAGES OWED
ON TIME AND AT TERMINATION;
(2) FAILURE TO PAY AT LEAST
MINIMUM WAGE;
(3) FAILURE TO PROVIDE MEAL
PERIODS;
(4) FAILURE TO PROVIDE REST
PERIODS;
(5) IMPROPER TIP SHARING;
(6) FAILURE TO PROVIDE ACCURATE
WAGE STATEMENTS;
(7) FAILURE TO REIMBURSE;
(8) FAILURE TO PROVIDE
EMPLOYMENT RECORDS;
(9) UNFAIR BUSINESS PRACTICES; and
(10) PENALTIES PURSUANT TO PAGA
(LABOR CODE §2698, *et seq.*)**

Plaintiff Evelyn Guerra alleges as and for cause of action against Defendants, and each of
them, as follows:

PARTIES

1. Plaintiff Evelyn Guerra is an individual residing in Merced County, California.
Plaintiff performed the work for Defendants that is the subject of this action primarily in Merced

1 County.

2 2. Defendant Black Bear Diner Los Banos, L.P. is a California limited partnership
3 doing business in Merced County, California.

4 3. Defendant Black Bear Diner San Joaquin Valley Corporation is a California
5 corporation doing business in Merced County, California

6
7 4. Plaintiff is informed and believes and, based upon such information and belief,
8 alleges that each of the Defendants designated as Does 1 through 25, inclusive, is contractually,
9 intentionally, negligently, legally, or in some manner responsible for the events and occurrences
10 more fully described below and which proximately caused injuries and/or damages to Plaintiff as
11 alleged. Plaintiff is unaware of the true names and capacities of those Defendants sued herein as
12 Does 1 through 25, inclusive, and therefore sues such Defendants by fictitious names. Plaintiff
13 will seek leave to amend this Complaint to set forth the true names and capacities of those
14 Defendants when they have been ascertained.

15
16 5. Plaintiff is informed and believes and, based on such information and belief,
17 alleges that at all times mentioned each of the Defendants was the agent, employee, and/or alter
18 ego of the remaining Defendants, and was at all times acting within the scope and purpose of this
19 agency, employment, and/or alter ego status and with the consent and permission of the remaining
20 Defendants such that each is liable for the wrongdoings described herein.

21
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23 **FACTS**

24 6. Defendants operate a restaurant in Los Banos, California. On information and
25 belief, Defendants and their associated entities and individuals operate six restaurants throughout
26 California, including multiple Black Bear Diner franchises. On information and belief,
27 Defendants employ approximately three hundred employees in California. Ms. Guerra was
28

1 employed by Defendants as a non-exempt hourly employee from approximately November 2018
2 through mid-2023.

3 7. Throughout her employment, due to understaffing, the press of business, and other
4 factors, Ms. Guerra and other employees were denied timely and uninterrupted meal and rest
5 periods. To the extent that employees were able to take breaks at all, they remained perpetually on
6 call, and were often required to cut their rest periods short. Ms. Guerra and other employees were
7 typically required to stay on-site and nearby during their meal and rest periods to monitor their
8 work – food being cooked, etc. – and interrupt their breaks to tend to their food, customers, or
9 other duties. Consequently, Ms. Guerra was required to work, off the clock, during virtually every
10 meal period, for which she was unpaid.

11 8. Despite failing to provide code-compliant meal and rest periods, at the end of
12 employees' shifts, Defendants required employees to confirm (often falsely) that they had received
13 their meal and rest periods, among other things, in violation of Labor Code §206.5.

14 9. Because Defendants failed to provide timely meal and rest periods, they owe Ms.
15 Guerra and other employees one hour of compensation for each day worked with a missed,
16 untimely, or interrupted meal period and one hour of compensation for each day worked with a
17 missed, untimely, or interrupted rest period. Defendants failed to pay Ms. Guerra and other
18 employees those wages when they were due and failed to pay Ms. Guerra and other employees
19 those wages upon termination.

