

Nazo Koulloukian, SBN 263809
nazo@koullaw.com
KOUL LAW FIRM, APC
3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010
Telephone: (213) 761-5484
Facsimile: (818) 561-3938

Sahag Majarian, Esq. SBN 146621
sahagii@aol.com
Garen Majarian, Esq. SBN 334104
garen@majarianlawgroup.com
MAJARIAN LAW GROUP, APC
18250 Ventura Blvd.
Tarzana, CA 91356
Telephone: (818) 609-0807
Facsimile: (818) 609-0892

ELECTRONICALLY FILED
Superior Court of California
County of Sacramento
04/02/2024
By: V. Bloxson Deputy

Attorneys for Plaintiff,
CHARLES POIRIER on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

CHARLES POIRIER, an individual, on behalf
of himself, all aggrieved employees, and the
State of California as a Private Attorneys
General,

Plaintiff,

vs.

D. G. SMITH ENTERPRISES, INC., a
California corporation, and DOES 1-50,
inclusive,

Defendant.

Case No.:

24CV006496

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 et seq.**

1 Plaintiff CHARLES POIRIER brings this PAGA representative action complaint on behalf
2 of himself, all aggrieved employees, and the State of California as a Private Attorneys General,
3 and alleges as follows:

4 NATURE OF THE ACTION

5 1. Plaintiff CHARLES POIRIER worked as an employee for Defendant D. G. SMITH
6 ENTERPRISES, INC. and Does 1-50 (collectively “Defendant”). Defendant is a franchisee of
7 Taco Bell and operates numerous fast-food restaurants in California. Plaintiff CHARLES
8 POIRIER worked for Defendant during the statutory period, earning minimum wage. Plaintiff
9 brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor
10 Code §2698 *et seq.*, on a representative basis. All current and former hourly, nonexempt employees
11 of Defendant within one year of serving notice on the LWDA to the present are aggrieved
12 employees.

13 2. Defendant failed to comply with California Labor Code requirements due to erroneous,
14 willful and intentional employment practices and policies. Plaintiff brings this representative
15 action on behalf of himself, all other similarly situated aggrieved employees, and the State of
16 California, based upon the claims articulated below. Plaintiff provided notice of his claims
17 pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as
18 illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The
19 LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice
20 period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
21 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

22 3. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
23 worked, including overtime hours worked; (2) failing to pay minimum wage; (3) failing to pay all
24 wages due upon termination; (4) failing to timely pay all wages owed; (5) failing to provide timely
25 meal breaks; (6) failing to provide rest breaks; (7) failing to provide suitable seating; (8) failing to
26 provide cool-down periods; (9) failing to provide safe working conditions; (10) failing to pay
27 reporting time pay; and (11) failing to provide accurate itemized wage statements and maintain
28 accurate records. Defendant is therefore liable for civil penalties under the Cal. Labor Code,

1 including the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described
2 more fully herein.

3 **THE PARTIES**

4 4. Plaintiff CHARLES POIRIER is a resident of the State of California and worked for
5 Defendant during the statutory period.

6 5. Defendant D. G. SMITH ENTERPRISES, INC. is a California corporation authorized
7 to do business and doing business in California with the capacity to sue and to be sued, and doing
8 business, in the county of Sacramento, State of California.

9 6. Plaintiff is unaware of the true names, capacities, relationships, and extent of
10 participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is
11 informed and believes and thereon alleges that said Defendant is legally responsible for the
12 wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff
13 will amend this complaint when their true names and capabilities are ascertained.

14 7. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
15 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
16 of the representative class, and exercised control over their wages, hours, and working conditions.
17 Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects
18 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
19 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
20 to the other Defendants.

21 **JURISDICTION AND VENUE**

22 8. Venue is proper in this judicial district because Defendant conducts business in this
23 county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees
24 in this case that arose in this county.

25 9. The statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of
26 the Superior Court and will be established according to proof at trial. Based on information,
27 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
28

monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

10. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California and Defendant is qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

11. During the relevant time-period, Defendant committed various violations of the California Labor Code as alleged below in more detail. Defendant enforces multiple policies that violate state law, which are intended to increase profits to the detriment of aggrieved employees.

