

1 RUTAN & TUCKER, LLP
Maria Z. Stearns (State Bar No. 230649)
2 mstearns@rutan.com
Kenneth J. Zielinski (State Bar No. 258555)
3 kzielinski@rutan.com
Jonas Trevethan (State Bar No. 340465)
4 jtrevethan@rutan.com
18575 Jamboree Road, 9th Floor
5 Irvine, CA 92612
Telephone: 714-641-5100
6 Facsimile: 714-546-9035

7 Attorneys for Defendant
LAZY DOG RESTAURANTS, LLC
8

9 LAW OFFICE OF SCOTT ERNEST WHEELER
Scott Ernest Wheeler (State Bar No. 187998)
10 sew@scottwheelerlawoffice.com
Justin A. Wheeler (State Bar No. 342226)
11 jaw@scottwheelerlawoffice.com
250 West First Street, Suite 216
12 Claremont, California 91711
Telephone: 714-641-5100
13 Facsimile: 714-546-9035

14 Attorneys for Plaintiff
JUAN MEJIA, and all other Aggrieved Employees
15
(Additional Counsel on Next Page)
16

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 FOR THE COUNTY OF SAN BERNARDINO

19 ELFEGO VILLALPANDO,

20 Plaintiff,

21 v.

22 LAZY DOG RESTAURANTS, LLC; and
DOES 1-50,

23 Defendants.
24
25
26
27
28

Lead Case No. CIVSB2121205
[Consolidated with Case No.: CIVSB2333342]

ASSIGNED FOR ALL PURPOSES TO:
HON. KORY MATHEWSON; DEPT. R12

**AMENDMENT NO. 1 TO STIPULATION
AND AGREEMENT FOR PAGA
REPRESENTATIVE ACTION
SETTLEMENT**

Date Action Filed: July 22, 2021

1 LAW OFFICES OF FARRAH MIRABEL
Farrah Mirabel (State Bar No. 162933)
2 fmesq@fmirabel.com
1070 Stradella Rd.
3 Los Angeles, CA 90077
Telephone: (714) 972-0707
4 Fax: (949) 417-1796
5 Attorneys for Plaintiff,
6 ELFEGO VILLALPANDO, and all other Aggrieved Employees

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Plaintiffs Elfego Villalpando and Juan Mejia (collectively, “Plaintiffs”), on behalf of
2 themselves and as representatives of the State of California and the Aggrieved Employees, on the
3 one hand, and Defendant Lazy Dog Restaurants, LLC (“Defendant”), on the other hand
4 (collectively, the “Parties”), agree to amend and supplement the Stipulation and Agreement for
5 PAGA Representative Action Settlement (the “Settlement Agreement,” “Agreement,” or
6 “Settlement”) as stated in this Amendment (“Amendment”). The Parties agree that the Agreement
7 and Amendment together constitute a binding agreement among the Parties. In the event of a
8 conflict or inconsistency between the terms of the Agreement, on the one hand, and the terms of this
9 Amendment, on the other hand, the terms of this Amendment shall control. The amendments stated
10 are incorporated in the Agreement by this reference:

11 **A. Paragraph 9 of the Agreement.**

12 **Paragraph 9 of the Agreement currently states as follows:**

13 9. “**Gross Settlement Amount**” means a maximum total of \$500,000.00, which
14 includes all payments owing as a result of this Agreement and includes: the Net Settlement Amount;
15 Settlement Administration Costs; Representative Plaintiffs’ Enhancement Awards; and PAGA
16 Counsel Attorneys’ Fees and Costs as awarded by the Court.

17 **Paragraph 9 of the Agreement is amended to state as follows:**

18 9. “**Gross Settlement Amount**” means a maximum total of \$510,000.00, which
19 includes all payments owing as a result of this Agreement and includes: the Net Settlement Amount;
20 Settlement Administration Costs; Representative Plaintiffs’ Enhancement Awards; and PAGA
21 Counsel Attorneys’ Fees and Costs as awarded by the Court.

22 **B. Paragraph 13 of the Agreement.**

23 **Paragraph 13 of the Agreement currently states as follows:**

24 13. “**PAGA Claim**” means the claim for civil penalties under the California Labor Code
25 Private Attorneys General Act of 2004 (Cal. Lab. Code sections 2698 *et seq.*, “PAGA”) alleged in
26 the Actions and stated in Representative Plaintiffs’ January 28, 2021, June 9, 2023, June 10, 2023
27 and November 21, 2023 notice letters to the LWDA, true and correct copies of which are attached
28 as Exhibit C.

1 **Paragraph 13 of the Agreement is amended to state as follows:**

2 13. **“PAGA Claim”** means the claim for civil penalties under the California Labor Code
3 Private Attorneys General Act of 2004 (Cal. Lab. Code sections 2698 *et seq.*, “PAGA”) alleged in
4 the Actions and stated in Representative Plaintiffs’ January 28, 2021, June 9, 2023, June 10, 2023,
5 November 27, 2023, and August 30, 2024 notice letters to the LWDA, true and correct copies of
6 which are attached as Exhibit C.

7 **C. Paragraph 16 of the Agreement.**

8 **Paragraph 16 of the Agreement currently states as follows:**

9 16. **“Released Claims”** means all claims or causes of action for PAGA penalties that
10 were, or could have been asserted in Representative Plaintiffs’ January 28, 2021, June 9, 2023, June
11 10, 2023 and November 21, 2023 notice letters to the LWDA and in the operative complaints in the
12 Actions, pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code
13 §§ 2698, *et seq.*, based on the alleged violations of Labor Code §§ 98.6, 201-205, 206.5, 210, 216,
14 218.5, 218.6, 221, 223, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 226.8, 227.3, 233, 234, 246, 246.5,
15 248.1, 248.2, 248.5, 248.6, 256, 432.5, 510-512, 551-552, 558, 558.1, 1051, 1054, 1102.5, 1174,
16 1174.5, 1182.12, 1185, 1193.6, 1194-1197.1, 1198-1199.5, 2698-2699, 2699.5, 2799, 2802, 2810.5,
17 6310 and IWC California Wage Order 5-2001, whether for civil penalties or attorneys’ fees and
18 costs arising out of the PAGA claims at issue, including: unlawful retaliation; failure to pay
19 minimum wages for all hours worked; failure to calculate and pay all overtime wages earned; failure
20 to provide lawful meal periods and pay meal period premiums; failure to provide lawful rest breaks
21 and pay rest break premiums; failure to maintain accurate records; failure to provide sick pay and
22 COVID-19 supplemental sick pay; willful misclassification; unlawful signed releases; failure to
23 provide accurate itemized wage statements; failure to pay all wages in full and on time during
24 employment; failure to pay vacation time; failure to pay all wages due upon termination; failure to
25 indemnify employees for necessary expenditures incurred in discharge of duties; failure to provide
26 suitable seating and suitable resting facilities; failure to provide written notice of employment-
27 related information; and failure to maintain and provide employment records.

1 **Paragraph 16 of the Agreement is amended to state as follows:**

2 16. **“Released Claims”** means all claims or causes of action for PAGA penalties that
3 were, or could have been asserted in Representative Plaintiffs’ January 28, 2021, June 9, 2023, June
4 10, 2023, November 27, 2023, and August 30, 2024 notice letters to the LWDA and in the operative
5 complaints in the Actions, pursuant to the California Labor Code Private Attorneys General Act of
6 2004, Labor Code §§ 2698, *et seq.*, based on the alleged violations of Labor Code §§ 98.6, 200-205,
7 206.5, 210, 216, 218.5, 218.6, 221, 223, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 226.8, 227.3, 233,
8 234, 246, 246.5, 248.1, 248.2, 248.3, 248.4, 248.5, 248.6, 256, 432.5, 510-512, 551-552, 558, 558.1,
9 1051, 1054, 1102.5, 1174, 1174.5, 1182.12, 1185, 1193.6, 1194-1197.1, 1198-1199.5, 2698-2699,
10 2699.3, 2699.5, 2799, 2802, 2810.5, 6310, and all applicable sections of IWC California Wage
11 Order 5-2001, whether for civil penalties or attorneys’ fees and costs arising out of the PAGA claims
12 at issue, including: unlawful retaliation; failure to pay minimum wages for all hours worked; failure
13 to calculate and pay all overtime wages earned; failure to provide lawful meal periods and pay meal
14 period premiums; failure to provide lawful rest breaks and pay rest break premiums; failure to
15 maintain accurate records; failure to provide sick pay and COVID-19 supplemental sick pay; willful
16 misclassification; unlawful signed agreements and releases; failure to provide accurate itemized
17 wage statements; failure to pay all wages in full and on time during employment; failure to pay
18 vacation time; failure to pay all wages due upon termination; failure to pay reporting time pay;
19 failure to pay split-shift premium pay; failure to indemnify employees for necessary expenditures
20 incurred in discharge of duties; failure to provide suitable seating and suitable resting facilities;
21 failure to provide written notice of employment-related information; and failure to maintain and
22 provide employment records.

23 **D. Paragraph 28 of the Agreement.**

24 **Paragraph 28 of the Agreement currently states as follows:**

25 28. On November 21, 2023, Plaintiff Juan Mejia sent an amended PAGA Notice to the
26 LWDA, with a copy to Defendant.

27 **Paragraph 28 of the Agreement is amended to state as follows:**

28 28. On November 27, 2023, Plaintiff Juan Mejia sent an amended PAGA Notice to the

1 LWDA, with a copy to Defendant. On August 30, 2024, Plaintiff Juan Mejia sent a second amended
2 PAGA Notice to the LWDA, with a copy to Defendant.

3 **E. Paragraph 38 of the Agreement.**

4 **Paragraph 38 of the Agreement currently states as follows:**

5 38. **Settlement Payments and Calculation of Claims.** Subject to final Court approval
6 and the conditions specified in this Agreement, and in consideration of the mutual covenants and
7 promises set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount of
8 **\$500,000.00**. For the avoidance of doubt, Defendant shall not be required to pay any amount over
9 \$500,000.00 for this Settlement. The Gross Settlement Amount includes, but is not limited to,
10 payments to be made to PAGA Counsel's attorneys' fees and costs, the LWDA Payment, Plaintiffs'
11 Enhancement Awards, and Settlement Administration Costs. The following table summarizes the
12 allocation of the Gross Settlement Amount:

13 **Gross Settlement Amount of \$500,000.00 Is Broken Down As Follows:**

- 14 • PAGA Counsel Attorneys' Fees not to exceed **33.3% (or \$166,500.00)**.
- 15 • PAGA Counsel's Costs not to exceed **\$20,000.00**.
- 16 • Plaintiffs' Enhancement Awards not to exceed **\$20,000.00** (combined).
- 17 • Settlement Administration Costs, not to exceed **\$31,500.00**.
- 18 • Approximately **\$263,000.00** for the Net Settlement Amount:
 - 19 ○ 25% of the Net Settlement Amount for the PAGA Aggrieved
Employee Payment (approximately **\$65,500.00**).
 - 20 ○ 75% of the Net Settlement Amount for the LWDA Payment
(approximately **\$196,500.00**).

21 **Paragraph 38 of the Agreement is amended to state as follows:**

22 38. **Settlement Payments and Calculation of Claims.** Subject to final Court approval
23 and the conditions specified in this Agreement, and in consideration of the mutual covenants and
24 promises set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount of
25 **\$510,000.00**. For the avoidance of doubt, Defendant shall not be required to pay any amount over
26 \$510,000.00 for this Settlement. The Gross Settlement Amount includes, but is not limited to,
27 payments to be made to PAGA Counsel's attorneys' fees and costs, the LWDA Payment, Plaintiffs'
28 Enhancement Awards, and Settlement Administration Costs. The following table summarizes the

1 allocation of the Gross Settlement Amount:

2 **Gross Settlement Amount of \$510,000.00 Is Broken Down As Follows:**

- 3
- 4 • PAGA Counsel Attorneys' Fees not to exceed **33.3% (or \$166,500.00)**.
 - 5 • PAGA Counsel's Costs not to exceed **\$20,000.00**.
 - 6 • Plaintiffs' Enhancement Awards not to exceed **\$20,000.00** (combined).
 - 7 • Settlement Administration Costs, not to exceed **\$31,500.00**.
 - 8 • Approximately **\$272,000.00** for the Net Settlement Amount:
 - 9 ○ 25% of the Net Settlement Amount for the PAGA Aggrieved Employee Payment (approximately **\$68,000.00**).
 - 10 ○ 75% of the Net Settlement Amount for the LWDA Payment (approximately **\$204,000.00**).

11 **F. Paragraph 39(d) of the Agreement.**

12 **Paragraph 39(d) of the Agreement currently states as follows:**

13 39(d). Net Settlement Amount: After deducting PAGA Counsel's Attorneys' Fees and
14 Costs, Plaintiff's Enhancement Awards, and the Settlement Administration Costs from the Gross
15 Settlement Amount, the remaining amount will comprise the Net Settlement Amount. The Net
16 Settlement Amount is comprised of the LWDA Payment and the PAGA Aggrieved Employee
17 Payment. The Net Settlement Amount of approximately **\$262,000.00** shall be allocated 75% to the
18 LWDA Payment, which is estimated to total **\$196,500.00** (\$262,000.00 x 75%). The remaining
19 25% of the Net Settlement Amount, estimated to total **\$65,500.00** (\$262,000.00 x 25%), shall be
20 allocated to the PAGA Aggrieved Employee Payment to be paid to the Aggrieved Employees on a
21 *pro rata* basis as noted below, which shall be referred to as the Aggrieved Employee's "**Individual
PAGA Payment.**"

22 **Paragraph 39(d) of the Agreement is amended to state as follows:**

23 39(d). Net Settlement Amount: After deducting PAGA Counsel's Attorneys' Fees and
24 Costs, Plaintiff's Enhancement Awards, and the Settlement Administration Costs from the Gross
25 Settlement Amount, the remaining amount will comprise the Net Settlement Amount. The Net
26 Settlement Amount is comprised of the LWDA Payment and the PAGA Aggrieved Employee
27 Payment. The Net Settlement Amount of approximately **\$272,000.00** shall be allocated 75% to the
28 LWDA Payment, which is estimated to total **\$204,000.00** (\$272,000.00 x 75%). The remaining
25% of the Net Settlement Amount, estimated to total **\$68,000.00** (\$272,000.00 x 25%), shall be

1 allocated to the PAGA Aggrieved Employee Payment to be paid to the Aggrieved Employees on a
2 *pro rata* basis as noted below, which shall be referred to as the Aggrieved Employee’s “**Individual**
3 **PAGA Payment.**”

4 **G. Exhibit A to the Settlement Agreement.**

5 Exhibit A referenced in and attached to the Agreement—the “**PAGA Settlement Notice**”—
6 is replaced by the “**PAGA Settlement Notice**” attached to this Amendment as Exhibit A.