20 10. Defendants required Ms. Guerra and other employees to wear a uniform consisting
21 of a black hat, black shirt, black pants, and black shoes. Defendants provided Ms. Guerra with
22 only a single shirt in the past two years. Ms. Guerra is forced to purchase multiple shirts and pants
23 each month, as they were inevitably stained with bleach or otherwise ruined in the normal course
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1 of her employment. Ms. Guerra is informed and believes that other employees face similar issues.
2 Defendants failed to compensate Ms. Guerra or the other employees for the expense of purchasing
3 these uniforms, despite the fact that these items were expenses incurred at the instruction of
4 Defendants and for the benefit of Defendants’ business.
5

6 11. On information and belief, during the relevant time period, Defendants required
7 employees to share their tips with other employees and with management, and failed to accurately
8 transmit those tips to employees, in a manner that deprived them of their fair share of those tips,
9 resulting in unlawful deductions and unpaid wages.
10

11 12. The above-referenced conduct resulted in Defendants failing to maintain accurate
12 records of days and hours actually worked by Ms. Guerra and other employees, failing to pay Ms.
13 Guerra and other employees for all hours worked, failing to pay Ms. Guerra and others at least
14 minimum wage for all hours worked, and failing to pay Ms. Guerra and others overtime premiums
15 for hours worked in excess of eight hours in a workday, forty hours in a workweek, and/or six
16 days in a workweek.
17

18 13. During the relevant time period, Defendants failed to provide Ms. Guerra and other
19 employees with accurate, itemized wage statements. The wage statements did not include an
20 accurate statement of the hours actually worked or the wages owed and unpaid as set forth above.
21

22 14. To the extent that employees resigned from or were terminated by Defendants
23 during the past year, Defendants willfully failed to pay those employees all wages due upon
24 termination or within 72 hours of said members’ resignation.

25 15. On May 26, 2023, counsel for Ms. Guerra requested her employment records
26 pursuant to Labor Code §§226, 247.5, 432, and 1198.5. Defendants provided some personnel
27 records, but failed to provide all records, including any time records or wage statements.
28

16. Ms. Guerra brings her Tenth Cause of Action in a representative capacity on behalf of herself, her fellow aggrieved employees, and the Labor & Workforce Development Agency (“LWDA”) under the Private Attorneys General Act (“PAGA”), and seeks to vindicate her rights under the Labor Code as well as those of all other aggrieved current and former employees of Defendants.

18. Plaintiff filed that PAGA notice with the LWDA on May 26, 2023 and sent it to Defendant Black Bear Diner Los Banos, L.P. by certified mail the same day. Plaintiff alleges that by the conduct described herein, Defendant violated Labor Code §§201, 202, 204, 206.5, 226, 226.7, 247.5, 351, 512, 558, 1174, 1197, 2802, and IWC Wage Order No. 5-2001 (8 C.C.R. §11050), for which it is subject to civil penalties under PAGA. Plaintiff filed and sent an amended notice on August 4, 2023 to correct a typo and adding Defendant Black Bear Diner San Joaquin Valley Corporation to the corporation. A true and correct copy of the amended PAGA notice is attached hereto as Exhibit A.

(Failure to Pay Wages on Time and at Termination; Violation of Labor Code §§201-204)

20. As set forth above, Defendants failed to track or pay Plaintiff for all hours worked, requiring Plaintiff and other employees to perform work off-the-clock, including without

1 limitation, requiring Plaintiff and other employees to work through meal periods. Defendants also
2 owe Plaintiff and other employees unpaid meal and rest period premiums.

3 21. Defendants willfully failed to pay Plaintiff all wages owed both (1) at the time they
4 were due and (2) upon his termination from employment. To date, Defendants have not paid those
5 wages.
6

7 22. As a proximate result of Defendants' failure to pay wages owed and on time,
8 Plaintiff has suffered damages in the estimated amount of \$6,000 as well as waiting time penalties
9 pursuant to Labor Code §203 in the estimated amount of \$3,840.
10

11 **SECOND CAUSE OF ACTION**

12 **(Failure to Pay Minimum Wage;**

13 **Violation of Labor Code §§1197, I.W.C. Wage Order No. 5-2001)**

14 23. Plaintiff incorporates the allegations above as though they were fully set forth
15 herein.
16

17 24. As set forth above, Defendants' requirement that Plaintiff and other employees
18 perform work off the clock led to her not being paid at least the minimum wage for all hours
19 worked, and indeed, not being paid at all for those hours.

