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January 15, 2024

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE §2699.3**

To: California Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612
Via Online Submission Only

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
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The Honey Baked Ham Company, LLC
c/o C T Corporation System
330 No. Brand Blvd., Ste. 700
Glendale, California 91203
Certified Mail Number: 9589 0710 5270 2402 28

The Honey Baked Ham Company, LLC
c/o Human Resources
3875 Mansell Road
Alpharetta, Georgia 30022
Certified Mail Number: 9589 0710 5270 2402 35

Honey Baked Ham, Inc.
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Irvine, California 92718
Certified Mail Number: 9589 0710 5270 2402 42

Hindquarters, Inc.
c/o Matthew Clint Congdon
One Capital Mall., Ste. 660
Sacramento, California 95814
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Hindquarters, Inc.
c/o Beth Carol Burns
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Hindquarters, Inc.
c/o Leo Daniel Leal
One Capital Mall., Ste. 660
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From: Ruben Orozco, on behalf of himself and other current and former aggrieved, California-based, hourly non-exempt employees of The Honey Baked Ham Company, LLC, a Delaware corporation, Honey Baked Ham, Inc., an unknown entity, and Hindquarters, Inc., a California corporation

c/o David Lavi, Esq.
Arie Ebrahimian, Esq.
E&L, LLP
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Factual Statement and Theories of Labor Code Violations

Aggrieved employee Ruben Orozco (“Employee”) was formerly employed by The Honey Baked Ham Company, LLC, a Delaware corporation, Honey Baked Ham, Inc., an unknown entity, and Hindquarters, Inc., a California corporation (“Employers”) as an hourly non-exempt employee from in December 3, 2022 to on or about April 2023.

1. Failure to Pay the Minimum Wage Rate of Pay for All Hours Worked

Employee maintains that during his employment, Employers failed to pay him and other current and former aggrieved, California-based, hourly non-exempt employees with compensation at the minimum wage rate of pay for all the hours that they worked in violation of Labor Code §1194 and 1197. Labor Code §1197 provides, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” Labor Code §1194 states, “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Employee maintains that during his employment, he and other current and former aggrieved, California-based, hourly non-exempt employees worked more hours per day than Employers credited them for having worked based on the following:

- Employers maintained a policy, practice, and/or procedure whereby Employers “rounded” down or “shaved” Employee’s and other current and former aggrieved, California-based, hourly non-exempt employees’ total daily hours worked to the benefit of Employers. Employee and other current and former aggrieved, California-based, hourly non-exempt employees were not paid for this time,
- Employers maintained a policy, practice, and/or procedure whereby they paid Employee and other current and former aggrieved, California-based, hourly non-exempt employees’ for their scheduled hours instead of properly keeping track of their time. As a result, Employers failed to properly track the actual hours Employee and other current and former aggrieved, California-based, hourly non-exempt employees’ worked. Otherwise, Employers unlawfully rounded Employee and other current and former aggrieved, California-based, hourly non-exempt employees’ hours and failed to properly compensate them for time spent working in a given shift.

Employers’ aforementioned policy, practice, and/or procedure results in time each day in which Employee and other current and former aggrieved, California-based, hourly non-exempt employees are subject to the control of employers’ without being compensated for that time.

Based on these violations, Employee intends to seek civil penalties pursuant to the Private Attorney General Act (“PAGA”), Labor Code §2698, et seq. and Labor Code §1197.1, subds. (a)(1)-(2), on behalf of the Labor and Workforce Development Agency (“LWDA”) against Employers if authorized to file a representative action on behalf of the State of California. Employee will also seek statutory penalties under Labor Code 226(a)(1) because the failure to pay such minimum wages for all hours worked rendered Employee’s and other current and former aggrieved, California-based, hourly non-exempt employees’ pay calculations inaccurate and in violation of Labor Code §226(e)(2)(B)(i)).