12. This representative action represents over fifty current and former aggrieved employees.

13. For at least one (1) year prior to the date of service notice on the LWDA, and continuing to the present, Defendant engaged in unlawful employment practices that resulted in violations of numerous Labor Code sections, as set forth more fully below.

14. Plaintiff and all current and former hourly, nonexempt employees within one year of filing this action to the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor code §2699(c).)

15. Defendant, and each of them, have committed the following violations of the California Labor Code:

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

16. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

17. Section 2(K) or Wage Order 5 defines "hours worked" as "the time during which an employee is subject to the control of an employer and including all the time the employee is suffered or permitted to work, whether or not required to do so." Labor Code §§1194 and 1197

1 require Defendant to compensate employees for all hours worked at least at a minimum wage as
2 established by the Wage Order.

3 18. Defendant has been engaged in many unlawful employment practices which resulted
4 in underpayment for hours worked each pay period as more fully set forth below:

5 19. Off-the-Clock Hours Worked. Plaintiff and aggrieved employees were required to
6 work off the clock frequently without pay. For example, Plaintiff worked the 6 pm to 2 am shift
7 and was often required to clock out at 2 am at the end of his shift but stay at the restaurant to clean
8 and prepare for the morning shift. Plaintiff describes countless times when he was required to stay
9 and work off the clock until 4 am, depriving him of two hours of unpaid overtime wages on each
10 occasion.

11 20. Plaintiff and aggrieved employees were also required to work during unpaid meal
12 periods. Sometimes employees were asked to clock out but continue working due to a rush of
13 customers. On other occasions, employees would be clocked out and on break but asked to return
14 and work off the clock to assist customers.

15 21. Plaintiff and aggrieved employees were not paid for this time worked, resulting in
16 failure to pay wages, including overtime and minimum wages. Defendant has violated Labor Code
17 §§510 1194, 1194.2, 1197, 1198, 1199 and Wage Order 5. Defendant is liable for civil penalties
18 pursuant to Labor Code §2698 *et seq*

19 22. Failure to Pay Overtime Wages. Defendant has required claimant and aggrieved
20 employees to work hours in excess of eight hours in a shift and forty in a week but has not paid
21 these employees overtime compensation, including for off the clock work as described above.

22 23. Additionally, Defendant has failed to pay overtime for shifts worked in excess of 8
23 hours when shifts start on one calendar day yet end on the next calendar day, claiming that because
24 the hours were not worked on the same calendar day that they do not qualify for a shift of over 8
25 hours. For example, when Plaintiff worked his shift which began at 6pm and ended the next day
26 at 2am, he was not paid overtime or double time even though overtime and/or double time was
27 called for. These hours were often also worked off the clock as described above. As a result,
28 Plaintiff and aggrieved employees have been denied payment for all hours worked as required by

1 Cal. Labor Code. §1194, §1198. Defendant is liable for civil penalties pursuant to Labor Code
2 §§558 and 2699 *et seq.*

3 **Failure to Pay Minimum Wage**

4 (Cal. Lab. Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

5 24. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
6 incorporate said paragraphs herein by reference.

7 25. Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer
8 to suffer or permit a California employee to work without paying wages at the proper minimum
9 wage for all time worked as required by the applicable IWC Wage Order.

10 26. Defendant failed to pay Plaintiff and aggrieved employees for all hours worked as a
11 result of Defendant's practices described herein. Based on Defendant's unlawful conduct, and
12 because Plaintiff and the aggrieved employees were paid at or near minimum wage, employer's
13 failure to pay for all hours worked, including overtime, resulted in a payment of less than the
14 minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the
15 Wage Order. Defendant is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

16 **Failure to Pay All Wages Owed Twice Per Month**

17 **(Cal. Lab. Code §§204, 210 and 2698 *et seq.*)**

18 27. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 28. Defendant was required to pay Plaintiff and aggrieved employees all wages earned
21 twice during each calendar month pursuant to Labor Code §204(a).

22 29. Defendant failed to pay all wages earned to employees as a result of the unlawful
23 employment policies and practices discussed herein. As a result of these practices, employees were
24 underpaid for hours worked, including overtime and penalty wages, and this underpayment
25 resulted in a failure to pay all wages owed twice per month.