20 25. As a proximate result of Defendants' failure to pay at least the minimum wages
21 owed, Plaintiff has suffered damages in the estimated amount of \$6,000.
22

23 **THIRD CAUSE OF ACTION**

24 **(Failure to Provide Meal Periods and Pay Meal Period Premiums;**

25 **Violation of Labor Code §§226.7, I.W.C. Wage Order No. 5-2001)**

26 26. Plaintiff incorporates the allegations above as though they were fully set forth
27 herein.
28

1 27. Plaintiff and other employees typically were not authorized or permitted to take a
2 timely, uninterrupted paid meal period during which they were relieved of all responsibility. To
3 the extent that employees were able to take any breaks at all, they remained perpetually on call
4 during their meal periods, and often were required to cut their meal periods short to address issues
5 with their work.
6

7 28. On these occasions, Defendants failed to pay Plaintiff one additional hour of pay at
8 her regular rate of compensation.

9 29. As a proximate result of Defendants' failure to allow Plaintiff to have timely and
10 uninterrupted rest periods and failure to compensate Plaintiff for missed meal periods, Plaintiff has
11 suffered damages and is entitled to penalties in the estimated amount of \$12,000.
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13 **FOURTH CAUSE OF ACTION**

14 **(Failure to Provide Rest Periods and Pay Rest Period Premiums;**

15 **Violation of Labor Code §§226.7, I.W.C. Wage Order No. 5-2001)**
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17 30. Plaintiff incorporates the allegations above as though they were fully set forth
18 herein.

19 31. Plaintiff and other employees typically were not authorized or permitted to take a
20 timely, uninterrupted paid rest period during which they were relieved of all responsibility. To the
21 extent that employees were able to take any breaks at all, they remained perpetually on call during
22 their rest periods, and often were required to cut their rest periods short to address issues with their
23 work .
24

25 32. On these occasions, Defendants failed to pay Plaintiff one additional hour of pay at
26 her regular rate of compensation.

27 33. As a proximate result of Defendants' failure to allow Plaintiff to have timely and
28

1 uninterrupted rest periods and failure to compensate Plaintiff for missed meal periods, Plaintiff has
2 suffered damages and is entitled to penalties in the estimated amount of \$12,000.

3
4 **FIFTH CAUSE OF ACTION**

5 **(Improper Tip Sharing and Pooling; Violation of Labor Code §351)**

6 34. Plaintiff incorporates the allegations above as though they were fully set forth
7 herein.

8 35. As set forth above, on information and belief, Defendants required Plaintiff and
9 other employees to share tips with other employees and with management, and failed to accurately
10 transmit those tips to employees in a manner that deprived them of their fair share of those tips,
11 resulting in unlawful deductions and unpaid wages.

12 36. Plaintiff suffered damages from Defendants' improper tip allocation in the
13 estimated amount of \$7,500.

14
15 **SIXTH CAUSE OF ACTION**

16 **(Failure to Provide Accurate Wage Statements; Violation of Labor Code §226)**

17 37. Plaintiff incorporates the allegations above as though they were fully set forth
18 herein.

19 38. Defendants failed to furnish Plaintiff and other employees with an accurate,
20 itemized statement in writing on the regular paydays showing gross wages earned, total hours
21 worked, net wages earned, all applicable hourly rates of pay in effect during the pay period, and
22 the corresponding number of hours worked at each hourly rate, as well as all other requirements of
23 Labor Code §226.

24 39. Defendants knew that they were required by law to furnish accurate itemized
25 statements in writing and intentionally failed to furnish accurate statements to Plaintiff on the
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1 regular paydays.

2 40. Plaintiff suffered injury from Defendants' failure to provide accurate itemized
3 statements in writing on the regular paydays. Plaintiff could not promptly and easily determine
4 the amount of gross or net wages earned, the total number of hours worked, or the applicable rates
5 in effect for the corresponding hours.
6

7 41. As a proximate result of Defendants' failure to furnish Plaintiff with an accurate,
8 itemized statement in writing on the regular paydays, Plaintiff is entitled to penalties under Labor
9 Code §226 in the estimated amount of \$4,000.
10

11 **SEVENTH CAUSE OF ACTION**

12 **(Failure to Reimburse Employment-Related Expenses; Violation of Labor Code §2802)**

13 42. Plaintiff incorporates the allegations above as though they were fully set forth
14 herein.
15

16 43. As set forth above, Defendants required Plaintiff and other employees to purchase
17 various items of clothing to wear as uniforms, and those clothes were regularly ruined in the
18 course of their employment.