2. Failure to Pay Overtime Wages for Overtime Hours Work

Employee maintains, Employer failed to pay him and other current and former aggrieved, California-based, hourly non-exempt employees for the overtime hours that they worked at their overtime rate of pay. Labor Code §510 provides:

“Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a

workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Overtime is based upon an employee’s regular rate of pay. “The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee.” See Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

Finally, Labor Code §1194 provides, “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

As stated above, Employee maintains that Employers failed to pay him and other current and former aggrieved, California-based, hourly non-exempt employees for all of the hours that they worked based on the following:

- Employers maintained a policy, practice, and/or procedure whereby Employers “rounded” down or “shaved” Employee’s and other current and former aggrieved, California-based, hourly non-exempt employees’ total daily hours worked to the benefit of Employers. Employee and other current and former aggrieved, California-based, hourly non-exempt employees were not paid for this time.
- Employers maintained a policy, practice, and/or procedure whereby they paid Employee and other current and former aggrieved, California-based, hourly non-exempt employees’ for their scheduled hours instead of properly keeping track of their time. As a result, Employers failed to properly track the actual hours Employee and other current and former aggrieved, California-based, hourly non-exempt employees’ worked. Otherwise, Employers unlawfully rounded Employee and other current and former aggrieved, California-based, hourly non-exempt employees’ hours and failed to properly compensate them for time spent working in a given shift.

Employers’ aforementioned policy, practice, and/or procedure results in time each day in which Employee and other current and former aggrieved, California-based, hourly non-exempt employees are subject to the control of employers’ without being compensated for that time. To the extent that the foregoing unpaid time resulted Employee and other current and former aggrieved, California-based, hourly non-exempt employees being subject to the control of Employers when they worked more than eight (8) hours in a workday or 40 hours in a workweek, Employers failed to pay Employee and other current and former aggrieved, California-based, hourly non-exempt employees for all of the overtime hours that they worked at their overtime rate of pay.

Based on these violations, Employee intends to seek civil penalties pursuant to the PAGA, Labor Code §2698, et seq. and Labor Code §§558 and/or 1197.1, subds. (a)(1)-(2), on behalf of the LWDA against Employers if authorized to file a representative action on behalf of the State of California. As a derivative

claim of Employers' failure to pay overtime wages for overtime hours worked, Employee will also seek statutory penalties under Labor Code §226(a)(1) because the failure to pay such overtime wages rendered Employee's and other current and former aggrieved, California-based, hourly non-exempt employees' pay calculations inaccurate and in violation of Labor Code §226(e)(2)(B)(i).

3. Failure to Authorize or Permit Meal Periods in Violation of Labor Code §§512 and 226.7

Employee maintains that during his employment, Employers failed to maintain compliant meal period policies and/or pay proper meal period premiums. California law requires an employer to provide an employee an uninterrupted meal period of no less than 30-minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Cal. Lab. Code §§226.7, 512; Wage Order 3, §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second such meal period of not less than 30 minutes prior to the start of the eleventh hour of work. *Id.* If the employer requires the employee to remain at the work site or facility during the meal period, the meal period must be paid. This is true even where the employee is relieved of all work duties during the meal period. *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968. Labor Code §226.7 provides that if an employee does not receive a required meal or rest period that "the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided."

Employee maintains that Employers failed to authorize or permit him and other current and former aggrieved, California-based, hourly non-exempt employees to take compliant meal periods based on the following:

- Employers maintained a policy, practice, and/or procedure whereby Employers failed to authorize or permit Employee and other current and former aggrieved, California-based, hourly non-exempt employees' to (a) take first meal periods prior to the end of the fifth hour of work; (b) take second meal periods when they worked shifts over 10 hours.

Further, Employee alleges, Employers maintained a policy, practice, and/or procedure whereby they failed to pay Employee and other current and former aggrieved, California-based, hourly non-exempt employees a meal period premium wage of one additional hour of pay at their regular rate of compensation for each work day that Employers failed to authorize or permit all required meal periods, timely meal periods, meal periods of at least 30 minutes, uninterrupted meal periods, and/or duty free meal periods as required by Labor Code §226.7.

Based on these violations, Employee intends to seek civil penalties pursuant to the PAGA, Labor Code §2698, et seq. on behalf of the LWDA against Employers if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employers' failure to authorize or permit meal periods or pay meal period premium wages, Employee will seek statutory penalties under Labor Code §226(a)(1) because the failure to pay such meal period premiums rendered Employee's and other current

and former aggrieved, California-based, hourly non-exempt employees' pay calculations inaccurate and in violation of Labor Code §226(e)(2)(B)(i).

4. Failure to Authorize or Permit Rest Periods in Violation of Labor Code §226.7

Employee maintains that during her employment, Employers failed to maintain compliant rest period policies. California law requires that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof..." Wage Order 3, §12. Employees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Lab. Code §226.7. Additionally, the rest period requirement "obligates employers to permit-and authorizes employees to take-off-duty rest periods." *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. *Id.* If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided." Wage Order 3, §12; Lab. Code §226.7.

