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David W. Slayton,
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By R. Perez, Deputy Clerk

Attorneys for Plaintiff CARL EMPY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

CARL EMPY, individually, and on behalf of all
others similarly situated,

Plaintiff,

vs.

24 WINDWARD AVENUE LLC, a California
Limited Liability Company; and DOES 1
through 10, inclusive,

Defendants

Case No.: 23STCV18608

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.]

1 Plaintiff CARL EMPY (“Plaintiff”), based upon facts that either have evidentiary support
2 or are likely to have evidentiary support after a reasonable opportunity for further investigation
3 and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendant 24 Windward Avenue LLCC dba
6 Belles Beach House and Does 1 through 10 (24 WINDWARD AVENUE LLC and Does 1
7 through 10 are collectively referred to as “Defendants”) for civil penalties under the Private
8 Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.* (“PAGA”) stemming
9 from Defendants’ failure to pay all wages due in violation of Labor Code Sections 204, 510 and
10 1194, including both regular and overtime wages; failure to pay sick leave and provide
11 employees with written notice of accrued sick leave in violation of Labor Code Section 246;
12 failure to provide meal periods or compensation in lieu thereof pursuant to Labor Code Sections
13 226.7 and 512, the applicable Industrial Welfare Commission Wage Orders, and Code of
14 Regulations, Title 8, Section 11000 *et seq.*; failure to provide rest periods or compensation in lieu
15 thereof pursuant to Labor Code Sections 226.7 and 512, the applicable Industrial Welfare
16 Commission Wage Orders, and Code of Regulations, Title 8, Section 11000 *et seq.*; failure to
17 provide accurate itemized wage statements upon payment of wages pursuant to Labor Code
18 Sections 226, subdivision (a), 1174, and 1175; failure to reimburse for necessary expenditures
19 pursuant to Labor Code Section 2802; failure to pay wages of terminated or resigned employees
20 pursuant to Labor Code Sections 201, 202, and 203; and failure to provide suitable seating
21 pursuant to Labor Code § 1198 and California Code of Regulations, Title 8, Section 11070 (14).

22 2. For over 50 years, California’s courts and legislature have recognized that this
23 state’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
24 Wages are not ordinary debts. Because of the economic position of the average worker and his
25 or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so
26 that employees are promptly paid the minimum/overtime wages that the Legislature has required
27 for employees. So fundamental are California’s wage-and-hour laws that the Legislature has
28 criminalized certain types of violations. In extending extra protection to deter violations of these

1 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
2 other damages other than civil penalties—California has enacted the PAGA to permit an
3 individual to bring an action on behalf of himself and on behalf of others for PAGA penalties
4 only, which is the precise and sole nature of this action.

5 3. All California employees during the relevant statutes of limitations who are or
6 were harmed by Defendant’s illegal practices are “Aggrieved Employees.”

7 4. Plaintiff brings this action against Defendants seeking only to recover penalties for
8 himself, on behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the
9 State of California. Plaintiff does not seek to recover anything other than penalties as permitted
10 by California Labor Code Section 2699 at this time. To the extent that statutory violations are
11 mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages
12 for those violations, but simply penalties as permitted by California Labor Code Section 2699,
13 declaratory relief, and injunctive relief for himself and all aggrieved employees as permitted by
14 the PAGA.

15 5. Defendants own/owned and operate/operated an industry, business, and
16 establishment within the State of California, including Los Angeles County. As such, and based
17 upon all the facts and circumstances incident to Defendants’ business in California, Defendants
18 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
19 Commission (“IWC”), and the California Business & Professions Code.

