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VIA ONLINE FILING

Labor and Workforce Development Agency

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<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: *Pablo Ortiz Madrigal v. Bushfire Beachside LLC*

Dear Representative:

This office represents Pablo Ortiz Madrigal (“**Mr. Madrigal**”) with respect to his claims under the California Labor Code against Bushfire Beachside LLC (“**Employer**”). This letter is being sent simultaneously to Employer by certified mail.

Employer employed Mr. Madrigal from approximately August 2022 to approximately June 2025, as an hourly, non-exempt employee. During his employment with Employer, Mr. Madrigal was employed as a Kitchen Manager and Cook at Employer’s location at 30080 Haun Road, Menifee, CA 92584. Employer operates restaurants across Southern California .

Mr. Madrigal intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 (“**PAGA**”). Mr. Madrigal is seeking penalties solely in a representative capacity on behalf of the State of California and all current and former non-exempt employees of Employer (“**Aggrieved Employees**”). This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employer violated several of California’s wage and hour laws during Mr. Madrigal’s employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the Industrial Welfare Commission Wage Orders (“IWC Wage Order”) including *inter alia*, IWC Wage Order No. 5. These claims are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employer has engaged in numerous unlawful practices which resulted in the failure to pay Mr. Madrigal and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

First, Employer regularly required Mr. Madrigal and Aggrieved Employees to work more than eight (8) hours in a day or forty (40) hours in a workweek, but failed to pay them overtime compensation for such work. Employer also failed to provide Mr. Madrigal and Aggrieved Employees with adequate



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training as to the payment of overtime compensation, all in an effort to keep its workers uninformed as to their legal right to overtime compensation. In addition, Employer regularly required Mr. Madrigal and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Mr. Madrigal and Aggrieved Employees to: (1) respond to Employer and work-related requests and perform work while clocked out for purported meal breaks; and (2) perform work before clocking in for the start of their shift. Mr. Madrigal and Aggrieved Employees were regularly required to work through their meal periods and/or were regularly interrupted during their purported meal break periods at the direction of Employer and due to the overwhelming demand of the work. Moreover, Mr. Madrigal and Aggrieved Employees were required to arrive to work before the start of their scheduled shifts to complete duties in preparation of their shift, including clean the kitchen, begin to cook, and do other tasks as needed. Employer prohibited Mr. Madrigal and Aggrieved Employees from recording this time worked in an effort to avoid compensating them for overtime. Additionally, Mr. Madrigal and Aggrieved Employees were instructed by Employer to complete their job tasks on their days off and prohibited them from recording these hours worked. Mr. Madrigal and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Mr. Madrigal and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Mr. Madrigal and Aggrieved Employees to perform work off-the-clock without compensation, Employer also edited Mr. Madrigal and Aggrieved Employees' time records to not pay all of their recorded hours worked, utilized time rounding practices, and automatically deducted 30-minutes from their daily time records for purported meal periods, even if a 30 minute meal period was not provided. These practices resulted in the systematic underpayment of wages to Mr. Madrigal and Aggrieved Employees, including minimum wages, straight time wages and overtime wages. Employer also failed to accurately record the actual time worked by Mr. Madrigal and Aggrieved Employees, which resulted in a failure to pay Mr. Madrigal and Aggrieved Employees for all hours actually worked, including minimum wages, straight time wages and overtime wages.

As a result of the foregoing practices, Employer has failed to pay Mr. Madrigal and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Mr. Madrigal and Aggrieved Employees will therefore seek unpaid wages; PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; compensation pursuant to Labor Code Section 1194; and attorneys' fees and costs.



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2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employer failed to provide Mr. Madrigal and Aggrieved Employees with legally-compliant 30-minute meal periods. Mr. Madrigal and Aggrieved Employees were required by Employer to work more than five (5) hours per day, but were not provided with timely uninterrupted 30-minute meal periods. Further, Mr. Madrigal and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employer regularly required Mr. Madrigal and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Mr. Madrigal and Aggrieved Employees frequently missed their meal break periods at the direction of the Employer and due to the overwhelming demand of the work. Moreover, Mr. Madrigal and Aggrieved Employees were not provided with a second (2nd) meal break period when they worked over ten (10) hours. Additionally, Employer automatically deducted 30 minutes from Mr. Madrigal and Aggrieved Employees' daily time records for purported meal periods, even if a 30-minute meal period was not provided. Employer also edited Mr. Madrigal and Aggrieved Employees' time records to show timely meal periods for meal periods that were not timely provided. On the occasions that Mr. Madrigal and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted to respond to Employer and work-related requests and perform work. Finally, Mr. Madrigal and Aggrieved Employees were not completely relieved of duty during their meal periods as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016) because Mr. Madrigal and Aggrieved Employees were required to remain on-call and on premises at all times including during their purported meal periods.