19 44. Defendants failed to compensate Plaintiff or the other employees for the expenses
20 of purchasing these uniforms, despite the fact that they were expenses incurred at the instruction of
21 Defendants and for the benefit of Defendants' business.
22

23 45. As a result, Plaintiff has been damaged in the estimated amount of \$3,240.
24

25 **EIGHTH CAUSE OF ACTION**

26 **(Failure to Provide Employment Records;**

27 **Violation of Labor Code §§226, 247.5, 432, and 1198.5)**

28 46. Plaintiff incorporates the allegations above as though they were fully set forth
herein.

1 47. On May 26, 2023, counsel for Plaintiff requested her employment records pursuant
2 to Labor Code §§226, 247.5, 432, and 1198.5. Defendants provided some personnel records, but
3 failed to provide all records, including any time records or wage statements.

4 48. As a result, Plaintiff is entitled to penalties under Labor Code §226 in the estimated
5 amount of \$750.
6

7 **NINTH CAUSE OF ACTION**

8 **(Unfair Business Practices, Violation of Bus. & Prof. Code §17200)**

9 49. Plaintiff incorporates the allegations above as though they were fully set forth
10 herein.

11 50. Defendants' conduct, as set forth above, violates the California Unfair Competition
12 Law, Bus. & Prof. Code §17200, *et seq.* ("UCL"). Defendants' conduct constitutes unlawful,
13 unfair, or fraudulent business acts or practices in that they willfully fail to pay employees for all
14 hours worked, fail to provide meal and rest periods, fail to provide accurate wage statements, fail
15 to reimburse employees for work expenses, and the like.
16

17 51. As a result of Defendants' unlawful, unfair, and fraudulent conduct, Plaintiff has
18 suffered injury in fact.
19

20 52. Plaintiff is informed and believes, and on that basis alleges, that Defendants
21 continue to engage in the unlawful, unfair, and fraudulent practices as alleged herein, and that they
22 will continue to do so unless enjoined by this court.
23

24 53. Pursuant to Bus. & Prof. Code §17203, Plaintiff seeks declaratory and injunctive
25 relief for Defendants' unlawful, unfair, and fraudulent conduct, and to recover restitution.
26

27 **TENTH CAUSE OF ACTION**

28 **(Violations of the California Labor Code under the Private Attorneys General Act**

(Lab. Code §2698, *et seq.*))

1 54. Plaintiff incorporates the allegations above as though they were fully set forth
2 herein.

3 55. Plaintiff brings this cause of action in a representative capacity on behalf of herself,
4 her fellow aggrieved employees, and the Labor & Workforce Development Agency (“LWDA”)
5 pursuant to the California Private Attorneys General Act (Labor Code §2698, *et seq.*), and seeks to
6 vindicate her rights under the Labor Code as well as those of all other aggrieved current and
7 former employees of Defendants.
8

9 56. For purposes of this cause of action, the group of aggrieved employees consist of
10 those employees of Defendants working in California (the “Representative Group”) at any time
11 since August 4, 2022, and through the date of entry of final judgment in this matter (the “Claim
12 Period”).
13

14 57. As set forth above, Defendants have violated Labor Code §§201, 202, 204, 206.5,
15 226, 226.7, 247.5, 351, 512, 558, 1174, 1197, 2802, and IWC Wage Order No. 5-2001 (8 C.C.R.
16 §11050) with respect to Plaintiff and the Representative Group, who have been injured as a result
17 of these violations.
18

19 58. Plaintiff seeks to recover civil penalties for violations of the Labor Code committed
20 by Defendants against Plaintiff and all other aggrieved employees as set out in the amended
21 PAGA notice submitted to the LWDA. A true and correct copy of the operative amended PAGA
22 notice is attached hereto as Exhibit A, and its contents are incorporated herein by reference as
23 though expressly set out herein.
24

25 59. For the violations of the Labor Code alleged, Plaintiff and other aggrieved
26 employees have no administrative remedies to exhaust.
27

28 60. Plaintiff has fully complied with notice requirements under PAGA by giving

1 written notice to both the LWDA and Defendants pursuant to Labor Code §2699.3(a)(1)(A), and
2 by paying the filing fee required by subsection (a)(1)(B) of the same.

3 61. Sixty-five calendar days have now passed since Plaintiff gave the LWDA notice of
4 his amended PAGA claims, and the LWDA has not responded or taken any position as to those
5 claims. Accordingly, Plaintiff now has the right to pursue those claims through a representative
6 civil suit pursuant to Labor Code §2699.3(a)(2)(A).