20 6. Despite these requirements, throughout the statutory period Defendants
21 maintained a systematic, company-wide policy and practice of:

- 22 (a) Failing to authorize and permit employees to take timely and duty-free rest
23 periods in compliance with the California Labor Code and IWC Wage
24 Orders, and failing to pay an additional hour’s pay for each workday a rest
25 period violation occurred;
 - 26 (b) Failing to maintain accurate records of the hours employees worked;
- 27
28

- (c) Failing to pay employees all meal period, rest period, minimum wages, straight time wages, and overtime wages due within the time period specified by California law when employment terminates; and
- (d) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders;
- (e) Failing to provide with written notice of paid sick leave available required by California Labor Code;
- (f) Failing to provide suitable seats pursuant to IWC order.

7. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

8. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior".

THE PARTIES

A. Plaintiff

9. Plaintiff CARL EMPY is a California resident that worked for Defendants in Los Angeles County, California as a dishwasher from December 2, 2021 to June 23, 2022.

B. Defendants

10. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant 24 WINDWARD AVENUE LLC is:

- (a) A California Limited Liability Company with its corporate headquarters and principal place of business in Los Angeles, California.
- (b) A business entity conducting business in numerous counties throughout the

State of California, including in Los Angeles County; and,

(c) The former employer of Plaintiff, and the current and/or former employer of the Aggrieved Employees' group. 24 WINDWARD AVENUE LLC suffered and permitted Plaintiff and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

11. Plaintiff does not know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff and the Aggrieved Employees in the State of California.

13. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other Aggrieved Employees, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendants acted pursuant to and within the scope of the relationships alleged above, that each Defendants knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

1 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

2 14. Plaintiff CARL EMPY worked for Defendants in Los Angeles County, California
3 as a dishwasher from December 2, 2021 to June 23, 2022. At all times Defendants classified
4 Plaintiff as non-exempt. During the statutory time period, Plaintiff was typically scheduled to
5 work 5 days in a workweek, and typically 8 to 12 hours in a single workday.

6 15. Throughout Plaintiff's employment, Defendants committed numerous labor code
7 violations under state law. As discussed below, Plaintiff's experience working for Defendants
8 was typical and illustrative.

9 16. Under California law, an employer must pay for all hours worked by an employee.
10 "Hours worked" is the time during which an employee is subject to the control of an employer
11 and includes all the time the employee is suffered or permitted to work, whether or not required
12 to do so.

13 17. In addition, Labor Code § 510 provides that employees in California shall not be
14 employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless
15 they receive additional compensation beyond their regular wages in amounts specified by law.

16 18. Labor Code §§ 1194 and 1198 also provide that employees in California shall not
17 be employed more than eight hours in any workday unless they receive additional compensation
18 beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states
19 that the employment of an employee for longer hours than those fixed by the Industrial Welfare
20 Commission is unlawful.

21 19. Throughout the statutory period, Defendants maintained a policy and practice of
22 failing to pay Plaintiff and the Aggrieved Employees for all hours worked including minimum
23 wages, straight time wages and overtime wages. Throughout the statutory period, Plaintiff and
24 the Aggrieved Employees regularly worked more than 10-12 hours during one shift, but
25 Defendants failed to pay Plaintiff and the Aggrieved Employees for the hours exceeding 8 hours
26 per shift with overtime rate. Throughout the statutory period, Defendants also maintained a
27 policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work "off-the-
28 clock". Plaintiff and the Aggrieved Employees would clock out and continue working an

1 additional 15 minutes to clean the premises. Defendants' management required to clock out and
2 continue working not to create overtime. Additionally, Defendants required Plaintiff and the
3 Aggrieved Employees to wash and maintain the uniforms off-the-clock without reimbursement.
4 In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate
5 records of the hours Plaintiff and the Aggrieved Employees worked.