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Madrigal and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Mr. Madrigal and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Mr. Madrigal and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Madrigal and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employer required Mr. Madrigal and other Aggrieved Employees to remain on-premises and on-call and respond to work-related requests at all times, including during meal periods, which included responding to telephone calls, text messages, and in-person verbal interruptions; (7) Employer's policy and culture prevented Mr. Madrigal and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees right to receive timely, uninterrupted, and duty-free meal periods and (8) Employer failed to keep accurate, contemporaneous time records showing when Mr. Madrigal and Aggrieved Employees were



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provided with meal periods.

Mr. Madrigal and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 226.7, 512(a) and 1198.

Mr. Madrigal and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

Employer failed to authorize and permit Mr. Madrigal and Aggrieved Employees take legally-compliant 10-minute rest periods. Employer required Mr. Madrigal and Aggrieved Employees to work through rest periods. Mr. Madrigal and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Mr. Madrigal and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in a day. Mr. Madrigal and Aggrieved Employees were hardly ever, if ever, provided with a rest period. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Mr. Madrigal and Aggrieved Employees were not completely relieved of duty during their rest periods as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016) because Mr. Madrigal and Aggrieved Employees were required to remain on-call and on-premises at all times including during their rest periods.

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Madrigal and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employer failed to adequately inform and train Mr. Madrigal and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Mr. Madrigal and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Madrigal and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer required Mr. Madrigal and other Aggrieved Employees to remain on-premises and on-call and respond to work-related requests at all times, including during rest periods, which included responding to telephone calls and in-person verbal



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interruptions; and (7) Employer's policy and culture prevented Mr. Madrigal and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees right to receive rest periods.

Mr. Madrigal and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 226.7, and 1198.

Mr. Madrigal and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

As to each pay period, Employer has failed to timely pay all wages earned because Mr. Madrigal and Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code section 204(a).

Mr. Madrigal and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

As a result of the practices described above, the wage statements provided to Mr. Madrigal and Aggrieved Employees failed to include the actual hours worked, the actual gross wages earned, and the correct rates of pay. The wage statements provided to Mr. Madrigal and Aggrieved Employees also contained facial violations. For example, the wage statements failed to itemize all deductions from employees' wages, including, but not limited to, taxes withheld from employees' wages. Employer failed to obtain written authorization from employees to allow deductions to be aggregated on wage statements. Accordingly, Employer violated California Labor Code section 226(a).

Mr. Madrigal and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

Employer has failed to maintain accurate records relating to Mr. Madrigal and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Mr.



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Madrigal and Aggrieved Employees were prohibited from clocking in their hours worked off-the-clock in order for the Employer to manipulate the timekeeping system and avoid providing overtime compensation. Employer also manipulated the timekeeping system to show timely meal periods when it failed to provide timely meal periods, to automatically deduct 30 minutes from Mr. Madrigal and Aggrieved Employees' daily time records even when meal periods were not provided, and to remove records of all hours worked. Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 1198.5 and 1174(d).

Mr. Madrigal and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 5 requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Mr. Madrigal and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employer. These costs include, but are not limited to, personal cellphone use and personal vehicle use for work purposes.

Accordingly, Employer violated IWC Order No. 5 and California Labor Code sections 2800 and 2802.

Mr. Madrigal and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; and attorneys' fees and costs.

8. FAILURE TO PAY REPORTING TIME

Pursuant to California Labor Code section 1198, "the employment of any employee... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage Orders, including *inter alia*, Wage Order No. 5-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay.



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During the relevant time period, Employer failed to pay Mr. Madrigal and other Aggrieved Employees half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay for workdays in which Mr. Madrigal and the other Aggrieved Employees reported to work and were furnished less than half the usual or scheduled day's work. Employer also failed to pay Mr. Madrigal and other Aggrieved Employees for two (2) hours at the employee's regular rate of pay on days in which Mr. Madrigal and the other Aggrieved Employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

Mr. Madrigal and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; and attorneys' fees and costs.

9. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

Upon the termination of employment, Mr. Madrigal and Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employer's practices of requiring Mr. Madrigal and Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, unlawful rounding practices, and failure to accurately record all hours actually worked, Employer failed to pay Mr. Madrigal and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employer also failed to pay Mr. Madrigal and Aggrieved Employees for meal period premiums, and rest period premiums they were owed, amongst other wages. Accordingly, Employer violated California Labor Code sections 201 and 202.

Mr. Madrigal and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 203, 1199, and 2699(f)(2); and attorneys' fees and costs.

Therefore, on behalf of the State of California and all Aggrieved Employees, Mr. Madrigal may seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

Very Truly Yours,

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Notice provided to Employer via Certified Mail (9414711105495815994131)

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