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County of San Joaquin
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Attorneys for Plaintiff Miguel Angel Hernandez

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

MIGUEL ANGEL HERNANDEZ,

Plaintiff,

vs.

ONO MANAGEMENT, LLC, and
DOES 1-100 inclusive,

Defendants.

Case No.: STK-CV-UOE-2024-4115

FIRST AMENDED COMPLAINT FOR
DAMAGES AND PENALTIES

1. VIOLATION OF LABOR CODE §§ 98.6, 1102.5, 6310 & 6311
2. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
3. VIOLATION OF LABOR CODE §§ 226(b) & 1198.5
4. VIOLATION OF LABOR CODE § 2698 (PAGA)

JURY TRIAL DEMANDED

Plaintiff Miguel Angel Hernandez brings this action for wrongful termination, economic loss, general damages, reinstatement, injunctive relief, unpaid wages, punitive damages, penalties, attorneys' fees and costs, against Defendants Ono Management, LLC, and Does 1 through 100, for violations of the California Labor Code and California Law. Plaintiff further alleges standing under the Private Attorney Generals Act ("PAGA") as an aggrieved employee, and seeks civil penalties, fees, and costs thereunder.

PARTIES

1. Miguel Angel Hernandez ("Plaintiff" or "Hernandez") is and at all times relevant herein was employed in San Joaquin County, California, and was an "employee" of Defendants herein, as

1 defined by the California Labor Code ("Labor Code") and the applicable California Industrial Wage
2 Commission ("IWC") Order(s).

3 2. Defendant Ono Management, LLC, ("Ono") is a corporation of unknown place of
4 formation, with its principal place of business in Diamond Bar, California, County of Los Angeles.

5 3. At all times relevant herein, Ono has been an "employer" as defined by the California
6 Labor Code ("Labor Code") and the applicable California Industrial Wage Commission ("IWC")
7 Order(s).

8 4. Ono and Does 1-100 are collectively referred to as Defendants.

9 5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as
10 Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sue such
11 Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names
12 and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each
13 of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged
14 and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants.
15 Unless otherwise indicated, each Defendant was acting within the course and scope of said agency
16 and/or employment, with the knowledge and/or consent of said co-Defendant.

17 6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
18 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
19 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
20 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting
21 within the course and scope of such agency, service, employment partnership, joint venture and/or
22 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
23 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
24 the remaining Defendants.

25 **JURISDICTION, VENUE AND JURY TRIAL DEMAND**

26 7. This Court is the proper Court, and this action is properly filed in the Superior Court of
27 California for the County of San Joaquin because Plaintiff was employed by Ono in San Joaquin
28

County, and the harmful acts alleged herein occurred in San Joaquin County. Plaintiff hereby demands a jury trial on all claims subject to trial by jury.

GENERAL ALLEGATIONS

8. Defendant Ono owns and operates restaurants in California.

9. In October of 2019, Defendant Ono hired Plaintiff Hernandez to operate its Ono Hawaiian BBQ in Manteca, California.

10. Throughout his employment, Plaintiff Hernandez was a non-exempt employee paid on a bi-weekly basis. As such, he was he was entitled to be paid for every hour worked and overtime as appropriate, and was entitled to meal breaks within the 5th and 10th hours of work. He was also entitled to earn non-discretionary bonuses during his employment.

11. In December of 2023, Plaintiff, while in the course and scope of his duties for Defendant, asked that a coworker he supervised, Anna Ramirez, not spend time on her cell phone while on the clock.

12. Ms. Ramirez' husband arrived at the workplace in Manteca and threatened to harm Plaintiff and challenged him to a fight because Plaintiff had disciplined his wife. Plaintiff Hernandez was able to calm Ms. Ramirez' husband down without a fight occurring.

13. On or about December 30, 2023, Ms. Ramirez' husband returned to Defendant Ono's Manteca premises, and confronted Mr. Hernandez as he was taking trash out while on the clock. Ms. Ramirez' husband used his phone to take a video of Plaintiff Hernandez, showed it to him, and then said he now had video to send to someone who would then kill Plaintiff Hernandez.

14. Plaintiff Hernandez had a genuine fear for his physical safety while at work. Plaintiff Hernandez reported this event to Ono District Manager, Ling Yang, and further advised her that he was afraid for his safety at the job site. Plaintiff Hernandez asked for a transfer to another franchise, but was told nothing was available.

15. Plaintiff Hernandez asked for a one month leave of absence because he was not safe at work, but was told that Ono's Human Resources did not approve it because the latest threat occurred "outside of the restaurant." Mr. Hernandez then asked to take the sick days he had available because he was scared to return to work, but was told that also was not approved by Ono.