7 **H. Exhibit B to the Settlement Agreement.**

8 Exhibit B referenced in and attached to the Agreement—the “**Proposed Order Granting**
9 **Approval of Settlement and Entering Judgment**”—is replaced by the “**Proposed Order**
10 **Granting Approval of Settlement and Entering Judgment**” attached to this Amendment as
11 Exhibit B.

12 **I. Exhibit C to the Settlement Agreement.**

13 Exhibit C referenced in and attached to the Agreement—the compiled PAGA Notices—is
14 replaced by the compiled “**PAGA Notices**” attached to this Amendment as Exhibit C.

15 **IT IS SO AGREED:**

16 Dated:

17 _____
Elfego Villalpando

18 Dated:

19 _____
Juan Mejia

20 Dated:

LAZY DOG RESTAURANTS, LLC

21 _____
22 By:

23 Its:

24 Dated:

APPROVED AS TO FORM

25 By:

26 Farrah Mirabel
27 Law Offices of Farrah Mirabel
28 Attorneys for Plaintiff Elfego Villalpando, as an
individual, on behalf of himself and all aggrieved
employees

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated:

Dated:

APPROVED AS TO FORM

By: _____
Scott Ernest Wheeler
LAW OFFICE OF SCOTT ERNEST WHEELER
Attorneys for Plaintiff Juan Mejia, as an individual,
on behalf of himself and all aggrieved employees

APPROVED AS TO FORM:

By: _____
Maria Z. Stearns
Kenneth J. Zielinski
Jonas Trevethan
RUTAN & TUCKER, LLP
Attorneys for Defendant Lazy Dog Restaurants, LLC

EXHIBIT A

[Date]

CPT Group, Inc.
[CPT Street Address]
[City, State Zip]

[Employee Name]
[Employee Street Address]
[City, State Zip]

Re: PAGA Settlement Payment

Dear Current or Former Lazy Dog Restaurants, LLC (“Lazy Dog”) Employee:

You have received this notice because Lazy Dog’s records indicate that you have worked for Lazy Dog at some time between January 28, 2020 through December 31, 2023. This notice relates to the settlement of related lawsuits styled *Elfego Villalpando v. Lazy Dog Restaurants, LLC*, San Bernardino Superior Court, Case No. CIVSB2121205, and *Juan Mejia v. Lazy Dog Restaurants, LLC*, San Bernardino Superior Court, Case No. CIVSB2333342 (collectively, the “Lawsuit”).

In the Lawsuit, Plaintiffs Elfego Villalpando and Juan Mejia (“Plaintiffs”) seek civil penalties pursuant to the California Private Attorneys General Act (“PAGA”), a law which allows Plaintiffs to attempt to recover penalties on behalf of the State of California and on behalf of employees who Plaintiffs claim were “aggrieved” by alleged wage and hour violations on the part of Lazy Dog, including claims premised on the alleged: unlawful retaliation; failure to pay minimum wages for all hours worked; failure to calculate and pay all overtime wages earned; failure to provide lawful meal periods and pay meal period premiums; failure to provide lawful rest breaks and pay rest break premiums; failure to maintain accurate records; failure to provide sick pay and COVID-19 supplemental sick pay; willful misclassification; unlawful signed agreements and releases; failure to provide accurate itemized wage statements; failure to pay all wages in full and on time during employment; failure to pay vacation time; failure to pay all wages due upon termination; failure to pay reporting time pay; failure to pay split-shift premium pay; failure to indemnify employees for necessary expenditures incurred in discharge of duties; failure to provide suitable seating and suitable resting facilities; failure to provide written notice of employment-related information; and failure to maintain and provide employment records.

Lazy Dog strongly disputes Plaintiffs’ allegations and maintains that it has fully complied with all applicable laws. The Court has not issued any ruling regarding the merits of the Lawsuit. Nonetheless, to avoid the cost and distraction of litigation, Lazy Dog has made a business decision to settle the Lawsuit, which settlement has been approved by the Court. As part of the Settlement, Lazy Dog agreed to pay a certain amount of penalties under PAGA. Under the PAGA statutes, penalties are divided between the State of California and aggrieved employees, with the State receiving 75 percent of the penalties. Under the Settlement, Plaintiffs and the State have released the following claims on behalf of the aggrieved employees:

All claims or causes of action for PAGA penalties that were, or could have been asserted in Representative Plaintiffs’ January 28, 2021, June 9, 2023, June 10, 2023,

November 27, 2023, and August 30, 2024 notice letters to the LWDA and in the operative complaint in the Actions, pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq., based on the alleged violations of Labor Code §§ 98.6, 200-205, 206.5, 210, 216, 218.5, 218.6, 221, 223, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 226.8, 227.3, 233, 234, 246, 246.5, 248.1, 248.2, 248.3, 248.4, 248.5, 248.6, 256, 432.5, 510-512, 551-552, 558, 558.1, 1051, 1054, 1102.5, 1174, 1174.5, 1182.12, 1185, 1193.6, 1194-1197.1, 1198-1199.5, 2698-2699, 2699.3, 2699.5, 2799, 2802, 2810.5, 6310, and for the violations of all applicable sections of IWC California Wage Order 5-2001, whether for civil penalties or attorneys' fees and costs arising out of the PAGA claims at issue, including: unlawful retaliation; failure to pay minimum wages for all hours worked; failure to calculate and pay all overtime wages earned; failure to provide lawful meal periods and pay meal period premiums; failure to provide lawful rest breaks and pay rest break premiums; failure to maintain accurate records; failure to provide sick pay and COVID-19 supplemental sick pay; willful misclassification; unlawful signed agreements and releases; failure to provide accurate itemized wage statements; failure to pay all wages in full and on time during employment; failure to pay vacation time; failure to pay all wages due upon termination; failure to pay reporting time pay; failure to pay split-shift premium pay; failure to indemnify employees for necessary expenditures incurred in discharge of duties; failure to provide suitable seating and suitable resting facilities; failure to provide written notice of employment-related information; and failure to maintain and provide employment records.

The Released Parties include Lazy Dog and its subsidiaries, affiliates, parent companies, shareholders, members, owners, officers, employees, attorneys, representatives, agents, insurers, predecessors, successors, and assigns, and any individual or entity which could be jointly liable with Lazy Dog.

As part of the settlement, Lazy Dog agreed to pay \$510,000.00 which includes the following payments: \$204,000.00 to the State of California; \$68,000.00 to the aggrieved employees; \$166,500.00 to Plaintiffs' counsel for attorneys' fees; \$20,000.00 to Plaintiffs' counsel for costs; \$10,000.00 for each Plaintiff's Enhancement Award; and \$31,500.00 for settlement administration costs. The enclosed settlement check represents your *pro-rata* portion of the Court-approved PAGA settlement to the aggrieved employees based on the number of pay periods you worked during the PAGA period.

You will not be retaliated against for cashing your check. Checks that are not cashed within 180 days of issuance will be voided and the funds will be distributed to the Court Appointed Special Advocates ("CASA") of Orange County. Regardless of what you do with the settlement check, you will have released claims for penalties arising under PAGA as asserted in the Lawsuit.

If you have any questions about this notice, please contact the Settlement Administrator, CPT Group, Inc., at [REDACTED].

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THE LAWSUIT. PLEASE DO NOT CONTACT THE COURT REGARDING THE CASE.

EXHIBIT B

LAW OFFICE OF SCOTT ERNEST WHEELER

Scott Ernest Wheeler (SBN 187998)
Justin A. Wheeler (SBN 342226)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com
jaw@scottwheelerlawoffice.com

LAW OFFICES OF FARRAH MIRABEL

Farrah Mirabel (SBN 162933)
1070 Stradella Road
Los Angeles, California 90077
Telephone: (714) 747-4447
Facsimile: (949) 417-1796
Email: fmesq@fmirabel.com

*Attorneys for Plaintiff and the Aggrieved
Employees*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

RANCHO CUCAMONGA DISTRICT

ELFEGO VILLALPANDO

Plaintiff,

v.

LAZY DOG RESTAURANTS, LLC, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

JUAN MEJIA, individually, and on behalf of
all other aggrieved employees,

Plaintiff,

v.

LAZY DOG RESTAURANTS, LLC, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case Number: CIVSB2121205 (consolidated
with Case Number: CIVSB233342)

**[PROPOSED] ORDER AND JUDGMENT
APPROVING PAGA SETTLEMENT,
ATTORNEY'S FEES AND COSTS AND
ENHANCEMENT AWARDS**

1 **[PROPOSED] FINAL ORDER AND JUDGMENT**

2 Plaintiffs Elfego Villalpando and Juan Mejia's ("Plaintiffs") unopposed Motion for
3 Approval of PAGA Settlement came on for hearing on November 20, 2024, at 9:00 a.m. before the
4 Honorable Kory Mathewson, Department R-12 of the above-entitled Court. The Court has
5 considered the proposed PAGA Settlement Agreement and Amendment No. 1 to the Settlement
6 Agreement (collectively, the "Settlement Agreement"), and all evidence filed in support thereof.

7 Having received and considered the Settlement Agreement, the supporting papers filed by
8 Plaintiffs, and the evidence and argument received by the Court, the Court grants approval of the
9 Settlement and HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:

10 1. Except as otherwise defined in this Order and Judgment ("Order"), all capitalized
11 terms have the same meaning as defined in the Settlement Agreement that is attached as Exhibit 1
12 to the Declaration of Scott E. Wheeler in support of the Motion for approval of the PAGA
13 Settlement.

14 2. Pursuant to PAGA, California Labor Code § 2699(1)(2), (1)(4), the Labor Workforce
15 and Development Agency ("LWDA") has been provided notice of the Settlement. In particular,
16 on or before the date Plaintiffs filed the motion seeking approval of the Settlement with the Court,
17 Plaintiffs submitted to the LWDA a notice of the Settlement enclosing a copy of the Settlement
18 Agreement. Plaintiffs' notice of the Settlement complied with the requirements of PAGA.

19 3. The Court confirms approval of the Settlement as to the Aggrieved Employees and
20 the State of California.

21 4. The Court has jurisdiction over the subject matter of this litigation, over all
22 Aggrieved Employees, and over those persons undertaking affirmative obligations under the
23 Settlement.

24 5. The Settlement is approved under Labor Code § 2699(1)(2).

25 6. The PAGA Settlement Notice to Aggrieved Employees, attached as Exhibit 2 to the
26 Declaration of Scott E. Wheeler in support of the Motion, fairly and adequately describes the
27 Action, the approved settlement, and is the best notice practicable under the circumstances.
28

1 7. The Court finds that each Aggrieved Employee, in accordance with the Settlement,
2 releases all Released Claims against the Released Parties.

3 8. The Gross Settlement Amount, Net Settlement Amount and the methodology used
4 to calculate the Aggrieved Employee Payment (which is comprised of the Individual PAGA
5 Payments and the LWDA Payment), in accordance with the Settlement, is approved under Labor
6 Code § 2699(1)(2).

7 9. The Court approves CPT Group, Inc. to act as the Settlement Administrator. The
8 Court awards the Settlement Administrator in this Action its actual fees and costs in accordance
9 with the terms of the Settlement Agreement, not to exceed \$31,500.

10 10. The Court approves the Law Offices of Farrah Mirabel and the Law Office of Scott
11 Ernest Wheeler as PAGA Counsel.

12 11. The Court awards the requested attorneys' fees in the amount of \$166,500.00 (70%
13 to the Law Office of Farrah Mirabel or \$116,500 and 30% or \$50,000 to the Law Office of Scott
14 Ernest Wheeler) and litigation costs in the amount of \$9,075.45 (\$7,371.00 shall be paid to the Law
15 Office of Farrah Mirabel and \$1,704.45 shall be paid to the Law Office of Scott E. Wheeler)
16 pursuant to the terms of the Settlement.

17 12. The Court authorizes the Settlement Administrator to calculate and pay the Net
18 Settlement Amount, inclusive of the LWDA Payment and Aggrieved Employee Payment (which
19 is comprised of the Individual PAGA Payments), in accordance with the terms of the Settlement.

20 13. The Court finds that the LWDA Payment of \$204,000 as its share of the settlement
21 of civil penalties is fair and reasonable. The Court authorizes the Settlement Administrator to pay
22 the LWDA Payment, in accordance with the terms of the Settlement Agreement.

23 14. The Court finds the Representative Plaintiffs' Enhancement Awards in the sum of
24 \$10,000 to each Representative Plaintiff is fair and reasonable. The Court authorizes the Settlement
25 Administrator to pay the Representative Plaintiffs' Enhancement Awards, in accordance with the
26 terms of the Settlement Agreement.

1 15. Checks for Individual PAGA Payments sent to Aggrieved Employees shall be valid
2 for 180 days after issuance. Funds remaining from any checks for Individual PAGA Payments
3 uncashed after 180 days will be transmitted to CASA of Orange County.

4 16. An Order to Show Cause Re Distribution is scheduled for
5 _____, at 9:00 a.m. in Department R-12. Upon completion of the Settlement,
6 the Settlement Administrator will provide written certification of the completion to the Court and
7 counsel for the Parties which shall be filed with the Court with seven (7) Court days prior to the
8 Order to Show Cause Hearing Date.

9 17. Without affecting the finality of this order and entry of judgment, the Court retains
10 exclusive and continuing jurisdiction over this Action for purposes of supervising, administering,
11 implementing, and enforcement of this Order and the Settlement.

12 18. Nothing in this Order or the Settlement shall be construed as an admission or
13 concession by any party. The Settlement and this resulting Order and entry of judgment simply
14 represent a compromise of disputed allegations.

15 19. The Court enters final judgment in accordance with the terms of the Settlement
16 Agreement and this Order.

17 20. Plaintiffs are directed to submit a copy of this Order and entry of judgment to the
18 LWDA within 10 days of the date of this Order and entry of judgment.