26 30. Due to these failures, Defendant is liable under Labor Code §204, 210 and 2698 *et seq.*
27 for failure to pay wages as required by law.
28

- 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

2

3
4

5
6
7
8
9
0
1
2
3

4
5
6
7
8
9

20

21

22
23

2.4
2.5
2.6
2.7
2.8

1 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on
2 duty’ meal period and counted as time worked.”

3 36. In this case, Plaintiff and his coworkers frequently took noncompliant meal periods.
4 Defendant failed to provide employees with any break facility. Plaintiff describes a workplace with
5 no break room, only a storage room where Defendant stored inventory and supplies, including taco
6 shells.

7 37. Meal periods were missed, short, or interrupted often. Plaintiff and his coworkers often
8 had to cut meal break short due to the flow of customers in the restaurant and Defendant’s failure
9 to adequately staff the facility. On occasion, Plaintiff and his coworkers were required to clock out
10 for lunch but keep working.

11 38. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because
12 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;
13 (2) did not adequately inform and train employees about their rights to meal periods and premium
14 payments for non-compliant meal periods; (3) did not adequately inform and train employees about
15 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because
16 Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal
17 periods; and/or (5) because management at various levels, affecting all hourly, non-exempt
18 employees, refused to offer, permit, or enforce a lawfully compliant meal period policy.

19 39. The Wage Orders require employers to authorize and permit employees to take an
20 uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code
21 §1198, “the employment of any employee... under conditions of labor prohibited by the order is
22 unlawful.” Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of
23 “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code
24 §§226.7 and 512. Defendant never paid penalty pay to Plaintiff or aggrieved employees for
25 noncompliant meal periods. As a derivative claim, Plaintiff alleges that pay statements were
26 inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor
27 Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to
28 Cal. Labor Code §558 and §2698 *et. Seq.*

1 **Failure to Provide Rest Breaks**

2 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2350, 2441, 2698 *et seq.*, 3457, 6712

3 40. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

5 41. Defendant has failed to maintain a policy and practice that provides or permits its
6 employees to take off-duty rest periods as required by California law. Plaintiff and aggrieved
7 employees are entitled to at least a ten-minute rest period in which they are relieved of all duties,
8 as required by Cal. Lab. Code §226.7, §512 and the Wage Order.

9 42. As described above, there was no break room, only a storage room. Plaintiff and his
10 coworkers often missed rest periods due to the flow of customers in the restaurant and Defendant's
11 failure to adequately staff the facility.

12 43. Rest periods were either less than ten minutes, not provided, interrupted or late, "on
13 duty," or not scheduled before and after a meal period for shifts greater than six hours, as
14 prescribed by California law because Defendant: (1) did not account for all hours worked that were
15 unaccounted for on their timecard; (2) did not adequately inform and train employees about their
16 rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately
17 inform and train employees about when, where and how to take timely and uninterrupted ten-
18 minute rest breaks; (4) because Defendant did not staff enough people to schedule all timely and
19 uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting
20 all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest
21 break policy.

22 44. Defendant failed to pay Plaintiff and similarly situated employees all premium
23 compensation (one hour of pay at the employee's regular rate of pay for missed, untimely rest,
24 interrupted, or noncompliant rest periods) mandated by Labor Code §226.7 (b). As a derivative
25 claim, Plaintiff alleges that pay statements were inaccurate, failing to include required rest period
26 penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result of these
27 violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et*
28 *Seq.*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

45. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

46. Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

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.

48. At all relevant times, Defendant failed to provide Plaintiff and aggrieved employees with suitable seating during their employment as required by section 14 of the applicable Wage Order. Plaintiff and other aggrieved employees were not provided with seating during shifts in which they worked at positions which would reasonably permit the use of seating. There were no seats in reasonable proximity to employees at any time.

49. Plaintiff, on behalf of himself and aggrieved employees, will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to the extent allowed by law for the alleged violations.

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order 5)

50. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

51. Section 15 of Wage Order 5 provides that:

1 A. The temperature maintained in each work area shall provide
2 reasonable comfort consistent with industry-wide standards for the nature of the
3 process and the work performed.

4 B. If excessive heat or humidity is created by the work process, the
5 employer shall take all feasible means to reduce such excessive heat or humidity
6 to a degree providing reasonable comfort.