6 20. Under California law, employers have an affirmative obligation to relieve
7 employees of all duty in order to take their first 30-minute, duty-free meal periods no later than
8 the start of sixth hour of work in a workday, and to allow employees to take their second 30-
9 minute, duty-free meal period no later than the start of the eleventh hour of work in the workday.
10 Further, employees are entitled to be paid one hour of additional wages for each workday they
11 were not provided with all required meal period(s). Despite these legal requirements, Defendants
12 wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal
13 periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess
14 of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted,
15 duty-free meal period for every five hours of work, or without compensating Plaintiff and the
16 Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of
17 work or tenth hour of work. Defendants did not adequately inform Plaintiff and the Aggrieved
18 Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts
19 greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendants did not have
20 adequate written policies or practices providing meal periods for Plaintiffs and the Aggrieved
21 Employees, nor did Defendants have adequate policies or practices regarding the timing of meal
22 periods. Plaintiff and the Aggrieved Employees would often times miss their meal periods, have
23 interrupted or short meal periods. Defendants never provided second meal periods when Plaintiff
24 and the Aggrieved Employees worked more than 10-hour shifts. Accordingly, Defendants' policy
25 and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in
26 compliance with California law.

27 21. Employers are required by California law to authorize and permit breaks of 10
28 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than

two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

22. Defendants, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendants did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants did not have adequate policies or practices permitting or authorizing rest periods for Plaintiffs and the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the timing of rest periods. Defendants did not schedule rest periods every 4 hours or a major fraction. Plaintiffs and the Aggrieved Employees have never been authorized and taken their second and third rest periods, and the first rest periods were often times interrupted or missed. Accordingly, Defendants' policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

23. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful. California Code of Regulations, Title 8, section 11070(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

24. California Code of Regulations, Title 8, section 11070(14)(B) provides that "[w]hen 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

1 proximity to the work area and employees shall be permitted to use such seats when it does not
2 interfere with the performance of their duties."

3 25. Defendants violated California Labor Code section 1198 and California Code of
4 Regulations, Title 8, section 11070(14) because Plaintiff and The Aggrieved Employees were not
5 permitted to sit, even if they were not engaged in active duties. They were not permitted to sit,
6 even when it would not interfere with the performance of their duties, nor were they provided
7 with suitable seats.

8 26. Plaintiff alleges that Defendants' restaurant has an ample space near each cash
9 register and kitchen area, and/or other areas, to allow for the presence and use of a seat or stool
10 by Defendants' employees during the performance of their work duties. Defendants have not
11 provided employees, including Plaintiff and the Aggrieved Employees, with seats or stools at or
12 near their cash registers, kitchen or other areas when the performance of their duties did not
13 require moving or standing. Defendants knew or should have known that Plaintiff and the
14 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not
15 interfere with the performance of their duties, and also have seats nearby to use during a lull in
16 tasks that do require moving about or standing.

17 27. During the time period of employment for Plaintiff and the Aggrieved Employees,
18 Defendants' policy of not providing suitable and adequate seating for standing positions violated
19 California law pursuant to IWC Wage Order 5-2001, specifically Section 14, and was intentional
20 and willful. Defendants unlawfully violated the provision of Section 14 of the applicable IWC
21 Wage Order because the seating provision would not in any way interfere with the performance
22 of the respective duties of Plaintiff and the Aggrieved Employees.

23 28. California Labor Code § 2802 requires employers to reimburse employees for
24 their necessary expenditures and losses incurred in direct consequence of the discharge of their
25 duties or of their obedience to directions of the employer.

26 29. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
27 Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
28 Defendants without reimbursement. Defendants required Plaintiff and the Aggrieved Employees

1 to purchase, wash and maintain the uniforms without reimbursement. Plaintiff and the Aggrieved
2 Employees incurred these substantial expenses as a direct result of performing their job duties for
3 Defendants, and Defendants have failed to indemnify Plaintiff and the Aggrieved Employees for
4 these employment-related expenses.

5 30. Labor Code § 246 (a) an employee who, on or after July 1, 2015, works in
6 California for the same employer for 30 or more days within a year from the commencement of
7 employment is entitled to paid sick days. Labor Code § 246 (i) requires employers to provide an
8 employee with written notice that sets forth the amount of paid sick leave available.

