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SUBMITTED VIA LWDA'S PAGA CLAIM NOTICE ONLINE PORTAL

COPY SENT VIA CERTIFIED MAIL TO:

BLOOMIN' BRANDS, INC.
2202 NORTH WEST SHORE BLVD., 5TH FLOOR
TAMPA, FL 33607

C/O CORPORATION SERVICE COMPANY
251 LITTLE FALLS DRIVE
WILMINGTON, DE 19808

Re: *Mauro Aguilar-Sanchez v. Bloomin' Brands, Inc.*
Notice of Intent to File Suit for California Labor Code § 2698 et seq. Penalties

To Whom It May Concern:

This office and Falakassa Law, P.C. represent Mauro Aguilar-Sanchez (hereinafter "Mr. Aguilar-Sanchez") and a proposed group of current and former non-exempt employees working for Bloomin' Brands, Inc. *dba* Fleming's Prime Steakhouse & Wine Bar (hereinafter "Bloomin' Brands") and any of its affiliated, predecessor, and merged entities in the State of California for violations of the California Labor Code §§ 204, 210, 221, 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4, 1194, 1194.2, 1197.1, 1199, and all applicable Industrial Welfare Commission Wage Orders ("Wage Order").

This letter shall serve as notification under Labor Code § 2699.3 (hereinafter "PAGA Notice"). The $75 filing fee payable to the California Labor and Workforce Development Agency for the Private Attorneys General Act Notice ("PAGA Notice") was paid online. A copy of this PAGA Notice was submitted electronically to the Department of Industrial Relations.

Mr. Aguilar-Sanchez wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of the following group of "aggrieved employees":

> All current and former non-exempt hourly employees who work or worked for Bloomin' Brands, Inc. in California during the one year immediately preceding the filing of this PAGA Notice and continuing into the present and ongoing ("aggrieved employees")

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Bloomin' Brands is a global casual dining restaurant company with a portfolio of brands. Founded in 1988 and headquartered in Tampa, Florida, Bloomin' Brands operates over 1,450 restaurants in the U.S. and internationally.

Mr. Aguilar-Sanchez was employed by Bloomin' Brands as a non-exempt employee with the title of "Food Prep" from September 2008 to July 20, 2022. Based in Rancho Cucamonga, California, Mr. Aguilar-Sanchez was responsible for a variety of tasks, including, but not limited to, opening the restaurant, receiving the goods, preparing food, and cleaning. Alongside Mr. Aguilar-Sanchez, other non-exempt employees played a crucial role in maintaining the efficiency and productivity of Bloomin' Brands' operations. These employees included, but were not limited to:

- **Line Cook** prepares and cooks food at a specific station in a professional kitchen, ensuring dishes are high-quality, consistent, and served promptly.
- **Fine Dining Server,** who is responsible for providing exceptional, attentive service to guests by greeting them, taking orders, serving food and beverages, and anticipating their needs.
- **Food Runner,** who is responsible for promptly and accurately delivering food from the kitchen to customer tables.
- **Host/Hostess**, who welcomes guests, manages reservations and waitlists, seats customers, and maintains a clean front-of-house area.

These aggrieved employees were responsible for a wide range of tasks critical to the company's operations, including preparing and serving food, providing customer service, cleaning, and performing other restaurant duties. Their work ensured the effective operation of Bloomin' Brands' assets. Despite the essential nature of their contributions, Mr. Aguilar-Sanchez and other aggrieved employees allege that Bloomin' Brands failed to comply with the California Labor Code, including, but not limited to, proper wage payment and the provision of meal and rest periods, as set forth below.

At all relevant times, Mr. Aguilar-Sanchez and other aggrieved employees regularly worked various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek. Mr. Aguilar-Sanchez alleges that other aggrieved employees were also subjected to the same policies, procedures, practices, working conditions, and corresponding wage and hour violations to which he was subjected during his employment.

First, at all relevant times, Bloomin' Brands has consistently failed to accurately record and pay for all time worked, including time during which aggrieved employees were under the employer's control. This included a policy and practice of failing to accurately record and capture the time of aggrieved employees, including all time spent working off the clock. As a result of this company-wide policy/practice, Mr. Aguilar-Sanchez and other aggrieved employees are not compensated for all hours worked and for all overtime hours worked, in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

As a result, Mr. Aguilar-Sanchez and other aggrieved employees were not adequately paid for all hours worked in violation of Cal. Labor Code §§ 204, 210, 1194, 1197.1, 1199, and applicable Wage Orders. Additionally, due to the unlawful timekeeping policy/practices, Mr. Aguilar-Sanchez and other aggrieved employees were also not correctly paid at the correct overtime rate for hours worked in excess of eight hours per shift in violation of Labor Code § 510.

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law or by order of the commission a civil penalty, restitution of wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day, no less than one and one-half times (11/2) the regular rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (11/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

Accordingly, through PAGA and to the extent permitted by law, Mr. Aguilar-Sanchez and other aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or Labor Code § 2699(f)(2), and attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Furthermore, at all relevant times, Mr. Aguilar-Sanchez and other non-exempt employees worked regular shifts that lasted longer than 8.0 hours in a workday and more than 40 hours in a workweek. However, Mr. Aguilar-Sanchez and other non-exempt employees were not properly paid at the correct overtime rate for all overtime hours worked due to Bloomin' Brands' uniform failure to include all forms of compensation/remuneration, including, but not limited to, shift pay, non-discretionary bonuses, commissions, stipends, incentives, and all other forms of remuneration in calculating the "regular rate of pay" for purposes of overtime compensation.

