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VIA ELECTRONIC FILING **September 4, 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)

58 EAST COLORADO CORPORATION
VIROJ WATANA
c/o RICHARD SHARPE
11100 WASHINGTON BOULEVARD
CULVER CITY, CA 90232

58 EAST COLORADO CORPORATION
VIROJ WATANA
10101 VENICE BLVD.
LOS ANGELES, CA 90034

PATCHA MARION v. 58 EAST COLORADO CORPORATION; VIROJ WATANA

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE

To Whom It May Concern:

Please be informed that our client, Ms. Patcha Marion (hereinafter "Ms. Marion" or "our client") seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid California employees ("aggrieved employees") who worked for 58 EAST COLORADO CORPORATION and VIROJ WATANA (hereinafter collectively referred to as "58 EAST") **at all of their restaurant locations in the State of California**, 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 VIROJ WATANA is being included in this PAGA notice pursuant to Labor Code section 558.1 in that he was and is the managing agent, owner, and/or director of 58 EAST COLORADO CORPORATION, was involved in the day-to-day operations of the business, including the wage and hour practices and policies, and as such, controlled the wages, hours, and/or working conditions of Ms. Marion and other hourly employees.

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Ms. Marion started working at 58 EAST on or around 2021 or 2022 as a server/waitress. Ms. Marion is and was classified as an hourly, non-exempt employee. Ms. Marion's last rate of pay was around $17.00 per hour. Ms. Marion is still currently employed at 58 EAST.

It is our position that due to personally suffering the below violations, Ms. Marion can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees who worked for 58 EAST anywhere in the state of California (at all different restaurant locations) during the relevant PAGA period.

It is our position that 58 EAST has violated the following Labor Code Sections against Ms. Marion and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for 58 EAST at their various locations/restaurants in the State of California during the relevant PAGA period.

58 EAST violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay our client and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for "off the clock" work. This is so because 58 EAST had a company policy wherein they would disproportionately round down the number of hours worked, resulting in "time shaving" and further resulting in aggrieved employees not being paid for all hours worked. In addition, Ms. Marion and others worked "off the clock" in that they would perform work activities including setting up before clocking in and would engage in clean up duties after clocking out. It was the normal practice for employees to work "off the clock" and management/ownership was unequivocally aware of this practice. Moreover, to the extent that Ms. Marion and others would work through their meal breaks, the latter would also amount to a minimum wage violation because they were not paid for all hours worked. Moreover, 58 EAST failed to provide its employees with proper and accurate reporting time pay.

Due to the above "off the clock" violations, 58 EAST also violated Labor Code §510 because it failed to pay our client and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Ms. Marion's and other aggrieved employees' actual work hours entitled them to overtime compensation, however, 58 EAST did not compensate its hourly, non-exempt employees with the correct amount of overtime due to the "off the clock" work and time shaving as described above. Moreover, 58 EAST did not keep accurate track of all hours worked and often shorted its employees on overtime compensation, whether it was at the rate of 1.5 times their regular rate or double time. Furthermore, 58 EAST failed to include bonuses/incentive payments/shift differentials in calculating employees' regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive, shift differential, and bonus payments were also not factored into employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

58 EAST also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide our client and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. 58 EAST did not completely relieve our client and others of all

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duty during said rest periods. 58 EAST did not pay to our client and others 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. Ms. Marion and others did not take any statutory, timely, and uninterrupted rest breaks during her employment tenure as that concept did not exist in a fast-paced restaurant environment where tables and guests needed constant and consistent attention. As such, it would not have been possible for employees such as Ms. Marion to take such rest breaks due to being understaffed and due to a heavy workload, especially in the fast-paced restaurant environment. As such, the culture as well as the policies and procedures of 58 EAST did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at 58 EAST was not conducive to receiving statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

58 EAST violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees, including Ms. Marion and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. 58 EAST did not completely relieve Ms. Marion and other employees of all duty during said meal periods. 58 EAST did not pay to Ms. Marion and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. Like the rest breaks, receiving a consistent thirty-minute <u>uninterrupted</u> and <u>timely</u> meal break before the 5th hour was not part of the company culture and was not enforced by 58 EAST. While 58 EAST tried to have Ms. Marion's scheduled shifts be 6 hours or less to avoid meal break issues, the reality was that Ms. Marion would consistently work PAST 10pm (the usual end of her scheduled shift) and so her shifts would actually be longer than 6 hours at times, however, Ms. Marion would not get any statutory breaks. There have been occasions wherein Ms. Marion has worked 8 hours consecutively without a single break. To the extent that Ms. Marion and other aggrieved employees even received meal periods, they were either late or consistently interrupted by work obligations as well. Consequently, it was the normal practice and custom of 58 EAST not to authorize, permit, and enforce timely statutory meal periods. If 58 EAST had our client sign a meal period waiver, it would not be valid and enforceable since our client and others generally worked more than a 5-hour shift. **Furthermore, under California law, however, employees must make an affirmative decision <u>every day</u> regarding whether to waive their meal periods. August 13, 2003 DLSE Opinion Letter ("The decision to forego a meal period may not, therefore, be based on a specific requirement of the employer or on a policy or practice which could reasonably be perceived to be a condition of employment. Therefore, blanket "waivers" of meal periods ...whether written or oral, will not be considered valid.").** If 58 EAST had our client sign an on-duty meal period agreement wherein our client agreed to work through the meal periods, it would be invalid and unenforceable because the nature of our client's job does not and did not prevent her from taking a meal period and the company could have hired "breakers" to relieve Ms. Marion of her job duties so that she can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for our client to revoke such an agreement even if it was signed. As such, our client and others did not always receive statutory, timely meal periods during their employment. To the extent that 58 EAST

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argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (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 Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at 58 EAST was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

Furthermore, during the relevant time period, and due to the above labor code violations, 58 EAST 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. Since Ms. Marion was not compensated for her "off the clock" work and since Ms. Marion did not receive meal and rest break premiums, Ms. Marion would still be owed wages pursuant to Labor Code Section 204. 58 EAST was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, tips, correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period, all employee identifying information, the correct and complete name and address of the legal employer, and reimbursement for business expenses, among others. As such, 58 EAST did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

During the relevant time period, 58 EAST also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Ms. Marion and others pursuant to California Labor Code sections 1174(d).

58 EAST also 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, overtime compensation, and premium pay for missed meal and rest breaks.

During the relevant time period, Ms. Marion and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by 58 EAST. These costs include, but are not limited to uniforms, and use of personal cell phones for work purposes as well as equipment to effectuate their job duties. Accordingly, 58 EAST was in violation of California Labor Code sections 2800 and 2802.

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Additionally, 58 EAST violated Labor Code Section 351 and 353 by taking some of the tips meant for employees and also deducting the tips from employees' earned wages. 58 EAST also deducted the credit card fee from employees' tips and did not timely provide the credit card and even cash tips to aggrieved employees. As such, aggrieved employees were not given accurate tips to which they were entitled.

Furthermore, 58 EAST did not provide proper and correct/accurate sick pay (inclusive of all bonuses/shift differentials/incentive payments) that was also delineated on employee pay stubs and also failed to provide proper sick leave in violation of Labor Code sections 233 and 246. Moreover, there were no suitable seating/rest break facilities for the employees pursuant to Wage Order no. 5-2001 as employees did not have a designated break area.

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

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, Ms. Marion 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 58 EAST.

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.

Very Truly Yours,

Harout Messrelian, Esq.