9 31. Throughout the statutory period, Defendants maintained a policy and practice of
10 failing to provide Plaintiff and the Aggrieved Employees with paid sick leave as well as to
11 provide a written notice of accrued paid sick leave. On information and belief, Defendants'
12 failure to provide an employee with written notice that sets forth the amount of paid sick leave
13 available was not a single, isolated incident, but was instead part of Defendants' policy and
14 practice that applied to the Aggrieved Employees.

15 32. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
16 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
17 if an employee voluntarily leaves his or her employment, his or her wages shall become due and
18 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
19 two (72) hours previous notice of his or her intention to quit, in which case the employee is
20 entitled to his or her wages at the time of quitting.

21 33. Throughout the statutory period, the employment of Plaintiff and many other
22 Aggrieved Employees ended, i.e. were terminated by quitting or discharge, and the employment
23 of others will be. However, during the relevant time period, Defendants failed, and continues to
24 fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required
25 to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-
26 two (72) hours of their leaving Defendants' employ. These unpaid wages include wages for
27 unpaid work time (including minimum and straight time wages), missed meal periods, and
28

missed rest periods. Additionally, Plaintiff's last day of work was on June 20, 2023. However, he was paid his final paycheck in portions on June 24, 2022 and July 1, 2022.

34. Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

35. Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. 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. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

36. Throughout the statutory period, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendants systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all wages for all hours worked. As a result, Defendants owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

37. During the statutory period, Defendants failed to furnish Plaintiff and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including wages for meal periods that were not

1 provided in accordance with California law, wages for rest periods that were not authorized and
2 permitted to take in accordance with California law, and correct wages earned for hours worked).
3 As a result of these violations of California Labor Code § 226(a), the Plaintiff and the Aggrieved
4 Employees suffered injury because, among other things:

- 5 (a) the violations led them to believe that they were not entitled to be paid
6 minimum wages, overtime wages, meal period premium wages, and rest
7 period premium wages, even though they were entitled;
- 8 (b) the violations led them to believe that they had been paid the minimum,
9 overtime, meal period premium, and rest period premium wages to which
10 they were entitled, even though they had not been;
- 11 (c) the violations led them to believe they were not entitled to be paid
12 minimum, overtime, meal period premium, and rest period premium wages
13 at the correct California rate even though they were;
- 14 (d) the violations led them to believe they had been paid minimum, overtime,
15 meal period premium, and rest period premium wages at the correct
16 California rate even though they had not been;
- 17 (e) the violations hindered them from determining the amounts of minimum,
18 overtime, meal period premium, and rest period premium wages owed to
19 them;
- 20 (f) in connection with their employment before and during this action, and in
21 connection with prosecuting this action, the violations caused them to have
22 to perform mathematical computations to determine the amounts of wages
23 owed to them, computations they would not have to make if the wage
24 statements contained the required accurate information;
- 25 (g) by understating the wages truly due them, the violations caused them to
26 lose entitlement and/or accrual of the full amount of Social Security,
27 disability, unemployment, and other governmental benefits;

1 (h) the wage statements inaccurately understated the wages, hours, and wages
2 rates to which Plaintiff and the Aggrieved Employees were entitled, and
3 Plaintiff and the Aggrieved Employees were paid less than the wages and
4 wage rates to which they were entitled.

5 Thus, Plaintiff and the Aggrieved Employees are owed the amounts provided for in California
6 Labor Code § 226(e).

7 **FIRST CAUSE OF ACTION**

8 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
9 **2004, Cal. Lab. Code § 2698 et seq.)**

10 38. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as
11 though fully set forth herein.

12 39. At all times herein mentioned, Defendants were subject to the Labor Code of the
13 State of California and the applicable Industrial Welfare Commission Orders.

14 40. California Labor Code § 2699(a) specifically provides for a private right of action
15 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of
16 law, any provision of this code that provides for a civil penalty to be assessed and collected by
17 the Labor and Workforce Development Agency or any of its departments, divisions,
18 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
19 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
20 herself and other current or former employees pursuant to the procedures specified in Section
21 2699.3.”