19 **IT IS SO ORDERED.**

20 DATED: _____
21

22 _____
23 HONORABLE KORY MATHEWSON
24 JUDGE OF THE SUPERIOR COURT
25
26
27
28

EXHIBIT C

January 28, 2021 Notice Letter

Law Offices of
Farrah Mirabel
Fmesg@fmirabel.com
1070 Stradella Rd.
Los Angeles, California 90077
Tel (714) 972-0707 Fax (949) 417-1796

January 28, 2021

via CERTIFIED MAIL

Attn. PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
(510) 286-1362

LAZY DOG RESTAURANTS, LLC
3337 SUSAN ST, STE 100
COSTA MESA CA 92626

CT Corporation System
818 West Seventh street, Suite 930
Los Angeles, CA 90017

In Re ELFEGO VILLALPANDO v. LAZY DOG RESTAURANTS

Dear PAGA Administrator:

Our firm represents the interests of **ELFEGO VILLALPANDO** (Plaintiff), former employee of **LAZY DOG RESTAURANTS** (referred to as the "Defendant"). Plaintiff was employed by Defendant for the period of 2014 to February 14, 2020 as a cook and lead for \$17/hour.

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

This notice is submitted, at a foundation level, on behalf of the Plaintiff and all other Defendant's employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

1. Violation of Labor Code § 226.7(a) (Missed Rest Breaks);
2. Violation of Labor Code §226.7, 512, and 1198 (Missed/Interrupted Meal Breaks);
3. Violation of Labor Code §1194 & §1197 (Failure to Pay Minimum Wages);

4. Violation of Labor Code §510 and 1194, 1198 (Failure to Pay All Overtime Worked)
5. Violation of Labor Code § 204 (Failure to Pay All Wages Earned)
6. Violation of Labor Code §§246(a), 246.5 (Failure to Pay for Sick Days)
7. Violation of Labor Code § 1174, 1198.5 and 226, (Failure to Keep Records, Improper Wage Statements)
8. Violation of Labor Code § 201-203 (Failure to Pay Wages Upon Separation)
9. Violation of Labor Code sections 2802 (Failure To Reimburse Required Business Expenses);
10. Civil Penalties Pursuant to Labor Code section 2699 (PAGA penalties)

During the relevant timeframe, Defendant employed Plaintiff as non-exempt hourly employee beginning in 2014. Plaintiff was employed as a cook and as a Lead. He worked from 10:00 a.m. to 11:00 p.m., six days per week, during Tuesday, Wednesday, Thursday, Friday, Saturday and Sunday. Plaintiff was paid \$17 per hour.

At times he had to drive his car to carry out his duties for Defendant's business, but Defendant never reimbursed him for the cost of using his car. He also was never paid for his time running errands for the Defendant. Plaintiff was ordered to pick up things from other restaurant locations at least twice per month. He had to go from ranch Cucamonga to Brea store or Corona store. Jorge Rios (Executive Assistant) would order him to do so. He was not even clocked in when he would make those trips. Jorge would call Plaintiff before his shift was to start and ask him to go make certain trips. He had to use his own personal vehicle, a Ford 2002 F150.

His superiors were named Tony Sambrano and Jorge Rios. His last day of work was February 14, 2020 but he was not paid his final paycheck on that day, but a week after when he went to Defendant to inquire.

At least three times a week, his superior Tony Sambrano asked Plaintiff to work minimum of 15 minutes before punching in. He was requested to help with orders in the kitchen. Defendant failed to pay for these off clock time and overtime wages at the legal rates of pay for all overtime hours worked. Defendant would tell him that they would adjust his time sheets later to pay him for the off clock time but he never saw any extra time and wage added to his checks, just the hours he had clocked in. He did object, to no avail. He witnessed that other employees were also taken advantage of: Angel, Eddie, two other employees both named Juan,

Plaintiff was not paid for several of his sick days. His father passed away in September 2019, but Defendant refused to grant him time to go to funeral despite his repeat requests. He was also required to provide a doctor's note in order to be paid for his sick days.

During the relevant timeframe, Plaintiff worked shifts of over five hours, and at times, was not given a thirty-minute, uninterrupted meal break for each such shift. He worked more than 10 hours a day but was never allowed to take a second meal break. Plaintiff worked during the meal periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent. Tony Sambrano would interrupt his only meal breaks per day and would ask him to go to kitchen and help with orders. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff to take his meal breaks in middle of his shift. Also, Plaintiff was not allowed to leave the work premises during the meal break.

Defendant failed to compensate Plaintiff at the required rate for each occasion in which Defendant failed to provide rest breaks and meal breaks. As such, Defendant failed to pay for all the hours worked and all wages earned by Plaintiff.

Defendant failed to maintain accurate payroll records, such that Plaintiff was given wage statements which were inaccurate and Plaintiff was not paid for all his wages and overtime compensation.

Several month before February 2020, Plaintiff fell from a 4 foot stair in the walk-in beer refrigerator, hurting his arm. That day he told a manager by the name of Nancy that he had fallen but no report was made and Defendant refused to send him to a doctor and refused to place a workers compensation claim for him but instead started mistreating Plaintiff and ultimately letting him go in February 2020, without giving him any reason. Plaintiff believes he was let go due to his work injury and his complaints about lack of breaks and his request to be accurately compensated for all his hours.

Defendant did not issue an accurate final paycheck to Plaintiff in accordance with the timeframes prescribed by law.

Plaintiff claims on his own behalf and also on behalf of all past and present employees that they worked in excess of 8 hours work shift and 40 hours per week and did not receive compensation for all the hours worked and were not paid overtime.

Plaintiff was hired to work shifts of over four hours, and was not allowed to take a ten-minute, uninterrupted rest break for each such shift. Plaintiff worked during the rest periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent. Plaintiff was a witness that other employees were not able to take their rest breaks either. Plaintiff did complain to his superiors, especially Tony, to no avail.

Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff and other employees to take their rest breaks.

Plaintiff and other employees received wages and wage statements which did not account for all the hours worked and did not account for the premiums due to employees for the missed rest and meal breaks, nor accounted for overtime pay for hours employees worked in excess of 8 hours per work shift and beyond 40 hours per week. Therefore, Defendant failed to maintain accurate payroll records, such that employees were given wage statements that did not accurately reflect their accurate hours worked and did not reflect the required and due compensation for all the hours worked and breaks missed and/or interrupted.

Defendant failed to compensate Plaintiff at the required rate for each occasion in which Defendant failed to provide rest breaks. Also at times Plaintiff had to work more than 10 hours a day but did not get a second meal break. As such, Defendant failed to pay for all the hours worked and all wages earned by Plaintiff.

Therefore, Plaintiff claims that Defendant did not provide him and all other past and present employees with uninterrupted rest breaks and/or meal breaks. Defendant is understaffed and cannot possibly provide its employees including Plaintiff with their statutory breaks. Furthermore, Plaintiff claims that the past and present employees did not receive an hour of premium pay, for each missed break, for all days they did not receive a proper rest break and/or meal break. As a result, Defendant failed to pay its employees for all wages earned.

None of the wage stubs of Plaintiff indicates the actual hours he worked. Defendant was issuing him a wage stub, which was inaccurate. Plaintiff claims that because Defendant did not properly compensate its employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest break or meal break, and failed to pay them overtime for all hours worked in excess of 8 hours per day and 40 hours per week, the employees' wage statements did not accurately reflect all the hours worked and the wages earned. As such, Plaintiff claims that Defendant provided all its past and present employees with improper wage statements.

Moreover, Defendant failed to compensate Plaintiff and all past and present employees, at the required rate for each occasion in which Defendant failed to provide rest breaks and meal periods.

As such, Defendant failed to pay for all the hours worked and all wages earned by Plaintiff. During Plaintiff's employment, Defendant failed to pay Plaintiff all overtime wages at the legal rates of pay for all overtime hours worked and also given the number of the hours Plaintiff was working, his pay rate fell below minimum wage.

Moreover, Defendant failed to pay timely accurate paycheck upon the separation of the employees. Therefore, Plaintiff also claims a violation of Labor Code section 201-203 on behalf of all employees who stopped working for the Defendant. His last day of work was February 14, 2020 but Defendant paid him after a few weeks.

CALIFORNIA LWDA

Private Attorneys General Act Notice

In Re ELFEGO VILLALPANDO v. LAZY DOG RESTAURANTS

Page 5

Plaintiff claims that Defendant's conduct, as stated herein, including not paying its employees all wages owed, including wages for all hours worked, overtime, missed meal and rest breaks, and not providing its employees with accurate wage statements, not paying timely paycheck upon the separation of the employee, has been unfair, unlawful, and harmful to all its past and present employees, including Plaintiff, and to the general public. As such, this letter is written to comply with the notice and reporting requirements of Labor Code section 2699.3.

Plaintiff can be contacted through his attorney of record:

Farrah Mirabel, Esq.
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.
Los Angeles, California 90077

Plaintiff and other similarly situated individuals, past and present employees, may also be entitled to penalties pursuant to Labor Code section 2699, et seq.

On behalf of Plaintiff, and all other past and present employees, our office will be filing a civil complaint against Defendant, alleging the above causes of action including PAGA claim and request damages pursuant to but not limited to the following labor code sections **98.6, 201-205, 210, 216, 218.5, 221, 225.5, 223, 226.2, 226.3, 226.7, 233, 234, 246, 246.5, 510-512, 551-552, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.1, 1198-1199.5 and 2698-2699, 2699.5 and 2802.**

Very truly yours,

LAW OFFICES OF FARRAH MIRABEL

/s/ Farrah Mirabel

Farrah Mirabel, Esq.

Law Offices of Farrah Mirabel

June 9, 2023 Notice Letter

SCOTT E. WHEELER
ATTORNEY AT LAW
250 WEST FIRST STREET, SUITE 216
CLAREMONT, CALIFORNIA 91711
TELEPHONE (909) 621-4988
FACSIMILE (909) 621-4622
sew@scottwheelerlawoffice.com

June 9, 2023

Filed Online

Labor and Workforce Development Agency
Department of Industrial Relations
Private Attorneys General Act (PAGA) - Filing
New PAGA Claim Notice

**Via Certified U.S. Mail – Return
Receipt Requested**

Lazy Dog Restaurants, LLC
3337 Susan Street, Suite 100
Costa Mesa, California 92626

Re: Notice Pursuant to California Labor Code § 2699.3

To The Labor and Workforce Development Agency and Employer Representatives:

This office represents Mr. Juan Mejia (“Mr. Mejia”), a former, non-exempt, hourly employee of Lazy Dog Restaurants, Inc. (hereinafter referred to as “Employer”) who has caused and/or committed the wage and hour violations as set forth herein. Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698 *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, No. 5-2001 and any other applicable wage order, which Mr. Mejia alleges that Employer has violated, including the facts and theories to support the alleged violations.

Please be advised that this letter constitutes written notice required by Labor Code §§ 2699.3(a)(1) and 2699.3(c)(1) and may lead to immediate action against Employer in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, applicable IWC wage orders, or regulations thereunder which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice is hereby given to and made against Employer, and any and all related, parent, and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

PRELIMINARY STATEMENT

My office is investigating a potential representative action on behalf of all current and former non-exempt employees of Employer (“aggrieved employees”) in the State of California regarding Employer’s unlawful policies and practices. Among other things, Mr. Mejia, and other aggrieved employees allege that Employer is liable for the following: failure to provide meal and rest periods to non-exempt employees, in violation of Labor Code §§ 226.7, 510, 512, 1194, 1197 and §§ 11-12 of Wage Order, No. 5-2001 and any other applicable wage order; failure to pay one additional hour of compensation to non-exempt employees at their regular rate of pay for each workday that a meal or rest period is not provided, in violation of Labor Code § 226.7 and §§ 11(B) and 12(B) of the applicable wage orders; failure to pay non-exempt employees overtime wages, and failure to properly calculate and pay overtime wages, in violation of Labor Code §§ 510, 1194, 1198, and § 3 of Wage Order, No. 5-2001 and any other applicable wage order; failure to pay non-exempt employees the unpaid balance of the full amount of minimum wage or overtime compensation, including interest, in violation of Labor Code § 1194; failure to timely pay non-exempt employees all wages due, in violation of Labor Code § 204; willful failure to pay discharged or quitting non-exempt employees all wages due, in violation of Labor Code §§ 201-203; failure to provide accurate itemized wage statements to non-exempt employees in violation of Labor Code §§ 226, 1174, and 1174.5; failure to maintain required records of non-exempt employees, in violation of Labor Code §§ 1174, 1174.5, and § 7 of Wage Orders, No. 5-2001 and any other applicable wage order; failure to indemnify employees for necessary employment expenditures, in violation of Labor Code § 2802; failure to provide and account for supplemental COVID-19 sick leave in violation of Labor Code §§ 246 and 248.2, et seq.; failure to provide suitable resting facilities, in violation of Wage Order No. 5-2001, § 13; failure to comply with Labor Code § 2810.5; and failure to provide employment records, in violation of Labor Code §§ 226 and 1198.5 and IWC Wage Order No. 5-2001, § 7.

FACTS AND THEORIES

Mr. Mejia was employed by Employer as a Food Preparer, a non-exempt position paid at an hourly rate of \$19.50. Mr. Mejia worked at Employer’s restaurant located at 19359 Stevens Creek Blvd., Cupertino, California 95014. Mr. Mejia began his employment with Employer on or about 2016 through October of 2022 when his employment was terminated. Employer operates casual dining restaurants through the State of California, with locations in Brea, Cerritos, Concord, Corona, Cupertino, Downey, Dublin, Folsom, Fresno, Huntington Beach, Irvine, Montclair, Newark, Orange, Oxnard, Rancho Cucamonga, Roseville, San Diego, San

Mateo, Temecula, Thousand Oaks, Torrance, Valencia/Santa Clarita, and San Jose.

Aggrieved employees other than Mr. Mejia include, but are not limited to, all non-exempt employees, who similarly experienced the wage and hour violations at Employer's locations throughout the State of California. Mr. Mejia on behalf of himself and other aggrieved employees of Employer in the State of California during the one (1) year preceding the date of this notice letter, alleges the following facts and theories:

I. Meal Period Violations

Pursuant to California Labor Code § 226.7, 512 and § 11 of IWC Wage Order No. 5-2001 and any other applicable wage order, no employer shall employ any non-exempt employee for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes. Employees who work more than ten (10) hours in a day are entitled to a second 30-minute meal break. California employers are required to pay one (1) hour of compensation for each missed or non-compliant meal period to their non-exempt employees.

Here, Employer regularly did not allow non-exempt employees, including Mr. Mejia and the other aggrieved employees, the opportunity to take a full thirty-minute meal period, and meal periods were regularly short (less than thirty minutes), late (taken after 5 hours), and interrupted (work was performed during the meal period). More specifically, Employer failed to implement adequate policies or procedures to provide meal periods to its non-exempt employees. Among other things, Employer systematically understaffed its restaurant such that Mr. Mejia and the other aggrieved employees could not take their meal periods. This practice caused Mr. Mejia and the other aggrieved employees to miss or otherwise take non-compliant meal periods.