7 52. The kitchen area in the worksite was excessively hot and did not have proper ventilation
8 or effective climate control given the climate issues caused by the cooking area.

9 53. Title 8 of the California Code of Regulations cover standards for indoor heat exposure.
10 Section 3203 requires that employers take the steps necessary to protect employees' health and
11 safety when the temperature exceeds 85 degrees in the workplace. Labor Code 226.7 requires that
12 breaks comply with requirements of the wage orders.

13 54. Plaintiff and aggrieved employees who worked in the kitchen worked under extreme
14 heat with no cooling or ventilation. Defendant did not give employees cool-down periods.
15 Employers who fail to provide required recovery periods are liable for damages under Labor Code
16 226.7.

17 **Failure To Provide Safe Working Conditions**

18 (Lab. Code §§1198, 6400, 6401, 6402, 6403, 6404, 6407, 2698 *et seq.*, Wage Order 5)

19 55. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
20 incorporate said paragraphs herein by reference.

21 56. As described above, Defendant's workplaces would get unsafely hot in the kitchen
22 area. Plaintiff and aggrieved employees are required to work with no air circulation, ventilation or
23 effective cooling mechanism. Defendant does not have proper climate control. Plaintiff and his
24 coworkers worked in unbearable heat.

25 57. As stated above, Section 15 of Wage Order 5 provides that:

26 A. The temperature maintained in each work area shall provide
27 reasonable comfort consistent with industry-wide standards for the nature of the
28 process and the work performed.

1 B. If excessive heat or humidity is created by the work process, the
2 employer shall take all feasible means to reduce such excessive heat or humidity
3 to a degree providing reasonable comfort.

4 58. By violating the wage order requirements concerning heat in the workplace, Defendant
5 is liable pursuant to Labor Code §1198 and for civil penalties pursuant to §2698 et. seq. Moreover,
6 Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of
7 employment that is safe and healthful for the employees therein. Cal. Labor Code §6401 provides
8 that “every employer shall furnish and use safety devices and safeguards, and shall adopt and use
9 practices, means, methods, operations, and processes which are reasonably adequate to render such
10 employment and place of employment safe and healthful. Pursuant to Cal. Labor Code §6402, no
11 employer shall require, or permit any employee to go or be in any employment or place of
12 employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer shall
13 fail or neglect to provide and use safety devices and safeguards reasonably adequate to render the
14 employment and place of employment safe, or to adopt and use methods and processes reasonably
15 adequate to render the employment and place of employment safe, or to do every other thing
16 reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code §
17 6404 provides that no employer shall occupy or maintain any place of employment that is not safe
18 and healthful. Defendant created and maintained an unsafe work environment by requiring
19 employees to work in unbearable heat. Defendant is liable for civil penalties pursuant to Cal. Labor
20 Code §2699 *et seq.*

21 **Failure to Pay Reporting Time Pay**

22 (Cal. Code Regs. tit. 8, § 11050 (5), Cal. Labor Code §§218.6, 226)

23 59. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
24 incorporate said paragraphs herein by reference.

25 60. The IWC Wage Order requires employers to pay half of the employee’s “usual or
26 scheduled day’s work,” and in no event less than two (2) hours pay on each instance the employer
27 requires an employee to report to work, as set forth fully below:

28 61. 5. Reporting Time Pay

A. 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, which shall not be less than the minimum wage.

62. On occasions when Plaintiff and his coworkers reported to work but were sent home because work was not available, they were not paid required reporting time wages. For example, on Plaintiff's last day of work, he reported to work but was not provided with half of his usual or scheduled shift, and was not paid reporting time pay to compensate him for the inconvenience and expense of reporting to work when no work was available. Reporting time pay constitutes wages required by law. *Kamar v. RadioShack Corp.*, No. CV07-2252AHM(AJWX), 2008 WL 2229166, at *4 (C.D. Cal. May 15, 2008). Accordingly, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.* As a derivative claim, Plaintiff alleges that employees' pay statements were inaccurate as they failed to indicate required reporting time pay, thus failing the requirements of Labor Code §226(a).

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174(d), 2699 *et seq*)

63. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

64. Defendant knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and aggrieved employees, and the records maintained by Defendant, have not accurately reflected actual gross wages earned, including pay for all hours worked, and overtime. They also state the incorrect total hours because they include sick pay and other items in the calculation. Moreover, when employees like Plaintiff work the overnight shift, Defendant is required to report the hours

1 worked accurately when the overnight shift spans over one pay period to the next. Defendant failed
2 to correctly record and list total hours worked during these pay periods.

3 65. Such failures caused injury to Plaintiff and others, by, among other things, impeding
4 them from knowing the total hours worked and the amount of wages to which they are and were
5 entitled. Defendant knowingly and intentionally failed to correctly itemize the gross wages earned,
6 net wages earned, and total hours worked. Defendant is liable for civil penalties pursuant to Labor
7 Code § 2698 *et seq.*

8 **FIRST CAUSE OF ACTION**

9 **Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)**

10 **(California Labor Code §2698 *et seq.*)**

11 66. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
12 incorporate said paragraphs herein by reference.

13 67. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendant
14 during the applicable statutory period and suffered one or more of the Labor Code violations set
15 forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and
16 former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable
17 attorneys’ fees and costs.

18 68. Plaintiff seeks to recover the PAGA civil penalties through a representative action
19 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
20 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

21 69. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
22 Code provisions:

- 23 a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal.
24 Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*);
- 25 b. Failure to Pay Minimum Wage (Cal. Lab. Code §§200, 218.5, 226, 558, 1194,
26 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)
- 27 c. Failure to Pay All Wages Owed Twice Per Month (Cal. Lab. Code §§204, 210 and
28 2698 *et seq.*)

- d. Failure to Timely Pay All Wages Owed (Cal. Labor Code §§201, 202 and 2698 *et seq.*)
- e. Failure to Provide Timely Meal Breaks (Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*)
- f. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2350, 2441, 2698 *et seq.*, 3457, 6712.)
- g. Failure to Provide Suitable Seating (Cal. Labor Code §§ 1198 and Wage Order 5 Section 14)
- h. Failure to Provide Cool-Down Periods (Cal. Labor Code §§ 226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order 5)
- i. Failure to Provide Safe Working Conditions (Cal. Labor Code §§ 1198, 6400, 6401, 6402, 6403, 6404, 6407, 2698 *et seq.*, Wage Order 5)
- j. Failure to Pay Reporting Time Pay (Cal. Code Regs. tit. 8, § 11050 (5), Cal. Labor Code §§218.6, 226)
- k. Failure to Provide Accurate Itemized Wage Statements (Cal. Labor Code §§ 226, 1174(d), 2699 *et seq.*).

70. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code §226(a).

71. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid.

72. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay

1 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
2 a civil penalty is not specifically provided.

3 73. Plaintiff and the other current and former employees of Defendant are aggrieved
4 employees. They were or are employed by Defendant, and each of them, and the violations alleged
5 herein were committed against them. Plaintiff brings this action on behalf of himself and all other
6 current and former aggrieved employees.

7 74. At the time of each violation, Defendant employed one or more employees.

8 75. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of
9 them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be
10 determined at trial, pre-judgment interest, costs and attorneys' fees.

11 76. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
12 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
13 Workforce Development Agency ("LWDA") and served by certified mail upon Defendant,
14 Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions
15 that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory
16 timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code
17 §2699.3, Plaintiff may now pursue their PAGA claims in this action on behalf of aggrieved
18 employees and the State of California.

19 20 21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
23 judgement against Defendant as follows:

- 24 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
25 determined at trial, but at least the jurisdictional amount of this Court;
- 26 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g)
27 and/or other applicable law;
- 28

3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;

4. Pre-judgement and post-judgement interest as provided by law; and

5. Such other and further relief that the Court may deem just and proper.

DATED: April 1, 2024

KOUL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', is written over a horizontal line.

BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff CHARLES POIRIER, and
all aggrieved employees

EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

January 26, 2024

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

D. G. Smith Enterprises, Inc.
c/o David G. Smith
5435 Madison Avenue
Sacramento, CA 95841

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Charles Poirier
Employer: D. G. Smith Enterprises, Inc.

Dear Sir or Madam:

Claimant Charles Poirier has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM, and Sahag Majarian, II, and Garen Majarian of MAJARIAN LAW GROUP, APC, to represent him, and all other aggrieved employees, for wage and hour claims against his former employer, D. G. Smith Enterprises, Inc. (hereafter “Employer.”)

Employer is a franchisee of Taco Bell and operates numerous fast-food restaurants in California. Claimant’s proposed PAGA representative action would represent over 50 current and former employees. Claimant is an aggrieved employee and worked for Employer during the statutory period, earning minimum wage. As set forth herein, Employer has violated, and/or has caused to be violated, several Labor Code provisions, and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.*

Claimant alleges herein the specific provisions of California law that Employer has violated, requiring this Notice, including but not limited to: California Labor Code sections 201-203, 204, 208, 210, 216, 221-223, 226, 226.2, 226.7, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

We request that your agency investigate the claims alleged below, or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of

California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay for all Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

Section 2(K) or Wage Order 5 defines “hours worked” as “the time during which an employee is subject to the control of an employer and including all the time the employee is suffered or permitted to work, whether or not required to do so.” Labor Code §§1194 and 1197 require Employer to compensate employees for all hours worked at least at a minimum wage as established by the Wage Order.

Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period as more fully set forth below:

Off-the-Clock Hours Worked

Claimant and aggrieved employees were required to work off the clock frequently without pay. For example, Claimant worked the 6 pm to 2 am shift and was often required to clock out at 2 am at the end of his shift but stay at the restaurant to clean and prepare for the morning shift. Claimant describes countless times when he was required to stay and work off the clock until 4 am, depriving him of two hours of unpaid overtime wages on each occasion.

Employees were also required to work during unpaid meal periods. Sometimes employees were asked to clock out but continue working due to a rush of customers. On other occasions, employees would be clocked out and on break but asked to return and work off the clock to assist customers.

Claimant and aggrieved employees were not paid for this time worked, resulting in failure to pay wages, including overtime and minimum wages. Employer has violated Labor Code §§510 1194, 1194.2, 1197, 1198, 1199 and Wage Order 5. Employer is liable for civil penalties pursuant to Labor Code §2698 *et seq*

Failure to Pay Overtime Wages

Employer has required claimant and aggrieved employees to work hours in excess of eight hours in a shift and forty in a week but has not paid these employees overtime compensation, including for off the clock work as described above.

Additionally, Employer has failed to pay overtime for shifts worked in excess of 8 hours when shifts start on one calendar day yet end on the next calendar day, claiming that because the hours were not worked on the same calendar day that they do not qualify for a shift of over 8 hours. For example, when claimant worked his shift which began at 6pm and ended the next day at 2am, he was not paid overtime or double time even though overtime and/or double time was called for. These hours were often also worked off the clock as described above. As a result, Claimant and aggrieved employees have been denied payment for all hours worked as required by Cal. Labor

Code. §1194, §1198. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq*

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described herein. Based on Employer's unlawful conduct, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Order. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

(Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a).

Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Due to these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202 and 2698 *et seq.*)

Failure to Pay Wages Due Upon Termination

As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing, including payment for all hours worked and penalty pay, to Claimant at the time employment terminated. Employer willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §§203, claimant and similarly situated individuals are now also entitled to recover up to thirty (30) days of wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer

violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Claimant believes that other employees who separated from the company, whether voluntary or involuntary, were also denied payment of wages in a timely manner as required by §§201-203. Claimant will seek restitution pursuant to §558 (a)(3) for himself and other aggrieved employees for each violation and will seek civil penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and Development Agency (LWDA) against Employer if authorized to file a representative action on behalf of the State of California.

Failure to Provide Timely Meal Breaks

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order)

Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

In this case, Claimant and his coworkers frequently took noncompliant meal periods. Employer failed to provide employees with any break facility. Claimant describes a workplace with no break room, only a storage room where Employer stored inventory and supplies, including taco shells.

Meal periods were missed, short, or interrupted often. Claimant and his coworkers often had to cut meal break short due to the flow of customers in the restaurant and Employer’s failure to adequately staff the facility. On occasion, Claimant and his coworkers were required to clock out for lunch but keep working.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy.

The Wage Orders require employers to authorize and permit employees to take an uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by the order is unlawful.” Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employer never paid penalty pay to Claimant or aggrieved employees for

noncompliant meal periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2350, 2441, 2698 *et seq.*, 3457, 6712)

Employer has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten-minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and the Wage Order.