22 41. Plaintiff has exhausted his administrative remedies pursuant to California Labor
23 Code § 2699.3. On June 1, 2023, he gave written notice by online filing to the Labor and
24 Workforce Development Agency and by certified mail to Defendants of the specific provisions
25 of the Labor Code that Defendants have violated against Plaintiff and current and former
26 aggrieved employees, including the facts and theories to support the violations. Plaintiff also
27 paid the filing fee on or about June 1, 2023. Plaintiff’s PAGA case number is LWDA-CM-
28 958831-23.

42. The statute of limitations is tolled while a plaintiff exhausts his/her administrative remedies with California's Labor and Workforce Development Agency (LWDA) prior to suit, which is required by the statute. See Cal. Lab. Code § 2699.3(d).

43. More than 65 days has elapsed since Plaintiff provided notice, but the Labor and Workforce Development Agency has not indicated that it intends to investigate Defendants' Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 210, 226.3, 1197.1, and 2699(f)(2).

44. In addition, Plaintiff seeks penalties for Defendants' violation of California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods, and total hours worked daily shall also be recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall keep total hours worked in the payroll period and applicable rates of pay.

45. Based on the conduct described in this Complaint, Plaintiff is entitled to an award of civil penalties on behalf of himself, the State of California, and similarly Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

46. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Aggrieved Employees pray for judgment as follows:

1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee

1 as provided by law, including, but not limited to, those civil penalties provided by statute,
2 provided by PAGA;

3 2. For costs of suit and expenses incurred herein pursuant to Labor Code sections
4 2699, subdivision (g) and any other statutory basis or pursuant to the California Rules of Court

5 3. For reasonable attorneys' fees pursuant to Labor Code sections 2699, subdivision
6 (g), 2802, Code of Civil Procedure section 1021.5, and any other statutory basis, and;

7 4. For all such other and further relief as the Court may deem just and proper

8
9 Dated: August 7, 2023

Respectfully submitted,

10 **TUNYAN LAW, APC**

11 By:  _____

12 Lilit Tunyan
13 Artur Tunyan

14 Attorneys for Plaintiff Carl Emphy
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Exhibit “A”



Lilit Tunyan, Esq.
1336 Rossmoyne Avenue,
Glendale, CA 91207
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

June 1, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Agent for Service of Process for
24 Windward Ave LLC
Charles Lew
9440 Santa Monica Boulevard, Suite 301
Beverly Hills, California 90210

VIA CERTIFIED MAIL

Return Receipt Requested

24 Windward Ave LLC
8605 Santa Monica Boulevard, PMB 67503
West Hollywood, California 90069

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: *Empy v. 24 Windward Ave LLC dba Belles Beach House*

To Whom It May Concern:

Please be advised that my office has been retained by Carl I. Empy ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer 24 Windward Ave LLC dba Belles Beach House ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which Plaintiff alleges Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of himself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a dishwasher from December 2, 2021 to June 23, 2022, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and between 8 to 12 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked including minimum wages, straight time wages and overtime wages. Throughout the statutory period, Plaintiff and

the Aggrieved Employees regularly worked more than 10-12 hours during one shift, but Defendant failed to pay Plaintiff and the Aggrieved Employees for the hours exceeding 8 hours per shift with overtime rate. Throughout the statutory period, Defendant also maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work “off-the-clock”. Plaintiff and the Aggrieved Employees would clock out and continue working an additional 15 minutes to clean the premises. Defendant’s management required to clock out and continue working not to create overtime. Additionally, Defendant required Plaintiff and the Aggrieved Employees to wash and maintain the uniforms off-the-clock without reimbursement. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiffs and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Plaintiff and the Aggrieved Employees would often times miss their meal periods, have interrupted or short meal periods. Defendant never provided second meal periods when Plaintiff and the Aggrieved Employees worked more than 10-hour shifts. Accordingly, Defendant’s policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiffs and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant did not schedule rest periods every 4 hours or a major fraction. Plaintiffs and the Aggrieved Employees have never been authorized and taken their second and third rest periods, and the first rest periods were often times interrupted or missed. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement. Defendant required Plaintiff and the Aggrieved Employees to purchase, wash and maintain the uniforms without reimbursement. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours 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.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods. Additionally, Plaintiff's last day of work was on June 20, 2023. However, he was paid his final paycheck in portions on June 24, 2022 and July 1, 2022.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly

rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to state Defendant’s correct address, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked. Moreover, during some pay periods Defendant failed to state the hourly rate, the total hours worked, the pay period beginning and end date in the wage statements at all.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. 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. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the

wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Provide Paid Sick Leave and Written Notice of Available Paid Sick Leave

Labor Code § 246 (a) an employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days.

Labor Code § 246 (i) requires employers to provide an employee with written notice that sets forth the amount of paid sick leave available.

During the statutory period, Defendant maintained a policy and practice of failing to provide Plaintiff and the Aggrieved Employees with the paid sick leave as well as to provide a written notice of accrued paid sick leave. On information and belief, Defendants' failure to provide an employee with written notice that sets forth the amount of paid sick leave available was not a single, isolated incident, but was instead part of Defendant's policy and practice that applied to the Aggrieved Employees.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to provide any information on accrued sick leave.

Failure to Provide Suitable Seats

Pursuant to applicable IWC Section 14(A) all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. IWC Section 14(B) states that 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 areas and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

However, Defendant failed to provide Plaintiff and the Aggrieved Employees with suitable seats.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements;
8. Labor Code § 204 by failing to pay all earned wages two times per month;
9. Labor Code § 246 by failing to provide paid sick leave and written notice of available paid sick leave; and
10. IWC order Section 14(A) by failing to provide suitable seats.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

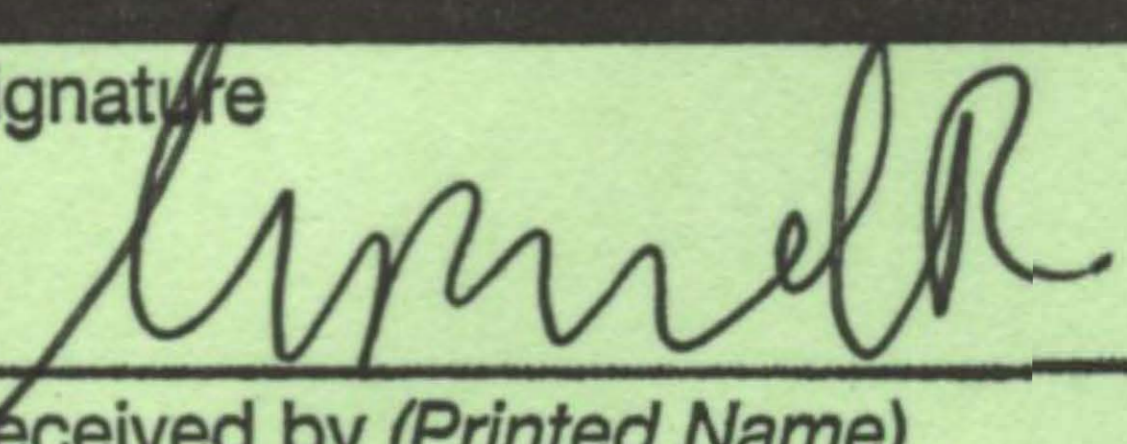
The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendant or any additional facts, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. Tunyan", with a stylized flourish at the end.

Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC

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To: ltunyan@tunyanlaw.com
Subject: Thank you for submission of your PAGA Case.
Date: Thursday, June 1, 2023 10:11:23 AM

6/1/2023

LWDA Case No. LWDA-CM-958831-23
Law Firm : Tunyan Law, APC
Plaintiff Name : Carl I. Empy
Employer: 24 Windward Ave LLC dba Belles Beach House
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm