



VIA ELECTRONIC FILING

February 8, 2024

California Labor & Workforce Development Agency (LWDA)
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

DH LONG POINT MANAGEMENT LLC
ATTN: CORPORATE SERVICE COMPANY DBA CSC –
LAWYERS INCORPORATING SERVICE
2710 GATEWAY OAKS DRIVE, SUITE 150N
SACRAMENTO, CA 95833-3505

DH LONG POINT MANAGEMENT LLC
ATTN: THOMAS P. LUERSEN
5299 DTC BOULEVARD, #1260
GREENWOOD VILLAGE, CO 80111

DH LONG POINT MANAGEMENT LLC
ATTN: CORALTREE HOSPITALITY GROUP LLC
5299 DTC BOULEVARD, #1260
GREENWOOD VILLAGE, CO 80111

JAYSON STAIB V. DH LONG POINT MANAGEMENT LLC

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE

To Whom It May Concern:

Please be informed that our client, Mr. Jayson Staib (hereinafter “our client” or “Mr. Staib”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid employees (“aggrieved employees”) who worked for **DH LONG POINT MANAGEMENT LLC** (hereinafter “DH MANAGEMENT”) at any of their California locations during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same. Individual THOMAS P. LUERSEN and entity CORALTREE HOSPITALITY GROUP, LLC are being included in this PAGA notice pursuant to Labor Code Section 558.1 as they were and are



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owner/director/manager or managing agent of DH LONG POINT MANAGEMENT LLC, were involved in the day-to-day operations of the restaurants, and as such, controlled the wages, hours, and working conditions of our client and other similarly situated aggrieved employees. DH MANAGEMENT was Mr. Staib's and other employees' employer and operated the Terranea Resort during the PAGA period.

Mr. Staib started working for DH MANAGEMENT, at the Terranea Resort as a bartender and server around thirteen years ago and is currently still employed with them. Mr. Staib is classified as an hourly, non-exempt employee. Mr. Staib and others were compensated every 2 weeks.

In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an "aggrieved employee" is able to file suit on behalf of themselves and others. The statute also states that an "aggrieved employee" is "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas' motion.

In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is our position that Mr. Staib can equivocally bring the following labor code violations on behalf of all other employees, including hourly, non-exempt employees who were not specifically servers.

It is our position that DH MANAGEMENT has committed the following labor code violations against our client and other hourly, non-exempt employees who worked for DH MANAGEMENT at any of their California locations during the relevant PAGA period:

DH MANAGEMENT did not provide Mr. Staib and other similarly situated aggrieved employees with the minimum wages to which they were entitled for all work performed and did not compensate him and others for all hours worked pursuant to California Labor Code sections



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1194, 1197 and 1197.1. Mr. Staib and others were not paid for all hours worked and consistently worked “off the clock.” This is so also to the extent employees such as Mr. Staib and others worked through their meal and rest periods. Those meal and rest periods were interrupted and/or not provided at all, as such they were not compensated for that time, which would be akin to a minimum wage violation.

Additionally, DH MANAGEMENT violated Labor Code Section 351 and Section 353 by taking some of the tips/gratuities meant for employees and also deducting and/or completing removing the tips from Mr. Staib and others’ earned wages. DH MANAGEMENT also deducted the credit card fee from Mr. Staib’s and others’ tips and did not timely provide the credit card and even cash tips to Mr. Staib and other similarly situated aggrieved employees, especially the gratuity collected during the banquet shifts.

Due to the above “off the clock” violations and as a matter of company policy, DH MANAGEMENT violated Labor Code §510 because it failed to pay our client and other similarly situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Mr. Staib’s and others’ actual work hours, which included the “off the clock” work as described above, entitled them to overtime, however, it was not company policy to keep accurate track of all hours worked and to pay employees all due overtime, as such DH MANAGEMENT did not accurately calculate employees’ true regular rate of pay for purposes of deciphering their correct overtime rate of pay. Notably, Mr. Staib and others routinely exceeded eight hours of work per day, especially on days that they worked both regular shift and banquet shift, yet DH MANAGEMENT systematically modified Mr. Staib’s and other’s timesheets and the hours worked, altering overtime hours worked and altering timesheets to falsely and inaccurately report less time worked, hence depriving our client and other aggrieved employees of their rightful overtime compensation. Additionally, timesheets were also altered and modified to falsely and inaccurately insert meal breaks, hence depriving our client and other aggrieved employees of their rightful meal and rest break premiums. As such, DH MANAGEMENT circumvented their legal obligations to pay overtime as mandated by Labor Code §510, and also their obligation to pay meal and rest break premiums, as further detailed below as well.