Next, Employer consistently denied Mr. Mejia and other aggrieved employees compliant meal periods by requiring them to complete so much work within their shifts that they would be forced to skip their meal periods, to take them after working longer than five (5) hours, to perform work during their meal periods, or return to work after taking less than a thirty (30) minute meal period. Further, Mr. Mejia and other aggrieved employees could not leave their workstations and/or no one was available to cover for them which resulted in taking non-compliant meal periods.

Employer further violated California Labor Code § 226.7 and IWC Wage Order No. 5-2001 and any other applicable wage by willfully failing to compensate Mr. Mejia and other aggrieved employees who were not provided with a meal period in compliance with California law with one (1) additional hour of compensation at their regular rates of pay for each workday that a compliant meal period was not provided. Employer further violated California Labor Code § 226.7, 510, 1194, 1197, and IWC Wage Order No. 5-2001 and any other applicable wage order by failing to compensate Mr. Mejia and other aggrieved employees for all hours worked during

their meal periods.

II. Rest Period Violations

Employer failed to authorize and permit Mr. Mejia and other aggrieved employees to take rest periods as required under California Labor Code §§ 226.7 and 512, and § 12 of IWC Wage Order No. 5-2001 and any other applicable wage order. California employers are required to provide a ten (10) minute rest period for every four hours worked, or major fraction thereof. Further, California employers are required to pay one (1) hour of compensation for each day in which a legally compliant rest period is not provided.

As with meal periods, Employer's policies and practices caused Mr. Mejia and other aggrieved employees to miss or otherwise take non-compliant rest periods by, among other things, giving them unreasonable amounts of work that had to be completed within their shift such that rest periods simply could not be taken. Further, as set forth above, Employer implemented skeletal staffing policies which resulted in the inability of Mr. Mejia and other aggrieved employees to take compliant rest periods.

In addition, Mr. Mejia and other aggrieved employees always needed to get permission from their supervisor in order to take their rest periods because they were too busy due to insufficient staffing. When Mr. Mejia and the other aggrieved employees did get a chance to take rest periods, these rest periods were regularly interrupted because Mr. Mejia and other aggrieved employees were required to perform work during their rest periods. Finally, Mr. Mejia and the other aggrieved employees were required to lump their rest periods with their meal periods which were not compensated by Employer.

Employer further violated California Labor Code § 226.7 and § 12 of IWC Wage Order No. 5-2001 and any other applicable wage order, by failing to pay Mr. Mejia and other aggrieved employees one (1) additional hour of compensation at their regular rates of pay for each workday that a legally-compliant rest period was not provided.

III. Failure to Pay Overtime Wages

Employer failed to pay overtime to Mr. Mejia and the other aggrieved employees as they are entitled to under the protections of the California Labor Code. Specifically, California Labor Code §§ 510, 1194 and § 3 of IWC Wage Order No. 5-2001 and any other applicable wage order, which requires Employer to compensate Mr. Mejia and other aggrieved employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any

workday.

Employer failed to compensate Mr. Mejia and other aggrieved employees for all overtime hours worked by, among other things, failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay; failing to properly calculate the regular rate of pay for the purposes of calculating overtime pay owed and due; requiring, permitting or suffering Mr. Mejia and other aggrieved employees to work off the clock, and failing to include this time in all hours worked; and other methods to be discovered.

Employer has refused to perform its obligations to compensate Mr. Mejia and other aggrieved employees for all overtime wages earned in violation of California Labor Code §§ 510, 1194, 1198, and § 3 of IWC Wage Orders, No. 5-2001 and any other applicable wage order.

IV. Failure to Pay Minimum Wages

Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 5-2001, § 4 and all other applicable wage orders, the payment to a non-exempt employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Employer failed to pay Mr. Mejia and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, permitting or suffering Mr. Mejia and other aggrieved employees to work off the clock; implementing an illegal rounding policy which resulted in the underpayment of wages to Mr. Mejia and the aggrieved employee, not properly compensating Mr. Mejia and other aggrieved employees for all hours worked; requiring, permitting or suffering Mr. Mejia and other aggrieved employees to work through meal and rest periods but not compensating them for this time and failing to include this time in all hours worked; illegally and inaccurately recording time that Mr. Mejia and other aggrieved employees worked; and other methods to be discovered.

V. Failure to Timely Pay All Wages Earned

Pursuant to California Labor Code § 204, California employers must pay employees at least twice a month for all wages earned during the preceding pay period. California Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

Employer failed to pay Mr. Mejia and aggrieved employees on their regularly scheduled payday for all labor performed during the preceding pay period by, among other things, failing to pay Mr. Mejia and other aggrieved employees for work they performed off the clock, failing to pay

them for bonuses to which they are entitled, illegally and inaccurately recording time in which Mr. Mejia and other aggrieved employees worked, failing to pay them overtime and minimum wages and requiring them to work through their meal and rest periods without proper compensation and/or remuneration.

Employer knew that it was required to pay Mr. Mejia and other aggrieved employees these wages owed and due no later than the payday for the next regular payroll period following the payroll period in which the wages were earned, yet it willfully failed to do so.

VI. Failure to Pay All Wages Due Upon Discharge or Termination

Pursuant to California Labor Code § 201, 202, and 203, California employers are required to pay all earned and unpaid wages to a non-employee who is discharged. California Labor Code § 201 mandates that if an employer discharges a non-exempt employee, that employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to California Labor Code § 202, an employer is required to pay all accrued wages due to a non-exempt employee no later than 72 hours after the employee quits his or her employment, unless the employee provides 72 hours previous 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.

California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the non-exempt employee at the same rate for up to thirty (30) workdays.

Because Employer, among other things, requires Mr. Mejia and other aggrieved employees to work off the clock without compensation, and fails to pay them overtime and minimum wages, Employer has willfully failed and continues to fail to pay wages due to Mr. Mejia and other aggrieved employees in accordance with California Labor Code §§ 201 and 202.

VII. Failure to Maintain Required Records

Employer has failed to maintain records as required under California Labor Code §§ 226, 1174, and § 7 of IWC Wage Order No. 5-2001 and any other applicable wage order, including but not limited to, the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; overtime hours worked; and accurate itemized statements that reflect all compensation and remuneration owed and due to them.

Employer has knowledge it is not providing its non-exempt employees with proper meal and rest periods, and that it fails to maintain records relating to sick pay accrued. Additionally, Employer

failed to pay Mr. Mejia and the other aggrieved employees their overtime compensation and failed to accurately compensate them for this time. Employer has also failed to pay Mr. Mejia and other aggrieved employees minimum wages, as described herein.

VIII. Failure to Furnish Accurate Itemized Wage Statements

Employer failed to provide Mr. Mejia and other aggrieved employees with timely, accurate, and itemized wage statements in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the complete correct names of the legal entity or entities employing Mr. Mejia and other aggrieved employees, the inclusive dates of the period for which the employee is paid, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of California Labor Code § 226 and § 7 of IWC Wage Order, No. 5-2001 and any other applicable wage orders.

Employer's wage statements violate Labor Code § 226 on their face by, among other things, failing to state the hours worked by Mr. Mejia and other aggrieved employees, and their applicable rates of pay for overtime hours worked, actual overtime hours worked and the correct legal name and address of Employer. Further, Employer is not providing Mr. Mejia and other aggrieved employees with proper meal and rest periods but intentionally fails to include in their wage statements one (1) additional hour of compensation at their regular rates of pay for each non-compliant meal or rest period. In addition, Employer requires Mr. Mejia and other aggrieved employees to work off the clock without compensation, which is not listed on the wage statements. Employer has also failed to pay Mr. Mejia and other aggrieved employees overtime and minimum wages, as described herein, rendering its wage statements incomplete and inaccurate.

IX. Failure to Indemnify Employees for Necessary Employment Expenditures

California Labor Code § 2802(a) requires an employer to indemnify non-exempt employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer. Employer failed to indemnify Mr. Mejia and the other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Employer, including but not limited to, all expenses incurred relating to the purchase of mandatory work shoes, washing and laundering uniforms, cellular phone usage; and other items which were not reimbursed, in violation of California Labor Code §2802.

X. California COVID-19 Supplemental Paid Sick Leave

As of March 29, 2021, Employer employs 26 or more aggrieved employees. As such, Employer is required to provide 80 hours of COVID-19 supplemental paid sick leave and compensate Mr. Mejia and the other aggrieved employees at their regular rate of pay for supplemental sick leave, i.e. highest regular rate of pay, taking into consideration non-discretionary bonuses, etc. See, California Labor Code §248.1(b)(3)(A). Employer has an obligation to provide COVID-19 supplemental sick leave in addition to regular sick leave.

Moreover, based upon the incorporation of California Labor Code §246 into California Labor Code §248.1(b)(2)(D), starting on March 29, 2021 or shortly thereafter, Employer is required to accurately reflect any offset and/or the current amount of COVID-19 supplemental sick leave available to Mr. Mejia and the other aggrieved employees. See, California Labor Code §248.1(b)(2)(D). Further, Employer is prohibited from requiring aggrieved employees to use any other paid or unpaid leave, paid time off, or vacation time provided by Employer before the aggrieved employees were provided, used or in lieu of COVID-19 supplemental paid sick leave. See, California Labor Code §248.1 (b)(4). See, Employer is in violation of California Labor Code §248.1, §§248.2, 248.3 and 248.4.

Here, Employer did not provide Mr. Mejia and the other aggrieved employees with COVID-19 supplemental paid sick leave. Further, Employer failed to list and itemize COVID-19 supplemental paid sick leave on the wage statements for Mr. Mejia and the other aggrieved employees and also failed to pay the aggrieved employees COVID-19 supplemental sick leave at their regular rate of pay. Employer also required aggrieved employees to use paid time off or the equivalent in lieu of providing COVID-19 supplemental sick leave. Employer also did not properly notify and/or provide its non-exempt employees of their rights under California law with regard to COVID-19 supplemental sick leave, and thus aggrieved employees like Mr. Mejia and the other aggrieved employees were left in the dark as to if or how much COVID-19 supplemental paid sick leave was available to them.

XI. Failure to Provide Suitable Seating

IWC Wage Order No. 5-2001, § 14 provides:

“(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the

performance of their duties.”

Employer has failed to provide suitable seating by not providing any seats or stools at the cash registers, food preparer stations, hostess stations, and bar tender stations for Mr. Mejia and other aggrieved employees. The nature of the work reasonably permits the use of seats when Mr. Mejia and the other aggrieved employees are performing their duties and responsibilities. To the extent that the use of seats could interfere with their work duties, at all times herein it is and has been reasonable for Employer to place seats in reasonable proximity within the work areas used by Mr. Mejia and other aggrieved employees when doing so would not interfere with their job duties.

XII. Failure to Provide Notice Pursuant to Labor Code § 2810.5.

California Labor Code Section § 2810.5 requires an employer to provide written notice at the time of hiring of certain employment related information, as follows:

“(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

(B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.

(C) The regular payday designated by the employer in accordance with the requirements of this code.

(D) The name of the employer, including any “doing business as” names used by the employer.

(E) The physical address of the employer’s main office or principal place of business, and a mailing address, if different.

(F) The telephone number of the employer.

(G) The name, address, and telephone number of the employer’s workers’ compensation insurance carrier.

(H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

(I) Any other information the Labor Commissioner deems material and necessary.”

Employer failed to adequately comply with California Labor Code § 2810.5 with the notice requirements as Employer failed to provide Mr. Mejia and the other aggrieved employees of the statutorily required notice regarding wage information, rate of pay, overtime rate of pay, etc.

XIII. Failure to Provide Employment Records

California Labor Code §§ 226 and 1198.5 and IWC Wage Order No. 5-2001, § 7 require California employers to provide to copies of their personnel files and certain other employment records upon their request. On March 9, 2023, April 13, 2023, and May 22, 2023, Mr. Mejia, through his counsel of record, requested copies of these records from Employer. Authorization forms, expressly permitting the disclosure of these records to counsel, signed by Mr. Mejia, were submitted to Employer along with the request. No response was received regarding the request for the payroll records and personnel file.

DEMAND

Demand is hereby made that Employer shall agree, in writing received by this office no later than thirty-three (33) calendar days from the postmark date of this notice, to pay Mr. Mejia and all other aggrieved employees employed by Employer at any time during the past twelve (12) months, back pay and compensation for the above-referenced violations. Additionally, the following demands are hereby made:

1. Employer shall agree to conduct a survey or interview of all current and former hourly aggrieved employees in California during the past twelve (12) months to obtain information from them about the number of rest periods and meal periods each employee missed during their work shifts including, but not limited to second meal periods, and about discharging their duties, with the investigation to be completed within thirty (30) days.
2. Employer shall agree to pay each aggrieved employee one (1) hour of pay for every shift in which he or she missed or otherwise did not take a compliant meal or rest period, as required by Labor Code § 226.7.
3. Employer shall agree to pay each aggrieved employee all unpaid overtime hours, as required pursuant to §§ 510, 1194, 1198, and pursuant to all applicable wage orders.
4. Employer shall reimburse each aggrieved employee with supplemental COVID-19 sick pay for each occurrence Employer required aggrieved employees to use paid or unpaid leave for sick leave related to COVID-19;

5. Employer shall agree to reimburse those aggrieved employees who were forced to pay for any business expenses incurred for the benefit of Employer, and to begin providing uniforms to aggrieved employees. In addition, Employer shall agree to pay a thirty (30) day waiting time penalty, equal to thirty (30) days of pay, to each formerly employed aggrieved employee who reports any unpaid wages as described herein.
6. Employer shall provide suitable seating for the aggrieved employees for each position where seating does not unreasonable interfere with Employer's business operations.
7. Employer shall agree to pay accrued interest to all aggrieved employees at the rate of ten percent (10%) per annum for said unpaid pages.

This demand includes but is not limited to all premium payments owed to Mr. Mejia and aggrieved employees for missed and non-compliant meal and rest periods, unpaid minimum wages and overtime compensation, in addition to waiting time penalties. Employer shall agree to pay accrued interest to Mr. Mejia and aggrieved employees at the rate of ten (10) percent per annum for all unpaid wages.

Employer shall further agree to pay all statutory and civil penalties arising from the violations of the Labor Code and IWC wage order sections referenced herein, including but not limited to Labor Code §§ 2698 *et seq.* (PAGA), 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1199, 2802, 2699, and Wage Order No. 5-2001, § 20. Employer shall further agree to create and implement policies and practices that ensure compliance with the California laws referenced herein.

Finally, a plaintiff has standing to represent all aggrieved employees for all of their asserted violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757 ("For PAGA standing a plaintiff need only have been employed by the violator and affected by 'one or more' of the alleged violations. (Sec. 2699, subds. (a), (c)).).

California Labor & Workforce Development Agency
Lazy Dog Restaurants, LLC
June 9, 2023
Page 12 of 12

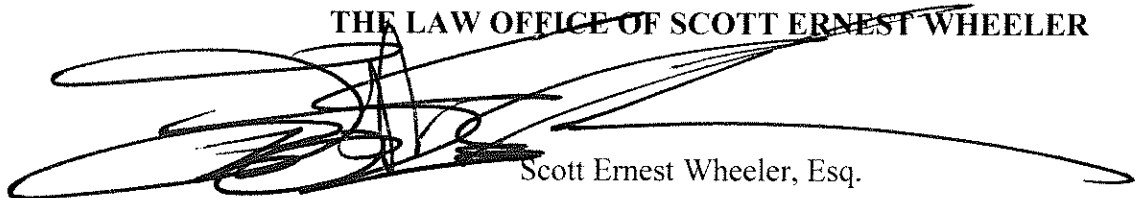
If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Law Office of Scott Ernest Wheeler
Scott Ernest Wheeler, Esq.
Justin A. Wheeler Esq.
250 West First Street, Suite 216 Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com

Thank you for your prompt attention to this matter.

Sincerely,

THE LAW OFFICE OF SCOTT ERNEST WHEELER

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Scott Ernest Wheeler, Esq.

June 10, 2023 Notice Letter

Law Offices of
Farrak Mirabel
Fmesq@mirabel.com
1070 Stradella Rd.
Los Angeles, California 90077
Tel (714) 972-0707 Fax (949) 417-1796

June 10, 2023

via ONLINE filing and email service
KZielinski@rutan.com, jtrevethan@rutan.com

Attn. PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
(510) 286-1362

Jonas Trevethan, Esq.
Kenneth Zielinski, Esq.
RUTAN & TUCKER, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612

Counsel for Defendant
LAZY DOG RESTAURANTS, LLC
3337 SUSAN ST, STE 100
COSTA MESA CA 92626

In Re AMENDED PAGA NOTICE ELFEGO VILLALPANDO v. LAZY DOG RESTAURANTS

LWDA-CM-820040-21

Dear PAGA Administrator:

Our firm represents the interests of **ELFEGO VILLALPANDO** (Plaintiff), former employee of **LAZY DOG RESTAURANTS** (referred to as the “Defendant”), on behalf of himself and all other non-exempt, aggrieved employees of Defendant. Plaintiff was employed by Defendant for the period of 2014 to February 14, 2020 as a cook and lead for \$17/hour.

On 1/29/2021, we filed a PAGA notice: **LWDA-CM-820040-21**

Here, we amend the notice to include the following claims, which are being asserted on behalf of Plaintiff and all other aggrieved employees:

- Failure to pay minimum wages (Violations of Labor Code sections 1182.12 and 1194.2);
- Unlawful release of claims (Violation of Labor Code section 206.5);
- Unlawful retaliation for complaining about wages (Violation of Labor Code section 1102.5);
- Failure to pay vacation time (Violation of Labor Code section 227.3);
- Willful misclassification (Violation of Labor Code section 226.8); and
- PAGA penalties (Violations Labor Code sections 248.5, 1102.5, 1182.12, 1194.2, and 2799).

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

This notice is submitted, at a foundation level, on behalf of the Plaintiff and all other Defendant's aggrieved employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

- 1. Violation of Labor Code § 226.7(a) (Missed Rest Breaks);**
- 2. Violation of Labor Code §226.7, 512, and 1198 (Missed/Interrupted Meal Breaks);**
- 3. Violation of Labor Code §§1194, 1197 1182.12 and 1194.2 (Failure to Pay Minimum Wages);**
- 4. Violation of Labor Code §510 and 1194, 1198 (Failure to Pay All Overtime Worked)**
- 5. Violation of Labor Code § 204 (Failure to Pay All Wages Earned)**
- 6. Violation of Labor Code §§246(a), 246.5, 248.5 (Failure to Pay for Sick Days)**
- 7. Violation of Labor Code §206.5 (Unlawful release of claims)**
- 8. Violation of Labor Code §1102.5 (Retaliation for complaining about wages)**
- 9. Violation of Labor Code §227.3 (Failure to pay vacation time)**
- 10. Violation of Labor Code § 1174, 1198.5 and 226, (Failure to Keep Records, Improper Wage Statements)**
- 11. Violation of Labor Code § 201-203 (Failure to Pay Wages Upon Separation)**
- 12. Violation of Labor Code §2802 (Failure To Reimburse Required Business Expenses);**
- 13. Violation of Labor Code § 226.8 (Willful misclassification)**

14. Civil Penalties Pursuant to Labor Code §§2699, 2799 (PAGA penalties)

During the relevant timeframe, Defendant employed Plaintiff as non-exempt hourly employee beginning in 2014. Plaintiff was employed as a cook and as a Lead. He worked from 10:00 a.m. to 11:00 p.m., six days per week, during Tuesday, Wednesday, Thursday, Friday, Saturday and Sunday. Plaintiff was paid \$17 per hour.

Upon information and belief, Plaintiff and the other aggrieved employees were not reimbursed for necessary business expenses incurred. For example, at times Plaintiff had to drive his car to carry out his duties for Defendant's business, but Defendant never reimbursed him for the cost of using his car. He also was never paid for his time running errands for the Defendant. Plaintiff was ordered to pick up things from other restaurant locations at least twice per month. He had to go from ranch Cucamonga to Brea store or Corona store. Jorge Rios (Executive Assistant) would order him to do so. He was not even clocked in when he would make those trips. Jorge would call Plaintiff before his shift was to start and ask him to go make certain trips. He had to use his own personal vehicle, a Ford 2002 F150.

His superiors were named Tony Sambrano and Jorge Rios. His last day of work was February 14, 2020 but he was not paid his final paycheck on that day, but a week after when he went to Defendant to inquire. Upon information and belief, other aggrieved employees were not timely paid their final wages.

At least three times a week, his superior Tony Sambrano asked Plaintiff to work minimum of 15 minutes before punching in. He was requested to help with orders in the kitchen. Defendant failed to pay for these off clock time and overtime wages at the legal rates of pay for all overtime hours worked. Defendant would tell him that they would adjust his time sheets later to pay him for the off clock time but he never saw any extra time and wage added to his checks, just the hours he had clocked in. He did object, to no avail. He witnessed that other employees were also taken advantage of: Angel, Eddie, and two other employees both named Juan. Upon information and belief, other aggrieved employees also performed off-the-clock work.

Plaintiff and the other aggrieved employees were not paid for several of their sick days. For example, Plaintiff's father passed away in September 2019, but Defendant refused to grant him time to go to funeral despite his repeat requests. He was also required to provide a doctor's note in order to be paid for his sick days.

During the relevant timeframe, Plaintiff and the other aggrieved employees worked shifts of over five hours, and at times, were not given a thirty-minute, uninterrupted meal break for each such shift. For example, Plaintiff worked more than 10 hours a day but was never allowed to take a second meal break. Plaintiff worked during the meal periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent. Tony Sambrano would interrupt his only meal breaks per day and would ask him to go to

kitchen and help with orders. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff and the other aggrieved employees to take their meal breaks in middle of their shifts. Also, Plaintiff and the other aggrieved employees were not allowed to leave the work premises during their meal breaks.

Defendant failed to compensate Plaintiff and the other aggrieved employees at the required rate for each occasion in which Defendant failed to provide rest breaks and meal breaks. As such, Defendant failed to pay for all the hours worked and all wages earned by Plaintiff and the other aggrieved employees.

Defendant failed to maintain accurate payroll records, such that Plaintiff and the other aggrieved employees were given wage statements which were inaccurate and Plaintiff and the other aggrieved employees were not paid for all wages and overtime compensation.

Several month before February 2020, Plaintiff fell from a 4 foot stair in the walk-in beer refrigerator, hurting his arm. That day he told a manager by the name of Nancy that he had fallen but no report was made and Defendant refused to send him to a doctor and refused to place a workers compensation claim for him but instead started mistreating Plaintiff and ultimately letting him go in February 2020, without giving him any reason. Plaintiff believes he was let go due to his work injury and his complaints about lack of breaks and his request to be accurately compensated for all his hours.

Defendant did not issue an accurate final paycheck to Plaintiff and the other aggrieved employees in accordance with the timeframes prescribed by law. For example, Plaintiff's accurate vacation pay was not included. He was asked to sign a release.

Plaintiff claims on his own behalf and also on behalf of all past and present employees that they worked in excess of 8 hours work shift and 40 hours per week and did not receive compensation for all the hours worked and were not paid overtime.

Plaintiff and the other aggrieved employees were hired to work shifts of over four hours, and were not allowed to take a ten-minute, uninterrupted rest break for each such shift. Plaintiff and the other aggrieved employees worked during the rest periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent. Plaintiff was a witness that other employees were not able to take their rest breaks either. Plaintiff did complain to his superiors, especially Tony, to no avail.

Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff and other employees to take their rest breaks.

Plaintiff and other employees received wages and wage statements which did not account for all the hours worked and did not account for the premiums due to employees for the missed rest and meal breaks, nor accounted for overtime pay for hours employees worked in excess of 8 hours per work shift and beyond 40 hours per week. Therefore, Defendant

failed to maintain accurate payroll records, such that employees were given wage statements that did not accurately reflect their accurate hours worked and did not reflect the required and due compensation for all the hours worked and breaks missed and/or interrupted.

Defendant failed to compensate Plaintiff and the other aggrieved employees at the required rate for each occasion in which Defendant failed to provide rest breaks. Also at times Plaintiff and the other aggrieved employees had to work more than 10 hours a day but did not get a second meal break. As such, Defendant failed to pay for all the hours worked and all wages earned by Plaintiff.

Therefore, Plaintiff claims that Defendant did not provide him and all other past and present employees with uninterrupted rest breaks and/or meal breaks. Defendant is understaffed and cannot possibly provide its employees including Plaintiff with their statutory breaks. Furthermore, Plaintiff claims that the past and present employees did not receive an hour of premium pay, for each missed break, for all days they did not receive a proper rest break and/or meal break. As a result, Defendant failed to pay its employees for all wages earned.

None of the wage stubs of Plaintiff indicates the actual hours he worked. Defendant was issuing him a wage stub, which was inaccurate. Plaintiff claims that because Defendant did not properly compensate its employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest break or meal break, and failed to pay them overtime for all hours worked in excess of 8 hours per day and 40 hours per week, the employees' wage statements did not accurately reflect all the hours worked and the wages earned. As such, Plaintiff claims that Defendant provided all its past and present employees with improper wage statements.

Moreover, Defendant failed to compensate Plaintiff and all past and present employees, at the required rate for each occasion in which Defendant failed to provide rest breaks and meal periods.

As such, Defendant failed to pay for all the hours worked and all wages earned by Plaintiff. During Plaintiff's employment, Defendant failed to pay Plaintiff and the other aggrieved employees all overtime wages at the legal rates of pay for all overtime hours worked and also given the number of the hours Plaintiff was working, his pay rate fell below minimum wage.

Moreover, Defendant failed to timely pay accurate paychecks upon the separation of the employees. Therefore, Plaintiff also claims a violation of Labor Code section 201-203 on behalf of all employees who stopped working for the Defendant. His last day of work was February 14, 2020 but Defendant paid him after a few weeks.

Plaintiff claims that Defendant's conduct, as stated herein, including not paying its employees all wages owed, including wages for all hours worked, overtime, missed meal

and rest breaks, and not providing its employees with accurate wage statements, not paying timely paycheck upon the separation of the employee, has been unfair, unlawful, and harmful to all its past and present employees, including Plaintiff, and to the general public. As such, this letter is written to comply with the notice and reporting requirements of Labor Code section 2699.3.

Plaintiff can be contacted through his attorney of record:

Farrah Mirabel, Esq.
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.
Los Angeles, California 90077

Plaintiff and the other aggrieved employees are also be entitled to penalties pursuant to Labor Code section 2699, et seq.

Therefore, on behalf of all past and present 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 following Labor Code sections: **98.6, 201-205, 206.5, 210, 216, 218.5, 221, 225.5, 223, 226.2, 226.3, 226.7, 226.8, 227.3, 233, 234, 246, 246.5, 248.5, 510-512, 551-552, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1193.6, 1194-1197.1, 1194.2 1198-1199.5 and 2698-2699, 2699.5, 2799 and 2802).**

Very truly yours,

LAW OFFICES OF FARRAH MIRABEL

/s/ Farrah Mirabel

Farrah Mirabel, Esq.

November 27, 2023 Notice Letter

SCOTT E. WHEELER
ATTORNEY AT LAW
250 WEST FIRST STREET, SUITE 216
CLAREMONT, CALIFORNIA 91711
TELEPHONE (909) 621-4988
FACSIMILE (909) 621-4622
sew@scottwheelerlawoffice.com

November 27, 2023

Filed Online

Labor and Workforce Development Agency
Department of Industrial Relations
Private Attorneys General Act (PAGA) - Filing
New PAGA Claim Notice

**Via Certified U.S. Mail – Return
Receipt Requested**

Lazy Dog Restaurants, LLC
C/O Rutan & Tucker, LLP
Maria A. Stearns, Esq
Kenneth Zielinski, Esq.
Jonas Trevethan, Esq.
18575 Jamboree Road, 9th Floor
Irvine, California 92612

Re: Amended Notice Pursuant to California Labor Code § 2699.3

To The Labor and Workforce Development Agency and Employer Representatives:

This office represents Mr. Juan Mejia (“Mr. Mejia”), a former, non-exempt, hourly employee of Lazy Dog Restaurants, Inc. (hereinafter referred to as “Employer”) who has caused and/or committed the wage and hour violations as set forth herein. Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698 *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, No. 5-2001 and any other applicable wage order, which Mr. Mejia alleges that Employer has violated, including the facts and theories to support the alleged violations. This amended notice is intended to supplement the original notice dated June 9, 2023, which Mr. Mejia previously submitted to the LWDA.

Please be advised that this letter constitutes written amended notice required by Labor Code §§ 2699.3(a)(1) and 2699.3(c)(1) and may lead to immediate action against Employer in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, applicable IWC wage orders, or regulations thereunder which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice is hereby given to and made against Employer, and any and all related, parent, and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

PRELIMINARY STATEMENT

My office is investigating a potential representative action on behalf of all current and former non-exempt employees of Employer (“aggrieved employees”) in the State of California regarding Employer’s unlawful policies and practices. Among other things, Mr. Mejia, and other aggrieved employees allege that Employer is liable for the following: failure to provide meal and rest periods to non-exempt employees, in violation of Labor Code §§ 226.7, 510, 512, 1194, 1197 and §§ 11-12 of Wage Order, No. 5-2001 and any other applicable wage order; failure to pay one additional hour of compensation to non-exempt employees at their regular rate of pay for each workday that a meal or rest period is not provided, in violation of Labor Code § 226.7 and §§ 11(B) and 12(B) of the applicable wage orders; failure to pay non-exempt employees overtime wages, and failure to properly calculate and pay overtime wages, in violation of Labor Code §§ 226, 510, 1194, 1198, and § 3 of Wage Order, No. 5-2001 and any other applicable wage order; failure to pay non-exempt employees the unpaid balance of the full amount of minimum wage or overtime compensation, including interest, in violation of Labor Code §§ 216, 223 and 1194; failure to timely pay non-exempt employees all wages due, in violation of Labor Code § 204; willful failure to pay discharged or quitting non-exempt employees all wages due, in violation of Labor Code §§ 201-203; failure to provide accurate itemized wage statements to non-exempt employees in violation of Labor Code §§ 226, 226.6, 1174, and 1174.5; failure to maintain required records of non-exempt employees, in violation of Labor Code §§ 1174, 1174.5, and § 7 of Wage Orders, No. 5-2001 and any other applicable wage order; failure to indemnify employees for necessary employment expenditures, in violation of Labor Code § 2802; failure to provide and account for supplemental COVID-19 sick leave in violation of Labor Code §§ 246 and 248.2, et seq.; failure to provide suitable resting facilities, in violation of Wage Order No. 5-2001, § 13; failure to comply with Labor Code § 2810.5; failure to provide employment records, in violation of Labor Code §§ 226 and 1198.5 and IWC Wage Order No. 5-2001, § 7; failure to comply with Labor Code Section § 432.5; and violation of Labor Code Section § 6310.

FACTS AND THEORIES

Mr. Mejia was employed by Employer as a Food Preparer, a non-exempt position paid at an hourly rate of \$19.50. Mr. Mejia worked at Employer's restaurant located at 19359 Stevens Creek Blvd., Cupertino, California 95014. Mr. Mejia began his employment with Employer on or about 2016 through October of 2022 when his employment was terminated. Employer

operates casual dining restaurants through the State of California, with locations in Brea, Cerritos, Concord, Corona, Cupertino, Downey, Dublin, Folsom, Fresno, Huntington Beach, Irvine, Montclair, Newark, Orange, Oxnard, Rancho Cucamonga, Roseville, San Diego, San Mateo, Temecula, Thousand Oaks, Torrance, Valencia/Santa Clarita, and San Jose.

Aggrieved employees other than Mr. Mejia include, but are not limited to, all non-exempt employees, who similarly experienced the wage and hour violations at Employer's locations throughout the State of California. Mr. Mejia on behalf of himself and other aggrieved employees of Employer in the State of California during the one (1) year preceding the date of this notice letter, alleges the following facts and theories:

I. Meal Period Violations

Pursuant to California Labor Code § 226.7, 512 and § 11 of IWC Wage Order No. 5-2001 and any other applicable wage order, no employer shall employ any non-exempt employee for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes. Employees who work more than ten (10) hours in a day are entitled to a second 30-minute meal break. California employers are required to pay one (1) hour of compensation for each missed or non-compliant meal period to their non-exempt employees.

Here, Employer regularly did not allow non-exempt employees, including Mr. Mejia and the other aggrieved employees, the opportunity to take a full thirty-minute meal period, and meal periods were regularly short (less than thirty minutes), late (taken after 5 hours), and interrupted (work was performed during the meal period). More specifically, Employer failed to implement adequate policies or procedures to provide meal periods to its non-exempt employees. Among other things, Employer systematically understaffed its restaurant such that Mr. Mejia and the other aggrieved employees could not take their meal periods. This practice caused Mr. Mejia and the other aggrieved employees to miss or otherwise take non-compliant meal periods.

Next, Employer consistently denied Mr. Mejia and other aggrieved employees compliant meal periods by requiring them to complete so much work within their shifts that they would be forced to skip their meal periods, to take them after working longer than five (5) hours, to perform work during their meal periods, or return to work after taking less than a thirty (30) minute meal period. Further, Mr. Mejia and other aggrieved employees could not leave their workstations and/or no one was available to cover for them which resulted in taking non-compliant meal

periods.

Employer further violated California Labor Code § 226.7 and IWC Wage Order No. 5-2001 and any other applicable wage by willfully failing to compensate Mr. Mejia and other aggrieved employees who were not provided with a meal period in compliance with California law with one (1) additional hour of compensation at their regular rates of pay for each workday that a

compliant meal period was not provided. Employer further violated California Labor Code § 226.7, 510, 1194, 1197, and IWC Wage Order No. 5-2001 and any other applicable wage order by failing to compensate Mr. Mejia and other aggrieved employees for all hours worked during their meal periods.

II. Rest Period Violations

Employer failed to authorize and permit Mr. Mejia and other aggrieved employees to take rest periods as required under California Labor Code §§ 226.7 and 512, and § 12 of IWC Wage Order No. 5-2001 and any other applicable wage order. California employers are required to provide a ten (10) minute rest period for every four hours worked, or major fraction thereof. Further, California employers are required to pay one (1) hour of compensation for each day in which a legally compliant rest period is not provided.

As with meal periods, Employer's policies and practices caused Mr. Mejia and other aggrieved employees to miss or otherwise take non-compliant rest periods by, among other things, giving them unreasonable amounts of work that had to be completed within their shift such that rest periods simply could not be taken. Further, as set forth above, Employer implemented skeletal staffing policies which resulted in the inability of Mr. Mejia and other aggrieved employees to take compliant rest periods.

In addition, Mr. Mejia and other aggrieved employees always needed to get permission from their supervisor in order to take their rest periods because they were too busy due to insufficient staffing. When Mr. Mejia and the other aggrieved employees did get a chance to take rest periods, these rest periods were regularly interrupted because Mr. Mejia and other aggrieved employees were required to perform work during their rest periods. Finally, Mr. Mejia and the other aggrieved employees were required to lump their rest periods with their meal periods which were not compensated by Employer.

Employer further violated California Labor Code § 226.7 and § 12 of IWC Wage Order No. 5-2001 and any other applicable wage order, by failing to pay Mr. Mejia and other aggrieved employees one (1) additional hour of compensation at their regular rates of pay for each workday that a legally-compliant rest period was not provided.

III. Failure to Pay Overtime Wages

Employer willfully failed to pay overtime to Mr. Mejia and the other aggrieved employees as they are entitled to under the protections of the California Labor Code, and falsely denied the aggrieved employees of those amounts. Specifically, California Labor Code §§ 216, 510, 1194 and § 3 of IWC Wage Order No. 5-2001 and any other applicable wage order, which requires Employer to compensate Mr. Mejia and other aggrieved employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Employer failed to compensate Mr. Mejia and other aggrieved employees for all overtime hours worked by, among other things, failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay; failing to properly calculate the regular rate of pay for the purposes of calculating overtime pay owed and due; requiring, permitting or suffering Mr. Mejia and other aggrieved employees to work off the clock, and failing to include this time in all hours worked; and other methods to be discovered.

Employer has refused to perform its obligations to compensate Mr. Mejia and other aggrieved employees for all overtime wages earned in violation of California Labor Code §§ 510, 1194, 1198, and § 3 of IWC Wage Orders, No. 5-2001 and any other applicable wage order.

IV. Failure to Pay Minimum Wages

Pursuant to California Labor Code §§ 216, 223, 1194, 1197, and IWC Wage Order No. 5-2001, § 4 and all other applicable wage orders, the payment to a non-exempt employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Employer wilfully failed to pay Mr. Mejia and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, permitting or suffering Mr. Mejia and other aggrieved employees to work off the clock; implementing an illegal rounding policy which resulted in the underpayment of wages to Mr. Mejia and the aggrieved employee, not properly compensating Mr. Mejia and other aggrieved employees for all hours worked; requiring, permitting or suffering Mr. Mejia and other aggrieved employees to work through meal and rest periods but not compensating them for this time and failing to include this time in all hours worked; illegally and inaccurately recording time that Mr. Mejia and other aggrieved employees worked; and other methods to be discovered. Employer falsely denied the aggrieved employees of the amounts owed.

V. Failure to Timely Pay All Wages Earned

Pursuant to California Labor Code § 204, California employers must pay employees at least twice a month for all wages earned during the preceding pay period. California Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

Employer failed to pay Mr. Mejia and aggrieved employees on their regularly scheduled payday for all labor performed during the preceding pay period by, among other things, failing to pay Mr. Mejia and other aggrieved employees for work they performed off the clock, failing to pay

them for bonuses to which they are entitled, illegally and inaccurately recording time in which Mr. Mejia and other aggrieved employees worked, failing to pay them overtime and minimum wages and requiring them to work through their meal and rest periods without proper compensation and/or remuneration.

Employer knew that it was required to pay Mr. Mejia and other aggrieved employees these wages owed and due no later than the payday for the next regular payroll period following the payroll period in which the wages were earned, yet it willfully failed to do so.

VI. Failure to Pay All Wages Due Upon Discharge or Termination

Pursuant to California Labor Code § 201, 202, and 203, California employers are required to pay all earned and unpaid wages to a non-employee who is discharged. California Labor Code § 201 mandates that if an employer discharges a non-exempt employee, that employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to California Labor Code § 202, an employer is required to pay all accrued wages due to a non-exempt employee no later than 72 hours after the employee quits his or her employment, unless the employee provides 72 hours previous 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.

California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the non-exempt employee at the same rate for up to thirty (30) workdays.

Because Employer, among other things, requires Mr. Mejia and other aggrieved employees to work off the clock without compensation, and fails to pay them overtime and minimum wages, Employer has willfully failed and continues to fail to pay wages due to Mr. Mejia and other

aggrieved employees in accordance with California Labor Code §§ 201 and 202.

VII. Failure to Maintain Required Records

Employer has failed to maintain records as required under California Labor Code §§ 226, 1174, and § 7 of IWC Wage Order No. 5-2001 and any other applicable wage order, including but not limited to, the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; overtime hours worked; and accurate itemized statements that reflect all compensation and remuneration owed and due to them.

Employer has knowledge it is not providing its non-exempt employees with proper meal and rest periods, and that it fails to maintain records relating to sick pay accrued. Additionally, Employer failed to pay Mr. Mejia and the other aggrieved employees their overtime compensation and failed to accurately compensate them for this time. Employer has also failed to pay Mr. Mejia and other aggrieved employees minimum wages, as described herein.

VIII. Failure to Furnish Accurate Itemized Wage Statements

Employer failed to provide Mr. Mejia and other aggrieved employees with timely, accurate, and itemized wage statements in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the complete correct names of the legal entity or entities employing Mr. Mejia and other aggrieved employees, the inclusive dates of the period for which the employee is paid, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of California Labor Code § 226 and § 7 of IWC Wage Order, No. 5-2001 and any other applicable wage orders. Moreover, Mr. Mejia and the other aggrieved employees further contend that Employer knowingly and intentionally violated Labor Code § 226 and is subject to a \$1,000 fine and/or imprisonment pursuant to Labor Code § 226.6.

Employer's wage statements violate Labor Code § 226 on their face by, among other things, failing to state the hours worked by Mr. Mejia and other aggrieved employees, and their applicable rates of pay for overtime hours worked, actual overtime hours worked and the correct legal name and address of Employer. Further, Employer is not providing Mr. Mejia and other aggrieved employees with proper meal and rest periods but intentionally fails to include in their wage statements one (1) additional hour of compensation at their regular rates of pay for each non-compliant meal or rest period. In addition, Employer requires Mr. Mejia and other aggrieved employees to work off the clock without compensation, which is not listed on the wage statements. Employer has also failed to pay Mr. Mejia and other aggrieved employees overtime and minimum wages, as described herein, rendering its wage statements incomplete and inaccurate.

IX. Failure to Indemnify Employees for Necessary Employment Expenditures

California Labor Code § 2802(a) requires an employer to indemnify non-exempt employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer. Employer failed to indemnify Mr. Mejia and the other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Employer, including but not limited to, all expenses incurred relating to the purchase of mandatory work shoes, washing and laundering uniforms, cellular phone usage; and other items which were not reimbursed, in violation of California Labor Code §2802.

X. California COVID-19 Supplemental Paid Sick Leave

As of March 29, 2021, Employer employs 26 or more aggrieved employees. As such, Employer is required to provide 80 hours of COVID-19 supplemental paid sick leave and compensate Mr. Mejia and the other aggrieved employees at their regular rate of pay for supplemental sick leave, i.e. highest regular rate of pay, taking into consideration non-discretionary bonuses, etc. See, California Labor Code §248.1(b)(3)(A). Employer has an obligation to provide COVID-19 supplemental sick leave in addition to regular sick leave.

Moreover, based upon the incorporation of California Labor Code §246 into California Labor Code §248.1(b)(2)(D), starting on March 29, 2021 or shortly thereafter, Employer is required to accurately reflect any offset and/or the current amount of COVID-19 supplemental sick leave available to Mr. Mejia and the other aggrieved employees. See, California Labor Code §248.1(b)(2)(D). Further, Employer is prohibited from requiring aggrieved employees to use any other paid or unpaid leave, paid time off, or vacation time provided by Employer before the aggrieved employees were provided, used or in lieu of COVID-19 supplemental paid sick leave. See, California Labor Code §248.1 (b)(4). See, Employer is in violation of California Labor Code §248.1, §§248.2, 248.3 and 248.4.

Here, Employer did not provide Mr. Mejia and the other aggrieved employees with COVID-19 supplemental paid sick leave. Further, Employer failed to list and itemize COVID-19 supplemental paid sick leave on the wage statements for Mr. Mejia and the other aggrieved employees and also failed to pay the aggrieved employees COVID-19 supplemental sick leave at their regular rate of pay. Employer also required aggrieved employees to use paid time off or the equivalent in lieu of providing COVID-19 supplemental sick leave. Employer also did not properly notify and/or provide its non-exempt employees of their rights under California law with regard to COVID-19 supplemental sick leave, and thus aggrieved employees like Mr. Mejia and the other aggrieved employees were left in the dark as to if or how much COVID-19

supplemental paid sick leave was available to them.

XI. Failure to Provide Suitable Seating

IWC Wage Order No. 5-2001, § 14 provides:

“(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of

suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the

performance of their duties.”

Employer has failed to provide suitable seating by not providing any seats or stools at the cash registers, food preparer stations, hostess stations, and bar tender stations for Mr. Mejia and other aggrieved employees. The nature of the work reasonably permits the use of seats when Mr. Mejia and the other aggrieved employees are performing their duties and responsibilities. To the extent that the use of seats could interfere with their work duties, at all times herein it is and has been reasonable for Employer to place seats in reasonable proximity within the work areas used by Mr. Mejia and other aggrieved employees when doing so would not interfere with their job duties.

XII. Failure to Provide Notice Pursuant to Labor Code § 2810.5.

California Labor Code Section § 2810.5 requires an employer to provide written notice at the time of hiring of certain employment related information, as follows:

“(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

(B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.

(C) The regular payday designated by the employer in accordance with the requirements of this code.

(D) The name of the employer, including any “doing business as” names used by the employer.

(E) The physical address of the employer's main office or principal place of business, and a mailing address, if different.

(F) The telephone number of the employer.

(G) The name, address, and telephone number of the employer's workers' compensation insurance carrier.

(H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

(I) Any other information the Labor Commissioner deems material and necessary."

Employer failed to adequately comply with California Labor Code § 2810.5 with the notice requirements as Employer failed to provide Mr. Mejia and the other aggrieved employees of the statutorily required notice regarding wage information, rate of pay, overtime rate of pay, etc.

XIII. Failure to Provide Employment Records

California Labor Code §§ 226 and 1198.5 and IWC Wage Order No. 5-2001, § 7 require California employers to provide to copies of their personnel files and certain other employment records upon their request. On March 9, 2023, April 13, 2023, and May 22, 2023, Mr. Mejia, through his counsel of record, requested copies of these records from Employer. Authorization forms, expressly permitting the disclosure of these records to counsel, signed by Mr. Mejia, were submitted to Employer along with the request. No response was received regarding the request for the payroll records and personnel file.

XIV. Violation of Labor Code Section § 432.5

An employer is prohibited from requiring "... any employee or applicant for employment to agree, in writing, to any term or condition which is know by such employer, or agent, manager ... to be prohibited by law." Here, Employer required Mr. Mejia and the other aggrieved employees sign and confirm its meal period policy which is illegal and otherwise prohibited by Labor Code Section § 512 and enter into unenforceable arbitration agreements, as well as other violations yet to be discovered.

XV. Violation of Labor Code Section § 6310

An employer is prohibited from terminating an employee in retaliation for filing a complaint for

Workers' Compensation benefits. See, Labor Code Section § 6310. Here, Employer terminated one or more aggrieved employees after becoming aware of the filing of a complaint for Workers' Compensation benefits, as well as other violations yet to be discovered.

DEMAND

Demand is hereby made that Employer shall agree, in writing received by this office no later than thirty-three (33) calendar days from the postmark date of this notice, to pay Mr. Mejia and all other aggrieved employees employed by Employer at any time during the past twelve (12) months, back pay and compensation for the above-referenced violations. Additionally, the following demands are hereby made:

1. Employer shall agree to conduct a survey or interview of all current and former hourly aggrieved employees in California during the past twelve (12) months to obtain information from them about the number of rest periods and meal periods each employee missed during their work shifts including, but not limited to second meal periods, and about discharging their duties, with the investigation to be completed within thirty (30) days.
2. Employer shall agree to pay each aggrieved employee one (1) hour of pay for every shift in which he or she missed or otherwise did not take a compliant meal or rest period, as required by Labor Code § 226.7.
3. Employer shall agree to pay each aggrieved employee all unpaid overtime hours, as required pursuant to §§ 510, 1194, 1198, and pursuant to all applicable wage orders.
4. Employer shall reimburse each aggrieved employee with supplemental COVID-19 sick pay for each occurrence Employer required aggrieved employees to use paid or unpaid leave for sick leave related to COVID-19;
5. Employer shall agree to reimburse those aggrieved employees who were forced to pay for any business expenses incurred for the benefit of Employer, and to begin providing uniforms to aggrieved employees. In addition, Employer shall agree to pay a thirty (30) day waiting time penalty, equal to thirty (30) days of pay, to each formerly employed aggrieved employee who reports any unpaid wages as described herein.

6. Employer shall provide suitable seating for the aggrieved employees for each position where seating does not unreasonable interfere with Employer's business operations.
7. Employer shall agree to pay accrued interest to all aggrieved employees at the rate of ten percent (10%) per annum for said unpaid pages.

This demand includes but is not limited to all premium payments owed to Mr. Mejia and aggrieved employees for missed and non-compliant meal and rest periods, unpaid minimum wages and overtime compensation, in addition to waiting time penalties. Employer shall agree to pay accrued interest to Mr. Mejia and aggrieved employees at the rate of ten (10) percent per annum for all unpaid wages.

Employer shall further agree to pay all statutory and civil penalties arising from the violations of the Labor Code and IWC wage order sections referenced herein, including but not limited to Labor Code §§ 2698 *et seq.* (PAGA), 210, 216, 223, 225.5, 226.3, 226.6, 432.5, 558, 1174.5, 1197.1, 1199, 2802, 2699, 6310, and Wage Order No. 5-2001, § 20. Employer shall further agree to create and implement policies and practices that ensure compliance with the California laws referenced herein.

Finally, a plaintiff has standing to represent all aggrieved employees for all of their asserted violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757 ("For PAGA standing a plaintiff need only have been employed by the violator and affected by 'one or more' of the alleged violations. (Sec. 2699, subds. (a), (c)).).

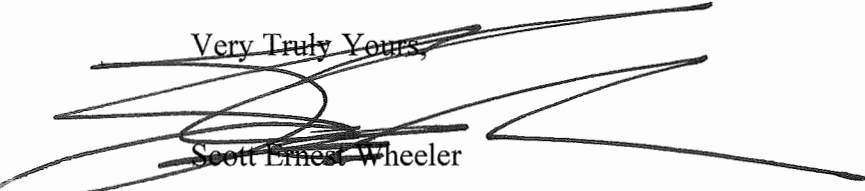
If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Law Office of Scott Ernest Wheeler
Scott Ernest Wheeler, Esq.
Justin A. Wheeler Esq.
250 West First Street, Suite 216 Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com

California Labor & Workforce Development Agency
Lazy Dog Restaurants, LLC
November 27, 2023
Page 13 of 13

Thank you for your prompt attention to this matter.

Very Truly Yours,



Scott Ernest Wheeler

SEW/jc

August 30, 2024 Notice Letter

SCOTT E. WHEELER
ATTORNEY AT LAW
250 WEST FIRST STREET, SUITE 216
CLAREMONT, CALIFORNIA 91711
TELEPHONE (909) 621-4988
FACSIMILE (909) 621-4622
sew@scottwheelerlawoffice.com

August 30, 2024

Filed Online

Labor and Workforce Development Agency
Department of Industrial Relations
Private Attorneys General Act (PAGA) - Filing
New PAGA Claim Notice

**Via Certified U.S. Mail – Return
Receipt Requested**

Rutan & Tucker, LLP
C/O Lazy Dog Restaurants, LLC
Maria A. Stearns, Esq
Kenneth Zielinski, Esq.
Jonas Trevethan, Esq.
18575 Jamboree Road, 9th Floor
Irvine, California 92612

Re: Second Amended Notice Pursuant to California Labor Code § 2699.3

To The Labor and Workforce Development Agency and Employer Representatives:

This office represents Mr. Juan Mejia (“Mr. Mejia”), a former, non-exempt, hourly employee of Lazy Dog Restaurants, Inc. (hereinafter referred to as “Employer”) who has caused and/or committed the wage and hour violations as set forth herein. Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698 *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, No. 5-2001 and any other applicable wage order, which Mr. Mejia alleges that Employer has violated, including the facts and theories to support the alleged violations. This second amended notice is intended to supplement the original notice dated June 9, 2023, and the amended notice dated November 27, 2023, which Mr. Mejia previously submitted to the LWDA.

Please be advised that this letter constitutes written amended notice required by Labor Code §§ 2699.3(a)(1) and 2699.3(c)(1) and may lead to immediate action against Employer in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, applicable IWC wage orders, or regulations thereunder which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice is hereby given to and made against Employer, and any and all related, parent, and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

PRELIMINARY STATEMENT

My office is investigating a representative action on behalf of all current and former non-exempt employees of Employer (“aggrieved employees”) in the State of California regarding Employer’s unlawful policies and practices. Among other things, Mr. Mejia, and other aggrieved employees allege that Employer is liable for the following: failure to provide meal and rest periods to non-exempt employees, in violation of Labor Code §§ 226.7, 510, 512, 1194, 1197 and §§ 11-12 of Wage Order, No. 5-2001 and any other applicable wage order; failure to pay one additional hour of compensation to non-exempt employees at their regular rate of pay for each workday that a meal or rest period is not provided, in violation of Labor Code § 226.7 and §§ 11(B) and 12(B) of the applicable wage orders; failure to pay non-exempt employees overtime wages, and failure to properly calculate and pay overtime wages, in violation of Labor Code §§ 226, 510, 1194, 1198, and § 3 of Wage Order, No. 5-2001 and any other applicable wage order; failure to pay non-exempt employees the unpaid balance of the full amount of minimum wage or overtime compensation, including interest, in violation of Labor Code §§ 216, 223 and 1194; failure to timely pay non-exempt employees all wages due, in violation of Labor Code § 204; failure to pay reporting time pay in violation of California law, including Wage Order No. 5-2001, § 5; failure to pay split-shift premium pay in violation of California law, including Wage Order No. 5-2001, § 4(c); willful failure to pay discharged or quitting non-exempt employees all wages due, in violation of Labor Code §§ 200-203; failure to provide accurate itemized wage statements to non-exempt employees in violation of Labor Code §§ 226, 226.6, 1174, and 1174.5; failure to maintain required records of non-exempt employees, in violation of Labor Code §§ 1174, 1174.5, and § 7 of Wage Orders, No. 5-2001 and any other applicable wage order; failure to indemnify employees for necessary employment expenditures, in violation of Labor Code § 2802; failure to provide and account for supplemental COVID-19 sick leave in violation of Labor Code §§ 246 and 248.2, et seq.; failure to provide suitable resting facilities, in violation of Wage Order No. 5-2001, § 13; failure to comply with Labor Code § 2810.5; failure to provide employment records, in violation of Labor Code §§ 226 and 1198.5 and IWC Wage Order No. 5-2001, § 7; failure to comply with Labor Code Section § 432.5; and violation of Labor Code Section § 6310.

FACTS AND THEORIES

Mr. Mejia was employed by Employer as a Food Preparer, a non-exempt position paid at an hourly rate of \$19.50. Mr. Mejia worked at Employer's restaurant located at 19359 Stevens Creek Blvd., Cupertino, California 95014. Mr. Mejia began his employment with Employer on or about 2016 through October of 2022 when his employment was terminated. Employer operates casual dining restaurants through the State of California, with locations in Brea, Cerritos, Concord, Corona, Cupertino, Downey, Dublin, Folsom, Fresno, Huntington Beach, Irvine, Montclair, Newark, Orange, Oxnard, Rancho Cucamonga, Roseville, San Diego, San Mateo, Temecula, Thousand Oaks, Torrance, Valencia/Santa Clarita, and San Jose.

Aggrieved employees other than Mr. Mejia include, but are not limited to, all non-exempt employees, who similarly experienced the wage and hour violations at Employer's locations throughout the State of California. Mr. Mejia on behalf of himself and other aggrieved employees of Employer in the State of California during the one (1) year preceding the date of this notice letter, alleges the following facts and theories:

I. Meal Period Violations

Pursuant to California Labor Code § 226.7, 512 and § 11 of IWC Wage Order No. 5-2001 and any other applicable wage order, no employer shall employ any non-exempt employee for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes. Employees who work more than ten (10) hours in a day are entitled to a second 30-minute meal break. California employers are required to pay one (1) hour of compensation for each missed or non-compliant meal period to their non-exempt employees.

Here, Employer regularly did not allow non-exempt employees, including Mr. Mejia and the other aggrieved employees, the opportunity to take a full thirty-minute meal period, and meal periods were regularly short (less than thirty minutes), late (taken after 5 hours), and interrupted (work was performed during the meal period). More specifically, Employer failed to implement adequate policies or procedures to provide meal periods to its non-exempt employees. Among other things, Employer systematically understaffed its restaurant such that Mr. Mejia and the other aggrieved employees could not take their meal periods. This practice caused Mr. Mejia and the other aggrieved employees to miss or otherwise take non-compliant meal periods.

Next, Employer consistently denied Mr. Mejia and other aggrieved employees compliant meal periods by requiring them to complete so much work within their shifts that they would be forced to skip their meal periods, to take them after working longer than five (5) hours, to perform work during their meal periods, or return to work after taking less than a thirty (30) minute meal period. Further, Mr. Mejia and other aggrieved employees could not leave their workstations and/or no one was available to cover for them which resulted in taking non-compliant meal

periods.

Employer further violated California Labor Code § 226.7 and IWC Wage Order No. 5-2001 and any other applicable wage by willfully failing to compensate Mr. Mejia and other aggrieved employees who were not provided with a meal period in compliance with California law with one (1) additional hour of compensation at their regular rates of pay for each workday that a compliant meal period was not provided. Employer further violated California Labor Code § 226.7, 510, 1194, 1197, and IWC Wage Order No. 5-2001 and any other applicable wage order by failing to compensate Mr. Mejia and other aggrieved employees for all hours worked during their meal periods.

II. Rest Period Violations

Employer failed to authorize and permit Mr. Mejia and other aggrieved employees to take rest periods as required under California Labor Code §§ 226.7 and 512, and § 12 of IWC Wage Order No. 5-2001 and any other applicable wage order. California employers are required to provide a ten (10) minute rest period for every four hours worked, or major fraction thereof. Further, California employers are required to pay one (1) hour of compensation for each day in which a legally compliant rest period is not provided.

As with meal periods, Employer's policies and practices caused Mr. Mejia and other aggrieved employees to miss or otherwise take non-compliant rest periods by, among other things, giving them unreasonable amounts of work that had to be completed within their shift such that rest periods simply could not be taken. Further, as set forth above, Employer implemented skeletal staffing policies which resulted in the inability of Mr. Mejia and other aggrieved employees to take compliant rest periods.

In addition, Mr. Mejia and other aggrieved employees always needed to get permission from their supervisor in order to take their rest periods because they were too busy due to insufficient staffing. When Mr. Mejia and the other aggrieved employees did get a chance to take rest periods, these rest periods were regularly interrupted because Mr. Mejia and other aggrieved employees were required to perform work during their rest periods. Finally, Mr. Mejia and the other aggrieved employees were required to lump their rest periods with their meal periods which were not compensated by Employer.

Employer further violated California Labor Code § 226.7 and § 12 of IWC Wage Order No. 5-2001 and any other applicable wage order, by failing to pay Mr. Mejia and other aggrieved employees one (1) additional hour of compensation at their regular rates of pay for each workday that a legally-compliant rest period was not provided.

III. Failure to Pay Overtime Wages

Employer willfully failed to pay overtime to Mr. Mejia and the other aggrieved employees as they are entitled to under the protections of the California Labor Code, and falsely denied the aggrieved employees of those amounts. Specifically, California Labor Code §§ 216, 510, 1194 and § 3 of IWC Wage Order No. 5-2001 and any other applicable wage order, which requires Employer to compensate Mr. Mejia and other aggrieved employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Employer failed to compensate Mr. Mejia and other aggrieved employees for all overtime hours worked by, among other things, failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay; failing to properly calculate the regular rate of pay for the purposes of calculating overtime pay owed and due; requiring, permitting or suffering Mr. Mejia and other aggrieved employees to work off the clock, and failing to include this time in all hours worked; and other methods to be discovered.

Employer has refused to perform its obligations to compensate Mr. Mejia and other aggrieved employees for all overtime wages earned in violation of California Labor Code §§ 510, 1194, 1198, and § 3 of IWC Wage Orders, No. 5-2001 and any other applicable wage order.

IV. Failure to Pay Minimum Wages

Pursuant to California Labor Code §§ 216, 223, 1194, 1197, and IWC Wage Order No. 5-2001, § 4 and all other applicable wage orders, the payment to a non-exempt employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Employer wilfully failed to pay Mr. Mejia and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, permitting or suffering Mr. Mejia and other aggrieved employees to work off the clock; implementing an illegal rounding policy which resulted in the underpayment of wages to Mr. Mejia and the aggrieved employee, not properly compensating Mr. Mejia and other aggrieved employees for all hours worked; requiring, permitting or suffering Mr. Mejia and other aggrieved employees to work through meal and rest periods but not compensating them for this time and failing to include this time in all hours worked; illegally and inaccurately recording time that Mr. Mejia and other aggrieved employees worked; and other methods to be discovered. Employer falsely denied the aggrieved employees of the amounts owed.

V. Failure to Timely Pay All Wages Earned

Pursuant to California Labor Code § 204, California employers must pay employees at least twice a month for all wages earned during the preceding pay period. California Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

Employer failed to pay Mr. Mejia and aggrieved employees on their regularly scheduled payday for all labor performed during the preceding pay period by, among other things, failing to pay Mr. Mejia and other aggrieved employees for work they performed off the clock (e.g., unpaid wellness checks), failing to pay them for bonuses to which they are entitled, illegally and inaccurately recording time in which Mr. Mejia and other aggrieved employees worked, failing to pay them overtime and minimum wages, requiring them to work through their meal and rest periods without proper compensation and/or remuneration, failing to pay reporting time pay (Wage Order No. 5-2001, § 5), and failing to pay split-shift premiums for employees who work split shifts (Wage Order No. 5-2001, § 4(c)).

Employer knew that it was required to pay Mr. Mejia and other aggrieved employees these wages owed and due no later than the payday for the next regular payroll period following the payroll period in which the wages were earned, yet it willfully failed to do so.

VI. Failure to Pay All Wages Due Upon Discharge or Termination

Pursuant to California Labor Code § 200, 201, 202, and 203, California employers are required to pay all earned and unpaid wages to a non-employee who is discharged. California Labor Code § 201 mandates that if an employer discharges a non-exempt employee, that employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to California Labor Code § 202, an employer is required to pay all accrued wages due to a non-exempt employee no later than 72 hours after the employee quits his or her employment, unless the employee provides 72 hours previous 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.

California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the non-exempt employee at the same rate for up to thirty (30) workdays.

Because Employer, among other things, requires Mr. Mejia and other aggrieved employees to work off the clock without compensation, and fails to pay them overtime and minimum wages,

Employer has willfully failed and continues to fail to pay wages due to Mr. Mejia and other aggrieved employees in accordance with California Labor Code §§ 201 and 202.

VII. Failure to Maintain Required Records

Employer has failed to maintain records as required under California Labor Code §§ 226, 1174, and § 7 of IWC Wage Order No. 5-2001 and any other applicable wage order, including but not limited to, the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; overtime hours worked; and accurate itemized statements that reflect all compensation and remuneration owed and due to them.

Employer has knowledge it is not providing its non-exempt employees with proper meal and rest periods, and that it fails to maintain records relating to sick pay accrued. Additionally, Employer failed to pay Mr. Mejia and the other aggrieved employees their overtime compensation and failed to accurately compensate them for this time. Employer has also failed to pay Mr. Mejia and other aggrieved employees minimum wages, as described herein.

VIII. Failure to Furnish Accurate Itemized Wage Statements

Employer failed to provide Mr. Mejia and other aggrieved employees with timely, accurate, and itemized wage statements in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the complete correct names of the legal entity or entities employing Mr. Mejia and other aggrieved employees, the inclusive dates of the period for which the employee is paid, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of California Labor Code § 226 and § 7 of IWC Wage Order, No. 5-2001 and any other applicable wage orders. Moreover, Mr. Mejia and the other aggrieved employees further contend that Employer knowingly and intentionally violated Labor Code § 226 and is subject to a \$1,000 fine and/or imprisonment pursuant to Labor Code § 226.6.

Employer's wage statements violate Labor Code § 226 on their face by, among other things, failing to state the hours worked by Mr. Mejia and other aggrieved employees, and their applicable rates of pay for overtime hours worked, actual overtime hours worked and the correct legal name and address of Employer. Further, Employer is not providing Mr. Mejia and other aggrieved employees with proper meal and rest periods but intentionally fails to include in their wage statements one (1) additional hour of compensation at their regular rates of pay for each non-compliant meal or rest period. In addition, Employer requires Mr. Mejia and other aggrieved employees to work off the clock without compensation, which is not listed on the wage statements. Employer has also failed to pay Mr. Mejia and other aggrieved employees overtime and minimum wages, as described herein, rendering its wage statements incomplete and inaccurate.

For example, Employer's wage statements fail to list the reporting time pay and split-shift premium pay that the aggrieved employees earned.

IX. Failure to Indemnify Employees for Necessary Employment Expenditures

California Labor Code § 2802(a) requires an employer to indemnify non-exempt employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer. Employer failed to indemnify Mr. Mejia and the other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Employer, including but not limited to, all expenses incurred relating to the purchase of mandatory work shoes, washing and laundering uniforms, cellular phone usage; and other items which were not reimbursed, in violation of California Labor Code §2802.

X. California COVID-19 Supplemental Paid Sick Leave

As of March 29, 2021, Employer employs 26 or more aggrieved employees. As such, Employer is required to provide 80 hours of COVID-19 supplemental paid sick leave and compensate Mr. Mejia and the other aggrieved employees at their regular rate of pay for supplemental sick leave, i.e. highest regular rate of pay, taking into consideration non-discretionary bonuses, etc. See, California Labor Code §248.1(b)(3)(A). Employer has an obligation to provide COVID-19 supplemental sick leave in addition to regular sick leave.

Moreover, based upon the incorporation of California Labor Code §246 into California Labor Code §248.1(b)(2)(D), starting on March 29, 2021 or shortly thereafter, Employer is required to accurately reflect any offset and/or the current amount of COVID-19 supplemental sick leave available to Mr. Mejia and the other aggrieved employees. See, California Labor Code §248.1(b)(2)(D). Further, Employer is prohibited from requiring aggrieved employees to use any other paid or unpaid leave, paid time off, or vacation time provided by Employer before the aggrieved employees were provided, used or in lieu of COVID-19 supplemental paid sick leave. See, California Labor Code §248.1 (b)(4). See, Employer is in violation of California Labor Code §248.1, §§248.2, 248.3 and 248.4.

Here, Employer did not provide Mr. Mejia and the other aggrieved employees with COVID-19 supplemental paid sick leave. Further, Employer failed to list and itemize COVID-19 supplemental paid sick leave on the wage statements for Mr. Mejia and the other aggrieved employees and also failed to pay the aggrieved employees COVID-19 supplemental sick leave at their regular rate of pay. Employer also required aggrieved employees to use paid time off or the equivalent in lieu of providing COVID-19 supplemental sick leave. Employer also did not properly notify and/or provide its non-exempt employees of their rights under California law

with regard to COVID-19 supplemental sick leave, and thus aggrieved employees like Mr. Mejia and the other aggrieved employees were left in the dark as to if or how much COVID-19 supplemental paid sick leave was available to them.

XI. Failure to Provide Suitable Seating

IWC Wage Order No. 5-2001, § 14 provides:

“(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

Employer has failed to provide suitable seating by not providing any seats or stools at the cash registers, food preparer stations, hostess stations, and bar tender stations for Mr. Mejia and other aggrieved employees. The nature of the work reasonably permits the use of seats when Mr. Mejia and the other aggrieved employees are performing their duties and responsibilities. To the extent that the use of seats could interfere with their work duties, at all times herein it is and has been reasonable for Employer to place seats in reasonable proximity within the work areas used by Mr. Mejia and other aggrieved employees when doing so would not interfere with their job duties.

XII. Failure to Provide Notice Pursuant to Labor Code § 2810.5.

California Labor Code Section § 2810.5 requires an employer to provide written notice at the time of hiring of certain employment related information, as follows:

“(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

(B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.

(C) The regular payday designated by the employer in accordance with the requirements of this code.

(D) The name of the employer, including any “doing business as” names used by the employer.

(E) The physical address of the employer’s main office or principal place of business, and a mailing address, if different.

(F) The telephone number of the employer.

(G) The name, address, and telephone number of the employer’s workers’ compensation insurance carrier.

(H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

(I) Any other information the Labor Commissioner deems material and necessary.”

Employer failed to adequately comply with California Labor Code § 2810.5 with the notice requirements as Employer failed to provide Mr. Mejia and the other aggrieved employees of the statutorily required notice regarding wage information, rate of pay, overtime rate of pay, etc.

XIII. Failure to Provide Employment Records

California Labor Code §§ 226 and 1198.5 and IWC Wage Order No. 5-2001, § 7 require California employers to provide to copies of their personnel files and certain other employment records upon their request. On March 9, 2023, April 13, 2023, and May 22, 2023, Mr. Mejia, through his counsel of record, requested copies of these records from Employer. Authorization forms, expressly permitting the disclosure of these records to counsel, signed by Mr. Mejia, were submitted to Employer along with the request. No response was received regarding the request for the payroll records and personnel file.

XIV. Violation of Labor Code Section § 432.5

An employer is prohibited from requiring “... any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager ... to be prohibited by law.” Here, Employer required Mr. Mejia and the other aggrieved employees sign and confirm its meal period policy which is illegal and otherwise prohibited by Labor Code Section § 512 and enter into unenforceable arbitration agreements, as well as other violations yet to be discovered.

XV. Violation of Labor Code Section § 6310

An employer is prohibited from terminating an employee in retaliation for filing a complaint for Workers' Compensation benefits. See, Labor Code Section § 6310. Here, Employer terminated one or more aggrieved employees after becoming aware of the filing of a complaint for Workers' Compensation benefits, as well as other violations yet to be discovered.

DEMAND

Demand is hereby made that Employer shall agree, in writing received by this office no later than thirty-three (33) calendar days from the postmark date of this notice, to pay Mr. Mejia and all other aggrieved employees employed by Employer at any time during the past twelve (12) months, back pay and compensation for the above-referenced violations. Additionally, the following demands are hereby made:

1. Employer shall agree to conduct a survey or interview of all current and former hourly aggrieved employees in California during the past twelve (12) months to obtain information from them about the number of rest periods and meal periods each employee missed during their work shifts including, but not limited to second meal periods, and about discharging their duties, with the investigation to be completed within thirty (30) days.
2. Employer shall agree to pay each aggrieved employee one (1) hour of pay for every shift in which he or she missed or otherwise did not take a compliant meal or rest period, as required by Labor Code § 226.7.
3. Employer shall agree to pay each aggrieved employee all unpaid overtime hours, as required pursuant to §§ 510, 1194, 1198, and pursuant to all applicable wage orders.
4. Employer shall reimburse each aggrieved employee with supplemental COVID-19 sick pay for each occurrence Employer required aggrieved employees to use paid or unpaid leave for sick leave related to COVID-19;
5. Employer shall agree to reimburse those aggrieved employees who were forced to pay for any business expenses incurred for the benefit of Employer, and to begin providing uniforms to aggrieved employees. In addition, Employer shall agree to pay a thirty (30) day waiting time penalty, equal to thirty (30) days of pay, to each formerly employed aggrieved employee who reports any unpaid wages as described herein.

6. Employer shall provide suitable seating for the aggrieved employees for each position where seating does not unreasonable interfere with Employer's business operations.
7. Employer shall agree to pay accrued interest to all aggrieved employees at the rate of ten percent (10%) per annum for said unpaid pages.

This demand includes but is not limited to all premium payments owed to Mr. Mejia and aggrieved employees for missed and non-compliant meal and rest periods, unpaid minimum wages and overtime compensation, in addition to waiting time penalties. Employer shall agree to pay accrued interest to Mr. Mejia and aggrieved employees at the rate of ten (10) percent per annum for all unpaid wages.

Employer shall further agree to pay all statutory and civil penalties arising from the violations of the Labor Code and IWC wage order sections referenced herein, including but not limited to Labor Code §§ 2698 *et seq.* (PAGA), 210, 216, 223, 225.5, 226.3, 226.6, 432.5, 558, 1174.5, 1197.1, 1199, 2802, 2699, 6310, and Wage Order No. 5-2001, §§ 4, 5, and 20. Employer shall further agree to create and implement policies and practices that ensure compliance with the California laws referenced herein.

Finally, a plaintiff has standing to represent all aggrieved employees for all of their asserted violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757 ("For PAGA standing a plaintiff need only have been employed by the violator and affected by 'one or more' of the alleged violations. (Sec. 2699, subds. (a), (c)).).

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Law Office of Scott Ernest Wheeler
Scott Ernest Wheeler, Esq.
Justin A. Wheeler Esq.
250 West First Street, Suite 216 Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com

California Labor & Workforce Development Agency
Lazy Dog Restaurants, LLC
August 30, 2024
Page 13 of 13

Thank you for your prompt attention to this matter.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Justin Wheeler", with a long horizontal flourish extending to the right.

JUSTIN A. WHEELER

JAW/yc