Under the California Labor Code (as well as the FLSA), courts have consistently held that regularly paid non-discretionary bonuses (and other forms of pay) must be included in determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc*. 435

F. Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgment to Plaintiff under California and federal law on the grounds that Defendant improperly calculated overtime by excluding annual bonuses paid to employees from the "regular rate of compensation"]; see *Walling v. Youngerman-Reynolds Hardwood Co*. (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very nature must reflect all payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties but an actual fact. Once the parties have decided upon the amount of wages and the mode of payment, the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary 'regular rate' in the contracts."); see also 29 CFR §§ 778.110 ("production bonus") and 778.111 ("piece-rate").

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8.0) hours in one workday, forty (40.0) hours in a workweek, and for the first eight (8.0) hours worked on the seventh consecutive day, no less than one and one-half times (11/2) the regular rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12.0) hours in a workday or more than eight (8.0) hours on the seventh consecutive day of work. Pursuant to Section 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8.0) hours in any workday or more than 40.0 hours in any workweek unless the employee receives one and one-half (11/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

By their policy of requiring aggrieved employees to work in excess of eight (8) hours in a workday and/or forty (40.0) hours in a workweek without compensating them at the rate of one-half (11/2) their regular rate of pay, Bloomin' Brands willfully violated the provisions of Labor Code § 510 and the applicable Wage Orders.

Accordingly, through PAGA and to the extent permitted by law, Mr. Aguilar-Sanchez and other aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or Labor Code § 2699(f)(2), and attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Similarly, at all relevant times, Bloomin' Brands also failed in its obligation to provide Mr. Aguilar-Sanchez and other aggrieved employees the legally required paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b), which requires that "[a]n employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment." Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must 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."

Additionally, Labor Code § 246(l)(2) states that the paid sick time must 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." Finally, Labor Code §246(i) requires employers to "provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages."

Here, at all relevant times, Bloomin' Brands failed in its obligation to provide Mr. Aguilar-Sanchez and other aggrieved employees the legally required paid sick days at the "regular rate of pay," including all forms of compensation, pursuant to Labor Code §§ 246(a), (b). As such, Bloomin' Brands paid sick time below his base rate of pay rather than the "regular rate of pay" as required by Labor Code §§ 246(l) (1-2).

Based on the foregoing Labor Code violations, Mr. Aguilar-Sanchez seeks all civil and statutory penalties available and applicable under Labor Code § 2699(f)(2), and attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Moreover, at all relevant times, Mr. Aguilar-Sanchez and other aggrieved employees were denied compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to Bloomin' Brands' uniform meal period policies/practices, operational requirements and work demands, Mr. Aguilar-Sanchez and other aggrieved employees often could not take timely and uninterrupted net 30-minute first meal periods before the end of the fifth hour of work. Further, when Mr. Aguilar-Sanchez and other aggrieved employees worked more than 10.0 hours in a shift, they were not allowed and permitted to take a mandated second meal period before the end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders. Indeed, Mr. Aguilar-Sanchez' and other aggrieved employees' meal periods were often interrupted and lasted fewer than 30 minutes due to Bloomin' Brands' meal period policies/procedures, operational requirements, and work demands.

In addition, for each missed or non-compliant meal period, Bloomin' Brands failed and continues to fail to maintain a mechanism by which aggrieved employees were paid meal period premiums at the "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor Code § 226.7.

Accordingly, due to Bloomin' Brands' uniform meal period practices, Mr. Aguilar-Sanchez and other aggrieved employees were also regularly denied legally compliant meal periods in violation of Labor Code 226.7, 510, 516, and applicable IWC Wage Orders and are entitled to penalties under Labor Code § 2699(f)(2).

Finally, at all relevant times, Mr. Aguilar-Sanchez and other aggrieved employees were not provided with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due to Bloomin' Brands' uniform rest period policies/practices, operational requirements and work demands. As a result, Mr. Aguilar-Sanchez and other aggrieved employees were and are often unable to take a net 10-minute duty-free rest period for every major fraction of four hours worked. This includes a second rest period for shifts in excess of six hours and a third rest period for shifts in excess of 10.0 hours in a workday.

By not relieving all non-exempt employees of all duties during rest periods, Bloomin' Brands failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc*. (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."]. In *Augustus*, the California Supreme Court expressly rejected the employer's assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained: "that employers [must] relinquish any control over how employees spend their break time and relieve their employees of all duties." *Id*. at 273. Each time Mr. Aguilar-Sanchez and other aggrieved employees could not take a compliant rest period, Bloomin' Brands failed and continues to fail to adequately pay rest period premium payments at the "regular rate of pay" as required by Labor Code § 226.7.

Accordingly, due to Bloomin' Brands' uniform rest period policies/practices and work demands, Mr. Aguilar-Sanchez and other aggrieved employees were also regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders and would be entitled to penalties under Labor Code § 2699(f)(2).

Pursuant to Labor Code § 2699.3(a)(2)(A), please advise within sixty-five (65) calendar days of the date of this notice whether your office intends to investigate the violations alleged hereinabove. We understand that if we do not receive a response from your office within sixty-five (65) calendar days of this PAGA Notice, Mr. Aguilar-Sanchez may thereafter pursue his interests and the interests of similarly aggrieved employees with a civil complaint against Bloomin' Brands for its violations of the California Labor Code and applicable Wage Orders.

While we intend to pursue a PAGA representative and/or Class Action lawsuit against Bloomin' Brands for unpaid wages and civil penalties under Labor Code § 2699, it is our firm's policy to attempt to negotiate an early resolution of all matters where possible and beneficial to all aggrieved employees. If Bloomin' Brands is interested in resolving this matter, please get in touch with me or have your lawyer contact our office to discuss an informal discovery plan and the possibility of early mediation on or before **February 1, 2026**.

Respectfully submitted,

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