1 16. Because Defendant Ono refused to provide for a safe work environment at its Manteca
2 premises, Plaintiff Hernandez was compelled to resign in order to prevent the real and credible threat
3 of harm to him while working. As he attempted to do so, Ono, likely realizing it was breaking the law,
4 told Plaintiff Hernandez that if he refused to sign paperwork it prepared regarding the termination of
5 his employment, he would not be eligible for rehire.

6 17. On March 20, 2024, Plaintiff sent a notice letter to the Labor Workforce and
7 Development Agency ("LWDA") and Defendants, setting forth legal theories and factual support for
8 Labor Code violations against Defendants. A true and correct copy of that notice is attached as
9 Exhibit 1, and is incorporated by this reference.

10 18. On March 22, 2024, Plaintiff sent a second notice letter to the LWDA and Defendants,
11 setting forth additional legal theories and factual support for Labor Code violations against
12 Defendants. A true and correct copy of that notice is attached as Exhibit 2, and is incorporated by this
13 reference.

14 19. The Private Attorney General Act ("PAGA"), as set forth at California Labor Code §
15 2698 et seq., is and at all times relevant herein was applicable to Plaintiff's employment.

16 20. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for
17 a civil penalty to be assessed and collected by the LWDA for violations of the Labor Code may, as an
18 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself
19 or herself and other current or former employees pursuant to the procedures outlined in Labor Code §
20 2699.3. California Labor Code § 2699(a).

21 21. Pursuant to PAGA, an "Aggrieved Employee" is "any person who was employed by the
22 alleged violator and against whom one or more of the alleged violations was committed." Labor Code
23 § 2699(c).

24 22. As alleged in Exhibit 1 and Exhibit 2, Plaintiff was employed by Defendants while
25 several of the violations alleged herein were committed against him. Plaintiff is therefore an
26 Aggrieved Employee as defined by Labor Code § 2699(c).

1 23. Defendants' other current and former non-exempt employees are also Aggrieved
2 Employees in that one or more of the alleged violations were also committed against them during their
3 time of employment with Defendants.

4 24. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for
5 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
6 ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil action
7 brought by an aggrieved employee on behalf of himself or herself and other current or former
8 employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code §
9 2699(a).

10 25. Plaintiff hereby realleges and incorporates by reference each and every allegation set
11 forth above as though fully set forth herein.

12 26. Pursuant to Labor Code § 2699(f), the civil penalty recoverable in a PAGA action is
13 that which is provided for by the Labor Code. When the Labor Code does not provide a civil penalty,
14 the penalty recoverable shall be \$100 for the initial violation per employee per pay period and \$200 for
15 each subsequent violation per employee per pay period.

16 27. Pursuant to Pursuant to California Labor Code § 2699(g), an aggrieved employee may
17 recover the civil penalty on behalf of himself or herself and other current or former employees against
18 whom one or more of the alleged violations was committed. Furthermore, any employee who prevails
19 in any action shall be entitled to an award of reasonable attorney's fees and costs.

20 28. Pursuant to Labor Code § 2699.3, an aggrieved employee, including Plaintiff, may
21 pursue a civil action arising under PAGA after the following requirements have been met:

- 22 a. The aggrieved employee shall give written notice by certified mail to the LWDA
23 and the employer of the specific provisions of California Labor Code alleged to
24 have been violated, including the facts and theories to support the alleged
25 violations;
- 26 b. The LWDA shall provide notice to the employer and the aggrieved employee by
27 certified mail that it does not intend to investigate the alleged violation within 60
28 days of the postmark date of the Employee's Notice. Upon receipt of the LWDA's

1 Notice, or if the LWDA does not provide notice with 65 calendar days of the
2 postmark date of the Employee's Notice, the aggrieved employee may commence a
3 civil action pursuant to California Labor Code § 2699 to recover civil penalties in
4 addition to any other penalties to which the employee may be entitled.

5 29. For all alleged violations not enumerated in Labor Code § 2699.5, the employer is
6 given thirty-three (33) days to cure and notify the aggrieved employee by certified mail that the
7 violation has been cured. If the violation is not cured, the aggrieved employee may commence a civil
8 action pursuant to California Labor Code § 2699 to recover civil penalties in addition to any other
9 penalties to which the employee may be entitled.