As described above, there was no break room, only a storage room. Claimant and his coworkers often missed rest periods due to the flow of customers in the restaurant and Employer's failure to adequately staff the facility.

Rest periods were either less than ten minutes, not provided, interrupted or late, "on duty," or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed, untimely rest, interrupted, or noncompliant rest periods) mandated by Labor Code §226.7 (b). As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure To Provide Suitable Seating

(Lab. Code section 1198 and Wage Order 5 Section 14)

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 14 of Wage Order 5 provides that:

(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.

At all relevant times, Employer failed to provide Claimant and aggrieved employees with suitable seating during their employment as required by section 14 of the applicable Wage Order. Claimant and other aggrieved employees were not provided with seating during shifts in which they worked at positions which would reasonably permit the use of seating. There were no seats in reasonable proximity to employees at any time.

Claimant, on behalf of himself and aggrieved employees, will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to the extent allowed by law for the alleged violations.

Failure to Provide Cool-Down Periods

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order 5)

Section 15 of Wage Order 5 provides that:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

The kitchen area in the worksite was excessively hot and did not have proper ventilation or effective climate control given the climate issues caused by the cooking area.

Title 8 of the California Code of Regulations cover standards for indoor heat exposure. Section 3203 requires that employers take the steps necessary to protect employees’ health and safety when the temperature exceeds 85 degrees in the workplace. Labor Code 226.7 requires that breaks comply with requirements of the wage orders.

Claimant and aggrieved employees who worked in the kitchen worked under extreme heat with no cooling or ventilation. Employer did not give employees cool-down periods. Employers who fail to provide required recovery periods are liable for damages under Labor Code 226.7.

Failure to Provide Safe Working Conditions

(Cal. Labor Code §§1198, 6400, 6401, 6402, 6403, 6404, 6407, 2698 *et seq.*, Wage Order 5)

As described above, Employer's workplaces would get unsafely hot in the kitchen area. Claimant and aggrieved employees are required to work with no air circulation, ventilation or effective cooling mechanism. Employer does not have proper climate control. Claimant and his coworkers worked in unbearable heat.

As stated above, Section 15 of Wage Order 5 provides that:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

By violating the wage order requirements concerning heat in the workplace, Employer is liable pursuant to Labor Code §1198 and for civil penalties pursuant to §2698 *et seq.* Moreover, Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401 provides that "every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe, or to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe, or to do every other thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful. Employer created and maintained an unsafe work environment by requiring employees to work in unbearable heat. Employer is liable for civil penalties pursuant to Cal. Labor Code §2699 *et seq.*

Failure to Pay Reporting Time Pay

(Cal. Code Regs. tit. 8, § 11050 (5), Cal. Labor Code §§218.6, 226)

The IWC Wage Order requires employers to pay half of the employee's "usual or scheduled day's work," and in no event less than two (2) hours pay on each instance the employer requires an employee to report to work, as set forth fully below:

5. Reporting Time Pay

(A) 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, which shall not be less than the minimum wage.

On occasions when Claimant and his coworkers reported to work but were sent home because work was not available, they were not paid required reporting time wages. For example, on Claimant's last day of work, he reported to work but was not provided with half of his usual or scheduled shift, and was not paid reporting time pay to compensate him for the inconvenience and expense of reporting to work when no work was available. Reporting time pay constitutes wages required by law. *Kamar v. RadioShack Corp.*, No. CV07-2252AHM(AJWX), 2008 WL 2229166, at *4 (C.D. Cal. May 15, 2008). Accordingly, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.* As a derivative claim, Claimant alleges that his pay statements were inaccurate as they failed to indicate required reporting time pay, thus failing the requirements of Labor Code §226(a).

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174(d), 2699 *et seq.*)

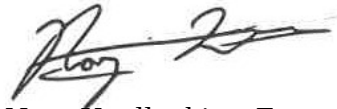
Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked, and overtime. They also state the incorrect total hours because they include sick pay and other items in the calculation. Moreover, when employees like Claimant work the overnight shift, Employer is required to report the hours worked accurately when the overnight shift spans over one pay period to the next. Employer failed to correctly record and list total hours worked during these pay periods.

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to correctly itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a stylized flourish at the end.

Nazo Koulloukian, Esq.
Attorney for Claimant