DH MANAGEMENT violated Labor Code § 226.7 along with Industrial Welfare Commission Wage Order no. 5 because it failed to provide our client and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. DH MANAGEMENT did not completely relieve our client of all duty during said rest periods. DH MANAGEMENT did not pay to our client one additional hour of pay at our client’s regular rate of compensation for each workday that one or more statutory rest periods was not provided. Rest breaks were not authorized or enforced at the resort. In fact, it was not part of DH MANAGEMENT’S culture for employees such as Mr. Staib and others to take at least one 10-minute rest break every day wherein they are relieved of all work duties. Mr. Staib and others were too busy to be able to take rest breaks because there was no coverage for the tables.



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Taking rest breaks meant leaving customers unattended and that could not happen. As such, rest breaks were not enforced and not a policy or practice of the restaurant. In fact, Mr. Staib did not receive timely, uninterrupted rest breaks throughout his employment tenure.

DH MANAGEMENT also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission Wage Order No. 5 because it failed to provide our client and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and our client did not validly waive said meal periods. DH MANAGEMENT did not completely relieve our client of all duties during said meal periods. DH MANAGEMENT did not pay to our client one additional hour of pay at our client's regular rate of compensation for each workday that one or more statutory meal periods was not provided. If DH MANAGEMENT had Mr. Staib sign a meal period waiver, it would not be valid and enforceable since Mr. Staib and others generally worked more than a 6-hour shift. If DH MANAGEMENT had Mr. Staib sign an on-duty meal period agreement wherein Mr. Staib agreed to work through his meal period, it would also be invalid and unenforceable because the nature of Mr. Staib's job as a bartender and server does not prevent him from taking a meal period. As such, Mr. Staib and others never received statutory, timely meal periods during their employment. In other words, there was rarely an uninterrupted and timely 30-minute meal period for any employees, including Mr. Staib. As was the case with rest periods, meal breaks were definitively not part of the DH MANAGEMENT'S culture, especially in a fast-paced bar, restaurant, banquet and resort environment. The meal periods were not authorized and were not enforced. Moreover, even if Mr. Staib was somehow able to get a meal period, it would be untimely and be interrupted by work-related tasks. Furthermore, even if DH MANAGEMENT did in fact provide meal period penalties to Mr. Staib and others for late, short, interrupted, or no meal periods, that does not absolve DH MANAGEMENT of PAGA penalties. *In Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, the Court stated that "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay" (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. *See also Wert v. U.S. Bancorp* (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). Furthermore, as noted above, timesheets were altered and/or modified to falsely and inaccurately insert meal breaks, hence depriving our client and other aggrieved employees of their rightful meal and rest break premiums.

Furthermore, during the relevant time period, DH MANAGEMENT failed to pay our client and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including the minimum wages and overtime as described above as well as meal/rest break premiums. DH MANAGEMENT was also in violation of California Labor Code section 226(a) by not providing access to paystubs and failing to include pertinent information on the wage statements, including but not limited to, all hours worked, tips earned, gross wages earned, net wages earned, all deductions, premium payments for meal and rest breaks, the correct legal name and address of the employer, the correct beginning and end of the pay period, all applicable hourly rates, and all identifying employee information, among other



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items. As such, DH MANAGEMENT did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

DH MANAGEMENT violated Labor Code § 203 because it willfully failed to pay other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked including minimum wages and overtime compensation, tips, and premiums for the missed meal and rest breaks.

During the relevant time period, DH MANAGEMENT also failed to keep accurate and complete payroll records showing the actual hours worked per day (including the time for meal and rest periods) and the wages paid to our client and other aggrieved employees pursuant to California Labor Code sections 1174(d).

Additionally, during the relevant time period, Mr. Staib and others incurred necessary, business-related expenses and costs that were not reimbursed by DH MANAGEMENT. These costs include, but are not limited to, reimbursement for use of personal cell phones for work purposes in having to clock-in/clock out on a cell phone application. Accordingly, DH MANAGEMENT was in violation of California Labor Code sections 2800 and 2802. Moreover, DH MANAGEMENT failed to provide sick pay in violation of Labor Code Sections 233 and 246.

Each of the aforementioned violations, except the Labor Code section 226(a) violations, is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please note, Mr. Staib's claims also include potential fraud claims, as well as any other claims associated therewith or arising therefrom.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, our client also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by DH MANAGEMENT.



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If you have any questions or require additional information, please do not hesitate to contact us.
Thank you in advance for your attention to this matter.

Sincerely,

A handwritten signature in black ink, which appears to read "Patil", is written over a large, stylized oval loop.

Patil T. Derderian, Esq.



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