10 30. The LWDA failed to take action on the subject notices it received from Plaintiff
11 (Exhibits 1 and 2) before May 27, 2024. It has not responded in any way as of the filing of this First
12 Amended Complaint. Plaintiff therefore has satisfied the administrative prerequisites under Labor
13 Code § 2699.3 to bring a civil action to recover penalties against Defendants, in addition to other
14 remedies, for the aforementioned violations of California Labor Code sections and applicable IWC
15 Wage Orders.

16 31. Wherefore, Plaintiff hereby amends this action to add a Fourth Cause of Action under
17 the PAGA.

18 **FIRST CAUSE OF ACTION**
19 **VIOLATION OF LABOR CODE §§ 98.6, 1102.5, 6310 & 6311**
20 **(Retaliation for Safety Complaints)**
Against All Defendants

21 32. Plaintiff hereby realleges and incorporates by reference each and every allegation set
22 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
23 allegations of this cause of action.

24 33. Pursuant to Labor Code § 98.6, no person shall discharge an employee or in any
25 manner discriminate against any employee because the employee engaged in any conduct delineated in
26 Chapter 4 of the Labor Code, including the conduct described in 96(k), and Chapter 5 of the Labor
27 Code (Labor Code §§ 1101-1105), or because of the exercise by the employee on behalf of himself,
28 herself, or others of any rights afforded him or her under the Labor Code.

1 34. Labor Code section 1102.5(b) makes expressly unlawful any form of retaliation against
2 an employee for disclosing to any person with authority over the employee information that the
3 employee has reasonable cause to believe is a violation of a state or federal statute, or local, state, or
4 federal rule or regulation.

5 35. Labor Code § 6310 provides, in pertinent part:

6 (b) Any employee who is discharged, threatened with discharge,
7 demoted, suspended, or in any other manner discriminated against in
8 the terms and conditions of employment by his or her employer
9 because the employee has made a bona fide oral or written complaint
10 to the division, other governmental agencies having statutory
11 responsibility for or assisting the division with reference to employee
12 safety or health, his or her employer, or his or her representative, of
13 unsafe working conditions, or work practices, in his or her
14 employment or place of employment, or has participated in an
15 employer-employee occupational health and safety committee, shall
16 be entitled to reinstatement and reimbursement for lost wages and
17 work benefits caused by the acts of the employer. Any employer who
18 willfully refuses to rehire, promote, or otherwise restore an employee
19 or former employee who has been determined to be eligible for
20 rehiring or promotion by a grievance procedure, arbitration, or
21 hearing authorized by law, is guilty of a misdemeanor.

22 36. Labor Code § 6311 provides, in pertinent part:

23 No employee shall be laid off or discharged for refusing to perform
24 work in the performance of which this code, including Section 6400,
25 any occupational safety or health standard, or any safety order of the
26 division or standards board will be violated, where the violation
27 would create a real and apparent hazard to the employee or their
28 fellow employees. Any employee who is laid off or discharged in
violation of this section or is otherwise not paid because the
employee refused to perform work in the performance of which this
code, any occupational safety or health standard, or any safety order
of the division or standards board will be violated and where the
violation would create a real and apparent hazard to the employee or
their fellow employees shall have a right of action for wages for the
time the employee is without work as a result of the layoff or
discharge. Notwithstanding Section 6303 or other law, as used in this
section, "employee" includes a domestic work employee, except for
a person who performs household domestic service that is publicly
funded, including publicly funded household domestic service
provided to a recipient, client, or beneficiary with a share of cost in
that service.

37. Nevertheless, as set forth above, after making a bona fide complaint regarding his safety at work and being forced to work in an unsafe work environment, Defendants violated these provisions and retaliated against Plaintiff by falsely characterizing his complaint as not implicating its duties under the Labor Code, by failing and refusing to provide to him a safe working environment, by refusing to provide him a leave of absence due to credible threats made to his safety at work by a coworker's spouse, by denying his request for sick leave, and by forcing him to quit his employment under circumstances in which any reasonable employee likewise would have quit to provide for his or her safety.

38. Defendants further retaliated against Plaintiff by telling him he was not eligible for rehire because he refused to sign termination papers prepared by Defendants.

39. As a result of Defendants conduct, Plaintiff has suffered compensatory damages, including special and general damages.

40. The acts taken toward Plaintiff were carried out by Defendants acting in an oppressive, fraudulent and malicious manner in violation of California Civil Code section 3294, in wanton disregard for his physical safety, thereby justifying an award to him of punitive damages. The acts were either performed by managing agents, such as District Manager, Ling Ying, or were ratified by officers, directors, or managing agents.

41. Wherefore, Plaintiff prays for relief as set forth below.

SECOND CAUSE OF ACTION
WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
(*Tameny v. ARCO*)
Against All Defendants

42. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

43. In *Tameny v. ARCO, Inc.* (1980) 27 Cal.3d 167, the California Supreme Court an action lies in tort for an employee who has been terminated in contravention to the fundamental principles of public policy.

44. When Defendants forced Plaintiff to end his employment as set forth above, they violated the fundamental principles of public policy in favor of workplace safety, and prohibiting workplace violence as well as retaliation for reporting and complaining about an unsafe work environment, including those set forth in Labor Code §§ 6402, 6403, 6404, 6406, 6310, 6311, 1102.5 and 98.6.

45. As a result of Defendants' conduct, Plaintiff has suffered compensatory damages, including special and general damages.

46. The acts taken toward Plaintiff were carried out by Defendants acting in an oppressive, fraudulent and malicious manner in violation of California Civil Code section 3294, in wanton disregard for his physical safety, thereby justifying an award to him of punitive damages. The acts were either performed by managing agents, such as District Manager, Ling Ying, or were ratified by officers, directors, or managing agents.

47. Wherefore, Plaintiff prays for relief as set forth below.

THIRD CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226(b) and 1198.5
(Failure to Provide Records)
Against All Defendants

48. Plaintiff hereby realleges and incorporates by reference all paragraphs and allegations in this Complaint, except to the extent any paragraph or allegation is inconsistent with the allegations of this cause of action.

49. Labor Code § 226(b) provides: “(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.”

50. Labor Code § 1198.5 provides, in pertinent part: “(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance

concerning the employee. (b) (1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from the date the employer receives the request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to produce a copy of the records, as long as the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request."

51. Plaintiff requested records from Defendants via certified mail on February 7, 2024, using the address it provided on wage statements issued to Plaintiff. Defendants did not respond.

52. The penalty for non-compliance is \$750 pursuant to Labor Code § 226(f), and \$750 pursuant to Labor Code § 1198.5(k). Plaintiff seeks \$1500 from Defendants for its failure to provide records.

53. Pursuant to Labor Code §226(h), Plaintiff may seek, and hereby does seek, injunctive relief to ensure compliance with Labor Code § 226(f). Pursuant to Labor Code § 1198.5(l), Plaintiff may seek, and hereby does seek, injunctive relief to ensure compliance with Labor Code § 1198.5.

54. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

FOURTH CAUSE OF ACTION
VIOLATIONS OF LABOR CODE § 2698 *et seq.*
(Private Attorney Generals Act)
Against All Defendants

55. Plaintiff hereby realleges and incorporates by reference all paragraphs and allegations in this Complaint, except to the extent any paragraph or allegation is inconsistent with the allegations of this cause of action.

56. As set forth above, Plaintiff has satisfied the administrative requirements for standing under the PAGA. He likewise has suffered violations of the Labor Code as alleged herein, and is therefore an “aggrieved employee,” as defined in the PAGA.

57. As set forth herein, including the March 20 and March 22 notices to the LWDA (Exhibits 1 and 2), Defendants have violated Labor Code sections 201 or 202, and 203, 226(b), 1198.5(b), 226(a), 226.7, 210, 510, 6402, 6403, 6404, 6406, 6311 and as to applicable Wage Orders issued by the Industrial Wage Commission, as to Plaintiff and, on information and belief, as to other of their former and current employees.

58. An actual controversy exists as to the magnitude of said violations as to current and former California employees, and as to whether Defendant have compliant wage and hour policies.

59. Wherefore, Plaintiff prays for relief under the PAGA as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

As to the First Cause of Action:

1. For compensatory damages in the form of economic and non-economic damages in an amount unknown, but in excess of the jurisdictional minimum of this Court;
2. For punitive damages in an amount sufficient to make an example of Defendants' wrongful conduct and to deter such future conduct by Defendants;
3. For a civil penalty of \$10,000 pursuant Labor Code § 98.6(b)(3);
4. For reinstatement, and for back wages until reinstatement;
5. For attorney's fees and costs pursuant to Labor Code § 1102.5(j), and any other applicable statute;
6. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including that available under Civil Code §§ 3287(a) and 3289(b);
7. For such other and further relief as the Court deems just and proper.

As to the Second Cause of Action:

1. For compensatory damages in the form of economic and non-economic damages in an amount unknown, but in excess of the jurisdictional minimum of this Court;
2. For punitive damages in an amount sufficient to make an example of Defendants' wrongful conduct and to deter such future conduct by Defendants;
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including that available under Civil Code §§ 3287(a) and 3289(b);
4. For such other and further relief as the Court deems just and proper.

As to the Third Cause of Action:

1. For \$750 pursuant to Labor Code § 226(f), and \$750 pursuant to Labor Code § 1198.5(k);
2. For injunctive relief requiring Defendants to adopt a policy that requires it will comply with its obligations under Labor Code §226(f), and §1198.5;
3. For attorneys' fees and costs of suit pursuant to Labor Code §226(h) and §1198.5(l); and
4. For such other and further relief as the court deems just and proper.

As to the Fourth Cause of Action:

1. For civil penalties under the PAGA, including,
 - a. Civil penalties of \$50 per pay period per affected employee for overtime violations pursuant to Labor Code §558;
 - b. Civil penalties of \$250 per violation pursuant to Labor Code section 226.3 for each instance an inaccurate wage statement was furnished to an employee;
 - c. Civil penalties of \$50 pursuant to Labor Code § 558 per pay period for each pay period in which an employee was not furnished all complaint meal period;
 - d. Civil penalties of \$50 pursuant to Labor Code § 558 per pay period per employee for each pay period in which an employee was not furnished all complaint rest periods;

- e. Penalties of \$50 for the first violation and \$100 per subsequent violation, per pay period, per employee pursuant to Labor Code §2699(f), for each instance an employee was not properly paid all wages due at the cessation of employment;
- f. Penalties of \$50 for the first violation and \$100 per subsequent violation, per pay period, per employee pursuant Labor Code §2699(f), for each instance an employee, or former employee, was not timely provided records when a request for the same was made pursuant to Labor Code §§226(b) or 1198.5;
- g. Penalties of \$50 for the first violation and \$100 per subsequent violation, per pay period, per employee pursuant Labor Code §2699(f), for each instance an employee, or former employee, experienced a violation of Labor Code sections 6402, 6403, 6404, 6406, or 6311.

2. For a judicial declaration that:

- a. Plaintiff has exhausted the administrative requirements for standing under the PAGA;
- b. Plaintiff is an “aggrieved employee” under the PAGA;
- c. Defendant’s wage and hour, and record provision policies are not legally compliant, according to proof presented before the trier of fact;
- d. Defendant must implement legally compliant policies as required, according to proof presented to the trier of fact;
- e. For such further and other declarations as are fair and just.

3. For statutory attorneys’ fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5 and Labor Code § 2699(g);

4. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b); and

5. For such other and further relief as the court deems just and proper.

1 **DATED:** June 28, 2024

MAYALL HURLEY P.C.

2
3 By

A handwritten signature in blue ink, appearing to be 'William J. Gorham III', is written over a horizontal line.

4 WILLIAM J. GORHAM III

NICHOLAS F. SCARDIGLI

Attorneys for Plaintiff Miguel Angel Hernandez

Exhibit 1

NORTHERN CALIFORNIA
118 WEST OAK STREET
LODI, CALIFORNIA 95240
[BY APPT. ONLY - NO SERVICE ACCEPTED]
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207
SOUTHERN CALIFORNIA
360 EAST 2ND STREET, SUITE 800
LOS ANGELES, CALIFORNIA 90012
[BY APPT. ONLY - NO SERVICE ACCEPTED]



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JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA

March 20, 2024

SUBMITTED VIA ONLINE CLAIM NOTICE

<https://dir.govfa.net/308>

The State of California Labor and Workforce Development Agency

SENT VIA CERTIFIED MAIL

Ono Management, LLC
21700 Copley Dr., Suite 320
Diamond Bar, CA 91765

Re: Miguel Hernandez

To Whom It May Concern:

This firm represents Miguel Hernandez ("Hernandez") relating to his employment in a non-exempt hourly position as a manager at Ono Management, LLC, d.b.a. Ono Hawaiian BBQ ("Ono Hawaiian BBQ" or "Employer"), in Manteca, California. In accordance with California Labor Code § 2699.3, this letter shall serve as Mr. Hernandez' written notice regarding the following violations, and facts and theories supporting the violations, on his behalf and, as a proxy for the Labor and Workforce Development Agency ("LWDA"), on behalf of current and other former California employees of Employer. Notice to the LWDA has been submitted online, in accordance with the process described on the California Department of Industrial Relations' website at <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

Since October of 2019, Mr. Hernandez has been employed as a manager by Ono Hawaiian BBQ. He is paid on a bi-weekly basis. Throughout his employment, Mr. Hernandez was a non-exempt employee. As such, he was entitled to be paid for every hour worked and overtime as appropriate, and was entitled to meal breaks within the 5th and 10th hours of work.

In January of 2024, Employer wrongfully terminated Mr. Hernandez in retaliation for complaining of being required to work in an unsafe workplace.

On February 7, 2024, by certified mail, the undersigned requested records from Employer pursuant to Labor Code §§ 226(b), 432, and 1198.5(b). **Exhibit 1**. Employer failed to respond to this request and therefore violated these Labor Code provisions. On information and belief, this is a business practice employed by Employer, and, within the last year and beyond, it has violated these

LWDA; Ono Management, LLC
Re: Miguel Hernandez
March 20, 2024
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Labor Code provisions when records requests have been presented to it by its employees, both current and former.

In addition, as to Mr. Hernandez, and other non-exempt employees of Employer, Employer has failed to provide compliant meal and rest breaks as required by Labor Code §§ 512, 226.7, and applicable Wage Order(s). Labor Code section 512 requires employers to furnish non-exempt employees with one thirty-minute uninterrupted meal break before the commencement of the sixth hour of work. Mr. Hernandez commonly worked twelve hours per day, five days per week. The demands of work commonly meant that he would not be able to start his lunch before the sixth or eleventh hour of work. In addition, he often was too busy to take a second meal break. The same was true as to rest breaks, which are required for every 4 hours of work or significant portion thereof. Yet, Employer did not pay the meal premium wage owed for the missed meal and/or rest breaks, nor did it pay the civil penalty due for these violations of the Labor Code. On information and belief, Employer has wage records that would have made it evident to Employer that it was not complying with Labor Code §§ 512, 226.7, and applicable Wage Order(s), as to Mr. Hernandez, and other former and current employees.

Mr. Hernandez and other former and current non-exempt employees, were also eligible for and at times received, non-discretionary bonuses, commissions, and other items of compensation. Throughout Mr. Hernandez' employment and beyond, as to other former and current of its employees, Employer has either (a) failed to include these non-discretionary bonuses, commissions, and other items of compensation when calculating its non-exempt employees' regular rate of pay for purposes of overtime, or (b) miscalculated its non-exempt employees' regular rate of pay for purposes of overtime. Instead, Employer had a uniform policy, pattern, and practice of only paying 1.5 times (or 2 times, as appropriate) the employee's base hourly rate for overtime hours worked.

Because Employer did not pay all wages due its employees, including Mr. Hernandez, it also violated Labor §§ 201-203, by failing to pay all wages due to them at the cessation of the employment relationship.

Because of the violations set forth above, the wage statements Employer furnished to its non-exempt employees violate California Labor Code section 226(a) insofar as they fail to accurately show:

- a. The gross wages earned, in violation of section 226(a)(1);
- b. The net wages earned, in violation of section 226(a)(5); and
- c. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

In light of the above violations, Mr. Hernandez is an "aggrieved employee" and has standing under the PAGA to bring an action for civil penalties. As set forth above, Employer has violated Labor Code sections 201-203 (failure to pay all wages due at cessation of employment and penalty provision), 210 (rest penalties), 226(a) (inaccurate wage statements), 226.3 (penalty provision for inaccurate wage statements), 226.7 (rest break violation), 510 (overtime), and as well as and the

LWDA; Ono Management, LLC
Re: Miguel Hernandez
March 20, 2024
Page 3 of 3

applicable IWC Wage Orders. Because of these violations, Ono Hawaiian BBQ is subject to civil penalties.

In addition to these penalties, attorneys' fees and costs are to be awarded to legal counsel to a party acting as proxy to the LWDA pursuant to Labor Code § 2699(g), and any other applicable statute providing for such reimbursement of fees and costs.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or to my client, Mr. Hernandez.

If the LWDA does not intend to investigate these violations, Mr. Hernandez intends to file a civil complaint against Employer pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on his behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention to this matter.

Sincerely,

MAYALL HURLEY P.C.

By _____
WILLIAM J. GORHAM, III

Enclosure: Exhibit 1

cc: client

Exhibit 1

NORTHERN CALIFORNIA
118 WEST OAK STREET
LODI, CALIFORNIA 95240
[BY APPT. ONLY - NO SERVICE ACCEPTED]

2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

SOUTHERN CALIFORNIA
360 EAST 2ND STREET, SUITE 800
LOS ANGELES, CALIFORNIA 90012
[BY APPT. ONLY - NO SERVICE ACCEPTED]



112 SOUTH CHURCH STREET
LODI, CALIFORNIA 95240

TELEPHONE: (209) 477-3833
WWW.MAYALLAW.COM

VLADIMIR F. KOZINA
STEVEN A. MALCOUN
MARK E. BERRY
WILLIAM J. GORHAM, III
NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMANN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA

February 7, 2024

SENT VIA CERTIFIED MAIL

Ono Management LLC
21700 Copley Dr., Suite 320
Diamond Bar, CA 91765

Re: Miguel Angel Hernandez

To Whom It May Concern:

This office represents Miguel Angel Hernandez, in connection with civil claims arising from his employment with Ono Management LLC, in California.

Mr. Hernandez hereby requests to inspect and obtain copies of the following items:

1. Mr. Hernandez' itemized wage statements, pursuant to Labor Code § 226(b);
2. All documents signed by Mr. Hernandez relating to the obtaining or holding of his employment, pursuant to Labor Code § 432; and
3. Mr. Hernandez' personnel records, pursuant to Labor Code § 1198.5(b) and/or any applicable collective bargaining agreements.

Enclosed is a signed authorization from Mr. Hernandez, designating this firm as his representative and authorizing it to obtain the items listed above on his behalf. Please direct copies of these items to me at my Lodi office at 112 South Church Street, Lodi, California 95240. If you have any questions concerning these requests, do not hesitate to contact me.

Sincerely,

MAYALL HURLEY P.C.

By

A handwritten signature in blue ink, appearing to read 'William J. Gorham, III', is written over a horizontal line.

WILLIAM J. GORHAM, III

Enclosure

AUTHORIZATION OF CLIENT

I, Miguel Angel Hernandez, hereby authorize Mayall Hurley PC, my attorneys, to request from Ono Management, LLC, and obtain on my behalf, the itemized statements and personnel records requested above pursuant to Labor Code §§226, 247.5, 432, and 1198.5.

Dated: February 07 2024

By Miguel Angel Hernandez C.
Miguel Angel Hernandez


MAYALL HURLEY
EMPLOYMENT LAWYERS
112 S. CHURCH STREET
LODI, CALIFORNIA 95240

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Ono Management LLC
21700 Copley Dr., Suite 320
Diamond Bar, CA 91765



March 18, 2024

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The following is in response to your request for proof of delivery on your item with the tracking number:
9489 0090 0027 6615 8346 78.

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Status Date / Time:	February 12, 2024, 12:28 pm
Location:	DIAMOND BAR, CA 91765
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™
	Return Receipt Electronic

Shipment Details

Weight:	1.0oz
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Recipient Signature

Signature of Recipient:	 Vvridla
Address of Recipient:	21700

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MAYALL HURLEY
EMPLOYMENT LAWYERS
112 S. CHURCH STREET
LODI, CALIFORNIA 95240



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Ono Management, LLC
21700 Copley Dr., Suite 320
Diamond Bar, CA 91765



March 26, 2024

Dear Julie Zeyen:

The following is in response to your request for proof of delivery on your item with the tracking number:
9489 0090 0027 6615 8344 01.

Item Details

Status:	Delivered to Agent for Final Delivery
Status Date / Time:	March 25, 2024, 11:18 am
Location:	DIAMOND BAR, CA 91765
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™
	Return Receipt Electronic

Shipment Details

Weight:	1.6oz
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Recipient Signature

Signature of Recipient:
(Authorized Agent)

Address of Recipient:

1315 VALLEY VISTA DR,
DIAMOND BAR, CA 91765

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Exhibit 2

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2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207
SOUTHERN CALIFORNIA
360 EAST 2ND STREET, SUITE 800
LOS ANGELES, CALIFORNIA 90012
[BY APPT. ONLY – NO SERVICE ACCEPTED]



112 SOUTH CHURCH STREET
LODI, CALIFORNIA 95240
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VLADIMIR F. KOZINA
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ROBERT J. WASSERMANN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA

March 22, 2024

SUBMITTED VIA ONLINE CLAIM NOTICE

<https://dir.govfa.net/310>

The State of California Labor and Workforce Development Agency

SENT VIA CERTIFIED MAIL

Ono Management, LLC
21700 Copley Dr., Suite 320
Diamond Bar, CA 91765

Re: Miguel Hernandez SUPPLEMENTAL LWDA NOTICE
LWDA Case No. LWDA-CM-1017560-24

To Whom It May Concern:

On March 20, 2024, on behalf of Miguel Hernandez (“Hernandez”) and pursuant to California Labor Code § 2699.3, we submitted notice of labor code violations to Ono Management, LLC, d.b.a. Ono Hawaiian BBQ (“Ono Hawaiian BBQ” or “Employer”) and to the Labor and Workforce Development Agency (“LWDA”). The LWDA assigned the above-referenced Case Number. The following is intended to supplement that submission, based on the following violations of the Labor Code provisions specified below.

As mentioned in the original notice, Employer wrongfully terminated Mr. Hernandez in retaliation for complaining of being required to work in an unsafe workplace. The facts surrounding this termination establish several violations of the Labor Code. As a manager, Mr. Hernandez was responsible for supervision of other employees, including employee Anna Ramirez. Mr. Hernandez noticed that Ms. Ramirez was spending time on her cell phone while she was on the clock, and instructed her to discontinue that conduct.

Ms. Ramirez’ husband then arrived at the Employer’s premises and challenged Mr. Hernandez to a fight because he had disciplined his wife. Mr. Hernandez was able to calm the man down without further incident. However, on or about December 30, 2023, Ms. Ramirez’ husband returned to Employer’s premises, and confronted Mr. Hernandez as he was taking trash out at Employer’s premises. He took video of Mr. Hernandez, showed it to him, and then said he now had video to send to someone who would then kill Mr. Hernandez.

LWDA; Ono Management, LLC
Re: Miguel Hernandez
March 22, 2024
Page 2 of 3

Mr. Hernandez reported this event to District Manager Ling Yang and further advised her that he was afraid for his safety at the job site. Mr. Hernandez asked for a transfer to another franchise, but was told nothing was available. Mr. Hernandez asked for one month leave of absence for safety reasons, but was told that Employer's Human Resources did not approve it because the latest threat occurred "outside of the restaurant." Mr. Hernandez asked to take the sick days he had available because he was scared to return to work, but was told that was not approved.

Employer then told Mr. Hernandez his employment would be terminated if he did not come to work. When Mr. Hernandez advised Employer it was unsafe for him to return, he was told that if he did not sign a release of claims against it, he would not be eligible for rehire.

Labor Code § 6402 provides:

"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."

Labor Code § 6403 provides:

"No employer shall fail or neglect to do any of the following:

(a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

(b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.

(c) To do every other thing reasonably necessary to protect the life, safety, and health of employees."

Labor Code § 6404 provides:

"No employer shall occupy or maintain any place of employment that is not safe and healthful."

Labor Code § 6406(d) provides:

"No person shall do any of the following:

...
(d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees."

Labor Code § 6311 provides, in part:

LWDA; Ono Management, LLC
Re: Miguel Hernandez
March 22, 2024
Page 3 of 3

“No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including Section 6400, any occupational safety or health standard, or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or their fellow employees. Any employee who is laid off or discharged in violation of this section or is otherwise not paid because the employee refused to perform work in the performance of which this code, any occupational safety or health standard, or any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or their fellow employees shall have a right of action for wages for the time the employee is without work as a result of the layoff or discharge.”

In acting as it did, as alleged above, Employer violated Labor Code §§ 6402, 6403, 6404, 6406, and 6311. On information and belief, and on that basis, it is alleged that Employer has likewise committed violations of these Labor Code provisions with respect to other of its former and current employees within the last year and beyond.

In light of the above, and as set forth in his original submission, which is incorporated by this reference, Mr. Hernandez is an “aggrieved employee” and has standing under the PAGA to bring an action for civil penalties. Because of these violations, Ono Hawaiian BBQ is subject to civil penalties.

In addition to these penalties, attorneys’ fees and costs are to be awarded to legal counsel to a party acting as proxy to the LWDA pursuant to Labor Code § 2699(g), and any other applicable statute providing for such reimbursement of fees and costs.

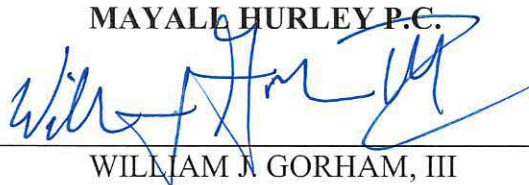
If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or to my client, Mr. Hernandez.

If the LWDA does not intend to investigate these violations, Mr. Hernandez intends to file a civil complaint against Employer pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on his behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention to this matter.

Sincerely,

MAYALL HURLEY P.C.

By



WILLIAM J. GORHAM, III

cc: client


MAYALL HURLEY
EMPLOYMENT LAWYERS
112 S. CHURCH STREET
LODI, CALIFORNIA 95240



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Ono Management, LLC
21700 Copley Dr., Suite 320
Diamond Bar, CA 91765



March 26, 2024

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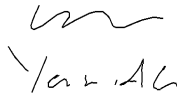
Status:	Delivered, Front Desk/Reception/Mail Room
Status Date / Time:	March 26, 2024, 9:56 am
Location:	DIAMOND BAR, CA 91765
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™
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