7
8 62. Plaintiff has been injured as a direct and proximate result of Defendants' violations
9 of the Labor Code as set out above and in Exhibit A.

10
11 63. Pursuant to Labor Code §2699(a) and (f), Plaintiff accordingly seek to recover civil
12 penalties against Defendants for the specified Labor Code violations against Plaintiff and all other
13 aggrieved employees in the estimated amount of \$7,260,000.

14 64. In addition, Plaintiff seeks to recover her reasonable attorneys' fees and costs
15 pursuant to Labor Code §2699(g)(1).

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18 WHEREFORE, Plaintiff prays for relief against Defendants as follows:

- 19 1. For damages and penalties for Plaintiff's individual claims in the estimated amount
20 of \$49,330;
- 21 2. For unpaid wages owed;
- 22 3. For prejudgment interest at the legal rate;
- 23 4. For one additional hour of pay for each workday that Defendants failed to provide
24 meal periods pursuant to Labor Code Sec. 226.7;
- 25 5. For one additional hour of pay for each workday that Defendants failed to provide
26 rest periods pursuant to Labor Code Sec. 226.7;
- 27
28

7. For reimbursement for work-related expenses incurred by Plaintiff pursuant to

8. For penalties pursuant to Labor Code §226;

10. That Defendant be ordered to pay all civil penalties due to Plaintiff, the Representative Group, and the LWDA for Defendant's violations of the Labor Code as alleged, , an estimated amount of \$7,260,000, to be distributed to the LWDA and the Representative Group as provided by Labor Code §§558 and 2699 and other applicable law;

12. For such further relief as the court deems just.

AIMAN-SMITH & MARCY, P.C.

John A. Lofton, Esq.
Attorney for Plaintiff Evelyn Guerra

Exhibit A

August 4, 2023

Via Certified Mail

Black Bear Diner Los Banos, L.P.
c/o Kiah Jordan
1224 Coast Village Circle, Suite 11
Santa Barbara, CA 93108

Black Bear Diner San Joaquin Valley Corporation
c/o Kiah Jordan
1224 Coast Village Circle, Suite 11
Santa Barbara, CA 93108

Re: Amended PAGA Notice Pursuant to Labor Code § 2699.3(a)(1) of Violations of the California Labor Code [LWDA-CM-957798-23]

Dear Sirs or Madams:

Pursuant to California Labor Code §2699.3, Evelyn Guerra a.k.a. Evelyn Ortiz hereby gives amended notice of violations of the following sections of the California Labor Code by Black Bear Diner Los Banos, L.P. and Black Bear Diner San Joaquin Valley Corporation. (collectively, “Employer”): §§201, 202, 204, 206.5, 226, 226.7, 247.5, 351, 512, 558, 1174, 1197, 2802, and IWC Wage Order No. 5-2001 (8 C.C.R. §11050). Employer’s legal violations as described herein were and are knowing and intentional.

Ms. Guerra was an aggrieved employee of Employer as defined by California Labor Code §2699(c) because she was: (1) an employee of Employer within the 12 months prior to the filing of this notice, (2) against whom Employer’s violations of the California Labor Code as described herein were committed.

I. Facts and Theories Giving Rise to Employer’s Violations of the California Labor Code

Employer operates multiple franchises of the Black Bear Diner restaurant in California. On information and belief, Employer employs more than one hundred employees in California. Ms. Guerra was employed by Employer as a non-exempt hourly employee from approximately November 2018 to mid-2023.

Throughout her employment, due to understaffing, the press of business, and other factors, Ms. Guerra and other employees were denied timely and uninterrupted meal and rest periods. To the extent that employees were able to take breaks at all, they remained perpetually on call, and were often required to cut their rest periods short. Ms. Guerra and other employees were typically required to stay on-site and nearby during their meal and rest periods to monitor their work – food being cooked, etc. – and interrupt their breaks to tend to their food, customers, or other duties. Consequently, Ms. Guerra was required to work, off the clock, during her meal periods, for which she was unpaid.

Despite failing to provide code-compliant meal and rest periods, at the end of employees' shifts, Employer required employees to confirm (often falsely) that they had received their rest period in violation of Labor Code §206.5.

Because Employer failed to provide timely meal and rest periods, it owes Ms. Guerra and other employees one hour of compensation for each day worked with a missed, untimely, or interrupted meal period and one hour of compensation for each day worked with a missed, untimely, or interrupted rest period. Employer failed to pay Ms. Guerra and other employees those wages when they were due and failed to pay Ms. Guerra and other employees those wages upon termination.

Employer required Ms. Guerra and other employees to wear a uniform consisting of a black hat, black shirt, black pants, and black shoes. Employer provided Ms. Guerra with only a single shirt in the past two years. Ms. Guerra is forced to purchase multiple shirts and pants each month, as they are inevitably stained with bleach or otherwise ruined in the normal course of her employment. Ms. Guerra is informed and believes that other employees face similar issues. Employer failed to compensate Ms. Guerra or the other employees for the expense of purchasing these uniforms, despite the fact that these items were expenses incurred at the instruction of Employer and for the benefit of Employer's business.

On information and belief, during the relevant time period, Employer required employees to share their tips with other employees and with management, and failed to accurately transmit those tips to employees, in a manner that deprived them of their fair share of those tips, resulting in unlawful deductions and unpaid wages.

The above-referenced conduct resulted in Employer failing to maintain accurate records of days and hours actually worked by Ms. Guerra and other employees, failing to pay Ms. Guerra and other employees for all hours worked, failing to pay Ms. Guerra and others at least minimum wage for all hours worked, and failing to pay Ms. Guerra and others overtime premiums for hours worked in excess of eight hours in a workday, forty hours in a workweek, and/or six days in a workweek.

During the relevant time period, Employer failed to provide Ms. Guerra and other employees with accurate, itemized wage statements. The wage statements did not include an accurate statement of the hours actually worked or the wages owed and unpaid as set forth above.

To the extent that employees resigned from or were terminated by Employer during the past year, Employer willfully failed to pay those employees all wages due upon termination or within 72 hours of said members' resignation.

II. Provisions of the California Labor Code Violated by Employer and Penalties Sought

As a result of Employer's violations of the California Labor Code, as alleged herein, Ms. Guerra is entitled to recover civil penalties pursuant to California Labor Code §2699 *et seq.* on

behalf of herself and all other former or current California employees of Employer who were subjected to their violations of the California Labor Code as described herein.

For failing to provide meal periods in violation of Labor Code §§512 and 558 and Industrial Welfare Commission Wage Order No. 5-2001 (8 C.C.R. §11050), Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For failing to provide one hour of pay to each employee who was not provided a timely meal period under Labor Code §§512 or 558 and Industrial Welfare Commission Wage Order No. 5-2001 (8 C.C.R. §11050), in violation of Labor Code §226.7, Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For failing to provide rest periods in violation of Labor Code §558 and Industrial Welfare Commission Wage Order No. 5-2001 (8 C.C.R. §11050), Employer is subject to civil penalties in the amount of \$50 for each aggrieved employee per pay period for the initial violation and \$100 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §558.

For failing to provide one hour of pay to each employee who was not provided a rest period under Labor Code §558 and Industrial Welfare Commission Wage Order No. 5-2001 (8 C.C.R. §11050), in violation of Labor Code §226.7, Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For failing to maintain accurate time and payroll records in violation of Labor Code §§247.5, 558, and 1174 and Industrial Welfare Commission Wage Order No. 5-2001 (8 C.C.R. §11050), Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For requiring employees to confirm a statement of hours worked and/or wages due, that Employer knows to be inaccurate, as a condition of being paid, in violation of Labor Code §206.5, Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For failing to pay employees for all hours worked, in violation of Labor Code §§204 and 558 and Industrial Welfare Commission Wage Order No. 5-2001 (8 C.C.R. §11050), Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for

the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For failing to pay at least the minimum wage for time worked, in violation of Labor Code §§558 and 1197 and Industrial Welfare Commission Wage Order No. 5-2001 (8 C.C.R. §11050), Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For misappropriating and wrongfully sharing employee tips in violation of Labor Code §351, Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For failing to reimburse employees for expenditures incurred by the employees at the instruction of Employer, in violation of Labor Code §2802, Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For failing to provide accurate, itemized wage statements in violation of Labor Code §226, Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For failing to pay all wages due at separation from employment or within 72 hours thereof in violation of Labor Code §§201 and 202, Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

Please note that further investigation may shed light upon additional violations beyond those contained herein, and Ms. Guerra reserves the right to file and serve a further amended notice should additional violations be discovered.

Sincerely,

AIMAN-SMITH & MARCY
A PROFESSIONAL CORPORATION



John A. Lofton