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May 14, 2024

NOTICE VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency (LWDA)

Attn: PAGA Administrator

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

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

Metro Taquero Drive Thru
Metro Taquero Huntwood Inc.
Metro Taquero Marina
Metro Taquero Skywest
c/o Alejandro Gamarra, Agent
19950 Hesperian Blvd.
Hayward, CA 94541

**Re: Luis Ronaldo Lara Navarro v. Metro Taquero Drive Thru; Metro Taquero Huntwood Inc.; Metro Taquero Marina; Metro Taquero Skywest
Private Attorneys General Act**

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA"), Mr. Luis Ronaldo Lara Navarro (hereafter "Navarro") provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt or hourly paid employees (hereafter the "Aggrieved Employees"), by Metro Taquero Drive Thru, Metro Taquero Huntwood Inc., Metro Taquero Marina, Metro Taquero Skywest, and Alejandro Gamarra (hereafter collectively "METRO TAQUERO"), of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802. Alejandro Gamarra is being included in this PAGA notice pursuant to Labor Code Section 558.1 as he was or is an owner/director/managing agent of Metro Taquero Drive Thru, Metro Taquero Huntwood Inc., Metro Taquero Marina, and Metro Taquero Skywest, was involved in the day-to-day operations of the business, and as such, controlled the wages, hours, and working conditions of Navarro and the other Aggrieved Employees.

On behalf of himself and all other Aggrieved Employees, Navarro hereby provides this notice to the Labor & Workforce Development Agency and METRO TAQUERO and its agents and representatives.

At all relevant times, METRO TAQUERO has employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Navarro and the Aggrieved Employees are “employees” within the meaning of Wage Order 5-2001 (hereafter “the Wage Order”) § 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

An Aggrieved Employee pursuing a representative action under the PAGA could seek civil penalties for alleged Labor Code violations that affected the Aggrieved Employee, as well as separate California Labor Code violations that affected other employees. In *Huff v. Securitas Security Services USA, Inc.*, 233 Cal. Rptr. 3d 502 (Ct. App. 2018), the Court concluded that an employee affected by at least one California Labor Code violation could pursue civil penalties under PAGA on behalf of other Aggrieved Employees for all Labor Code violations by the same employer, even if such violations did not affect the employee initiating the PAGA action. Consequently, Navarro can equivocally bring the following labor code violations on behalf of all other employees.

STATEMENT OF FACTS

METRO TAQUERO first began to employ Navarro in or around October 2021 to work at its restaurants, including: Metro SL (13775 E. 14th Street, San Leandro, CA 94578), Metro Taquero Drive thru (1776 Marina Blvd., San Leandro, CA, 94577), Metro Skywest (1199 W. Ast, Hayward, CA 94541), Metro A St. (310 W. A St., Hayward, CA 94541), Metro B St. (1063 B. St., Hayward, CA 94541) and Metro Huntwood (29950 Huntwood Ave., Hayward, CA 94544). Throughout his employment, Navarro generally worked at 3 different locations per week. During his employment, Navarro’s job title was “cashier” and he generally worked Tuesday through Sunday, and his schedule varied from 9:00 a.m. to 4:00 p.m., 9:00 a.m. to 5:00 p.m., or 5:00 p.m. to 11:00 p.m.

At all relevant times, METRO TAQUERO has issued wages to Navarro and all of the other Aggrieved Employees on a bi-weekly basis and paid him by the hour. At all relevant times, METRO TAQUERO has classified Navarro and all of the other Aggrieved Employees as a non-exempt employee entitled to the protections of the Labor Code and the Wage Order. Navarro’s latest rate of pay is approximately \$18.50 per hour.

It is our position that METRO TAQUERO has violated numerous Labor Code Sections against Navarro and the other Aggrieved Employees.

METRO TAQUERO has failed to pay Navarro and the other Aggrieved Employees for all time worked or subject to its control. At all relevant times, METRO TAQUERO required the Aggrieved Employees to perform work off-the-clock and failed to compensate them for this time. METRO TAQUERO would instruct the Aggrieved Employees to clock out at the end of their shifts and continue working. METRO TAQUERO has failed to compensate the Aggrieved Employees for all of this work performed off-the-clock. Furthermore, to the extent Navarro and the Aggrieved Employees have worked through their meal periods and those meal periods were interrupted, they were not compensated for that time, which would be akin to a minimum wage violation. METRO

TAQUERO managers, including Camila, Evelyn, Andrea and Alejandra (last names unknown) would contact Navarro on his days off and ask him to come in to work to cover a shift. If Navarro was not able to cover a shift, METRO TAQUERO would retaliate against Navarro and reduce his work schedule the following week.

Due to the above “off the clock” violations, METRO TAQUERO has failed to pay Navarro and the Aggrieved Employees properly-calculated overtime wages. Navarro’s and the Aggrieved Employees’ 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, like Navarro, the accurate amount of overtime, especially since the “off the clock” work was not factored into the equation. Furthermore, any incentive payments and/or bonus payments were not factored into the employees’ regular rate of pay for purposes of deciphering the correct overtime rate of pay. In addition, any bonus and/or incentive payments were not factored into the correct meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

In addition, Navarro and the other Aggrieved Employees were not given accurate tips to which they were entitled in violation of California Labor Code Section 351 and 353.

METRO TAQUERO has failed to provide all compliant meal periods and authorize and permit all compliant rest periods to which Navarro and the other Aggrieved Employees were entitled. Navarro is entitled to take off-duty, uninterrupted 30-minute meal periods before the fifth hour of work and to take uninterrupted 10-minute rest periods for every four hours or major fraction thereof worked. Due to the press of business, Navarro and the other Aggrieved Employees would not be able to take timely, uninterrupted meal periods before the 5th hour worked. When Navarro tried to take a meal period, METRO TAQUERO management or the other staff would interrupt him with requests for assistance or questions about work related matters. Moreover, Navarro and the other Aggrieved Employees would have to take their meal periods in the restaurant (as some of the locations did not have a break room) where naturally patrons would interrupt them for assistance. Similarly, Navarro and the Aggrieved Employees have not been able to take two compliant 10-minute rest breaks due to the work load/ press of business. METRO TAQUERO management only authorized Navarro to take one rest break per shift, which was often interrupted. Compliant meal and rest breaks were definitively not part of METRO TAQUERO’s culture, especially in a fast-paced restaurant environment. On information and belief, METRO TAQUERO did not always provide premium wages to Navarro for these meal and rest break violations; if METRO TAQUERO did provide premium wages, they were not paid at the correct rate, as explained above.

METRO TAQUERO has failed to reimburse Navarro and the other Aggrieved Employees for the business expenses they incurred in direct consequence of the discharge of their duties. METRO TAQUERO only provided its employees with one uniform shirt and required Navarro and the other Aggrieved Employees to purchase additional uniform items and use their own personal cell phone to communicate with management concerning work matters and scheduling. METRO TAQUERO instructed Navarro and the other Aggrieved Employees to download the “Sling” app

on their personal mobile phones to check their scheduled shift times and which location they were scheduled for work. METRO TAQUERO did not reimburse Navarro and the other Aggrieved Employees for these uniform and mobile phone expenses. Accordingly, METRO TAQUERO was in violation of California Labor Code sections 2800 and 2802.

METRO TAQUERO has failed to pay Navarro and the other 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.

METRO TAQUERO has not provided Navarro and the other Aggrieved Employees accurate, itemized wage statements. Wage statements must include all hours worked, overtime hours worked, all applicable hourly rates, the correct legal name and correct address of employer entity, gross wages earned, all deductions, net wages earned, reimbursement for business expenses, the correct start and end of the applicable pay period, the employee ID numbers or social security numbers, among other items. Labor Code § 226(a)(2). METRO TAQUERO issued wage statements that inaccurately reflected total hours worked, gross and net wages earned, and the number of hours worked at each hourly rate because of METRO TAQUERO's failure to properly pay wages as explained herein. Labor Code §§ 226(a)(1), (2), (5), (9).

METRO TAQUERO has also violated Labor Code section 558 and engaged in business practices which violate Business and Professions Code Section 17200.

For the reasons herein, on behalf of himself and the Aggrieved Employees, Navarro alleges that METRO TAQUERO committed the following violations of the California Labor Code and the Wage Order: 1) failed to pay wages for all time worked or subject to METRO TAQUERO's control, including minimum wages and correctly-calculated overtime wages; 2) failed to provide meal periods or pay correctly-calculated premium wages in lieu thereof; 3) failed to authorize and permit rest periods or pay correctly-calculated premium wages in lieu thereof; 4) failed to reimburse reasonably necessary business expenses; 5) failed to provide compliant wage statements; 6) failed to maintain accurate records; and 7) failed to timely pay all wages owed during and upon separation of employment. Accordingly, Navarro now seeks civil penalties on behalf of himself and the Aggrieved Employees based on METRO TAQUERO's alleged violations of the California Labor Code and the Wage Order.

THE WAGE ORDER

The Wage Order applies to "all persons employed in the public housekeeping industry," where "Public Housekeeping Industry" includes "Restaurants." (*Id.*, §§ 1 & 2(P)(1).)

At all relevant times during the applicable limitations period, METRO TAQUERO operated a restaurant. Accordingly, Navarro and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

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**FAILURE TO PAY WAGES FOR ALL HOURS WORKED AT THE CORRECT
RATES OF PAY**

Labor Code §§ 510, 558, 1194, 1197, and 1198

Labor Code sections 510, 1194, and 1197 require employers to pay the wages agreed to and at least minimum wages for all time under the employer's control, overtime wages for hours worked over eight per day or forty per week at one and one-half times the employee's regular rate of pay, and double-time wages for hours worked over twelve in one day or for the first eight hours of work on the seventh consecutive day of work at two times the employee's regular rate of pay. Labor Code section 558 establishes a civil penalty for violation of Labor Code section 510. Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

METRO TAQUERO failed to pay all minimum, regular, and overtime wages to Navarro and the other Aggrieved Employees because METRO TAQUERO did not pay for off-the-clock work and failed to pay overtime wages based on correct regular rates of pay.

FAILURE TO PROVIDE MEAL PERIODS

Labor Code §§ 226.7, 512, and 1198

Employers must provide employees a 30-minute, uninterrupted meal period after no more than five hours of work, and a second such meal period after no more than 10 hours work. Labor Code § 512(a); IWC Wage Order(s) §§ 11(A)-(B); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. If an employer fails to provide an employee a meal period in accordance with California law, the employer must pay the employee one hour of pay at the employee's regular rate for each work day the meal period is not provided. Lab. Code § 226.7(c); IWC Wage Order(s), § 11(D); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

METRO TAQUERO failed to provide Navarro and the other Aggrieved Employees with compliant meal periods and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

Labor Code § 226.7 & 1198

The Rest Period section of the applicable Wage Order provides: "Every 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." IWC Wage Order(s), § 12(A). If an employer fails to provide an employee a rest period in accordance with California law, the employer must pay the employee one hour of pay at the employee's regular rate for each work day a rest period is not provided. IWC Wage Order(s), § 12(B); Labor Code § 226.7(c); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

METRO TAQUERO failed to authorize and permit Navarro and the other Aggrieved Employees to take compliant rest periods and failed to pay one hour of correctly-calculated premium pay for each day such a rest period was not provided.

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

Labor Code §§ 226

California employers are required to provide itemized wage statements showing, among other things, “gross wages earned,” “total hours worked by the employee,” “net wages earned,” and “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Labor Code §§ 226(a)(1), (2), (5), (9).

METRO TAQUERO did not provide itemized wage statements accurately reflecting Navarro’s and the other Aggrieved Employees’ gross wages earned, total hours worked, net wages earned, and all applicable hourly rates and the number of hours worked at each rate.

FAILURE TO PROVIDE ACCURATE RECORDS

Labor Code §§ 1174, 1174.5, 1198; IWC Wage Order(s), § 7

An employer must maintain payroll records showing hours worked daily by, and wages paid to, its employees, in accordance with rules established by the Industrial Welfare Commission. Labor Code §1174. An employer must also maintain time records showing when each work period, and meal period, begins and ends. IWC Wage Order(s), § 7.

Because METRO TAQUERO engaged in time shaving, did not record off-the-clock work, and interrupted employees’ meal periods, METRO TAQUERO failed to maintain accurate records as to the hours worked daily by employees and as to when each work period and meal period began and ended.

FAILURE TO REIMBURSE FOR EXPENSES

Labor Code §§ 1198, 2802, and 2804

An employer must reimburse its employees for their reasonable business-related expenses. Labor Code § 2802. The right to reimbursement cannot be waived. Labor Code § 2804.

METRO TAQUERO failed to reimburse Navarro and the other Aggrieved Employees for their reasonable business-related expenses, including use of their own personal cell phones and uniforms, in effectuating their job duties.

TIP VIOLATIONS

Lab. Code §§ 351 and 353

Labor Code § 351 prohibits an employer or agent of the employer from collecting, taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by a patron,

or deducting any amount from wages due an employee on account of a gratuity, or requiring an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Labor Code § 353 requires every employer to keep accurate records of all gratuities it receives, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise.

METRO TAQUERO failed to provide Navarro and the other Aggrieved Employees accurate tips to which they were entitled in violation of California Labor Code Section 351 and 353.

FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT
& UPON SEPARATION
Labor Code §§ 201-204

An employer must pay “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment...twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Labor Code § 204. An employer must pay all wages owed to terminated employees at the time of termination, or within 72 hours to employees who quit. Labor Code §§ 201-202. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days, until paid. Labor Code § 203.

As a result of its failure to pay all wages earned, as described above, METRO TAQUERO failed to pay all final wages due to Navarro and the other Aggrieved Employees and violated Labor Code Sections 201-204.

CONCLUSION

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that Luis Ronaldo Lara Navarro will seek both reasonable attorneys’ fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,



Maralle Messrelian, Esq.

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