Employee maintains that Employers failed to authorize or permit him and other current and former aggrieved, California-based, hourly non-exempt employees to take compliant meal periods based on the following:

- Despite that California law requires Employer to provide Employee with one 10 minute rest break when an employee's work shift is in excess of 3.5 hours, a second 10 minute rest break when a shift is in excess of 6 hours, a third 10-minute rest break when a shift is in excess of 10 hours, Employer regularly failed to do so. As a result, Employee and similarly situated non-exempt, employees did not receive legally compliant rest periods as they were untimely, on-duty, or were not taken at all.

Based on these violations, Employee intends to seek civil penalties pursuant to the PAGA, Labor Code §2698, et seq. on behalf of the LWDA against Employers if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employers' failure to authorize or permit rest periods or pay rest period premium wages, Employee will seek statutory penalties under Labor Code §226(a)(1) because the failure to pay such rest period premiums rendered Employee's and other current and former aggrieved, California-based, hourly non-exempt employees' pay calculations inaccurate and in violation of Labor Code §226(e)(2)(B)(i).

5. Failure to Pay Accrued and Vested Vacation Wages

Employers had a policy and/or procedure of providing its employees, including Employee and other current and former aggrieved California-based non-exempt hourly employees, with paid vacation time and/or personal time off (“Vacation/PTO”). Vacation/PTO wages are deferred wages that vest once accrued. Labor Code §227.3 provides that Employers must pay its employees, including Employee and others similarly situated, all unused vested vacation/PTO at the time of termination at the employees’ final rate of pay.

Employers had a vacation policy in which Plaintiff and other similarly situated employees accrued vacation/PTO wages. However, Employee maintains that Employer terminated Employee and other similarly situated employees without paying them the full amount of their earned vacation/PTO wages, in violation of California law, and employed policies and procedures which ensured Employee and those similarly situated would not receive their accrued and vested vacation/PTO wages upon termination.

6. Failure to Timely Pay Earned Wages During Employment

In California, wages must be paid at least twice during each calendar month on days designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days following the close of the payroll period in which wages were earned. Labor Code §204(d).

Employer’s aforementioned policies, practices, and/or procedures resulted in their failure to pay Employee and similarly situated employees their earned wages within the applicable time frames outlined in Labor Code §204.

7. Failure to Provide Accurate Wage Statements

Based on the aforementioned derivative violations for failure to provide complete and accurate wage statements pursuant to Labor Code §§2698, et seq. and 226.3, Employee will seek recovery of civil penalties on behalf of the LWDA against Employers if authorized to file a representative action on behalf of the State of California.

8. Failure to Timely Pay All Wages Due at the Time of Termination/Resignation

As a result of the aforementioned violations of the Labor Code, Employee was not paid his final wages in a timely manner as required by Labor Code §203.

Employee is informed and believes that other current and former aggrieved, California-based, hourly non-exempt employees who separated from Employers, whether voluntarily or involuntarily, were not paid at the time of Employee's separation of employment, including (a) minimum wage (b) overtime hours for overtime hours worked; (c) meal period premiums; (d) rest period premiums; and (e) vacation/PTO, as required by Labor Code §§201, 202, and 203.

Based on these violations, Employee intends to seek civil penalties pursuant to the PAGA, Labor Code §2698, et seq. on behalf of the LWDA against Employers if authorized to file a representative action on behalf of the State of California.

9. Civil Penalties

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 25 Cal.App.5th 745 ("*Huff*"), as an aggrieved employee, Employee has standing to, and intends to, on behalf of the LWDA, pursue civil penalties against Employers for any and all other violations Labor Code violations committed by Employers. In *Huff*, the California Court of Appeals held that an employee alleging a single violation of the Labor Code under the PAGA may also bring PAGA claims against the employer for all other alleged Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Employee, as an "aggrieved" employee affected by at least one Labor Code violation may, and hereby does, pursue penalties on behalf of the LWDA for unrelated Labor Code violations by Employers.

Conclusion

Employee intends to file a putative wage and hour class action as well as a representative action pursuant PAGA concerning his wage claims as warranted by Employers' violations of Labor Code §§201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and the IWC Wage Orders.

This letter is being sent to you as an inquiry into whether the LWDA wishes to investigate my client's allegations for any civil penalties associated with the Employers' alleged violations of the Labor Code.

Thank you for your assistance and cooperation in this matter. Please contact me at the above-listed information should you have any questions.

Very truly yours,
E&L, LLP

David Lavi, Esq.