1635 Pontius Ave, 2nd Floor
Los Angeles, California 90025
(424) 320-6420
(424) 320-6454

November 4, 2024

Submitted at https://www.dir.ca.gov with $75 filing fee

PAGA Administrator
California Labor and Workforce Development Agency
PAGAfilings@dir.ca.gov

Re: RAR Hotel Management, Inc. (the "Employer")

NOTICE OF LABOR CODE VIOLATIONS UNDER LABOR CODE § 2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency, and the Employer

From: Blanca Morales Mejia (the "Employee"), who was subjected to the wage and hour practices set forth below.

The Employee, by way of the above-named counsel, submits this Notice, under and in compliance with the requirements of California Labor Code § 2699.3(a)/(c), and alleges the facts and theories to support the alleged violations as follows:

During the applicable time period each Employer employed the Employee and all other similarly situated aggrieved employees as non-exempt employees and utilized consistent policies and procedures regarding the Employee and all such other aggrieved employees, as follows:

First, the Employee and other aggrieved employees spent time under the Employer's control but were not paid therefor. For example, the Employer required the Employee and other aggrieved employees to perform work-related tasks at the end of their shifts after clocking out and inordinately wait in a line of employees before being able to clock in and/or out. In these circumstances, the Employer failed to pay all straight time, minimum, and/or overtime wages due for the time the Employee and other aggrieved employees were subject to the Employer's control. As such, the Employer violated Labor Code §§ 510, 1194, 1197, and/or 1198 and the applicable Industrial Wage Order, and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Second, the Employer paid the Employee and other aggrieved employees certain forms of non-discretionary pay, including but not limited to bonuses and/or incentive pay. However, the Employer did not include all forms of remuneration in the overtime pay rate when the Employee and other aggrieved employees worked overtime. As such, the Employer violated Labor Code §§ 510, 1194, 1197, 1198 and the applicable Industrial Wage Order and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Third, the Employee and other aggrieved employees were sometimes required to report to work but were not put to work or were furnished less than half of their usual or scheduled day's work. When this occurred, they were sometimes paid for less than half the usual or scheduled day's work at each such employee's regular rate of pay, in violation of the applicable Industrial Wage Order § 5(A)/(B) and Labor Code § 1198. As such, the Employer owes penalties under Labor Code §§ 2699(a)/(f), 1197.1, and/or 558.

Fourth, the Employee and other aggrieved employees were sometimes required to be on call/standby and available to report to work within one hour. Nonetheless, the Employer did not compensate for this time under the Employer's control and/or paid for less than half the usual or scheduled day's work at each such employee's regular rate of pay, in violation of the applicable Industrial Wage Order § 5(A)/(B) and Labor Code § 1194, 1197, and/or 1198 and the applicable Industrial Wage Order, and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Fifth, the Employer failed to timely provide all legally compliant meal breaks (including second meal breaks) to the Employee and other aggrieved employees, because the Employer failed to relinquish all control and/or because meal breaks were missed, interrupted, short and/or late. The Employee and other aggrieved employees were required to carry and respond to Employer-issued radios during their shift, including during meal and rest periods, essentially requiring them to be "on call" during meal and rest periods. The Employee and other aggrieved employees routinely worked over five hours but did not always get lawful full thirty-minute uninterrupted meal breaks within the first five hours of their shifts, including but not limited to for the reasons stated above. Further, they sometimes worked over ten and/or twelve hours but were not timely provided a legally compliant second meal break, including but not limited to for the reasons set forth above. The Employer did not always pay a meal period penalty for these violations. As such, the Employer violated Labor Code §§ 226.7, 512 and 516 and the applicable Industrial Wage Order ¶ 11 and owes penalties under Labor Code §§ 2699(f) and/or 558.

Sixth, the Employer failed to always authorize and permit paid rest breaks to the Employee and other aggrieved employees. As stated, the Employee and other similarly employees were required to carry and respond to Employer-issued radios during their shifts, essentially requiring them to be "on call" during meal and rest periods. The Employee and other aggrieved employees did not always get full ten-minute uninterrupted rest breaks within the first four hours of their shift or major fraction thereof and each subsequent four hours worked thereafter or major fraction thereof. As such, the Employee and other aggrieved employees were not always authorized and permitted legally compliant rest breaks. *Augustus v ABM Security Services, Inc.* (2016) 2 Cal 5th 257. Because the Employer did not pay a rest period penalty for these violations, the Employer violated Labor Code §§ 226.7 and 516 and the applicable Industrial Wage Order ¶ 12(A)/(B) and owes penalties under Labor Code §§ 2699(f) and/or 558.

Seventh, the Employer sometimes paid the Employee and other aggrieved employees premium pay for meal and/or rest period violations. However, the Employer failed to always comply with the meal and/or rest period penalty payment requirements established by *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, Labor Code §§ 226.7, 512, 516, and Section 11 and/or 12 of the IWC Wage Order(s). Specifically, the Employer failed to always include all forms of remuneration in the calculation of the regular rate of pay. As such, the Employer owes the Employee and other aggrieved employees unpaid wages, in violation of Labor Code §§ 1194 and 226.7(c) and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Eighth, the Employee and other aggrieved employees incurred work-related expenses while performing reasonable and necessary work-related duties, including but not limited to for the use of their personal mobile devices which were required by the Employer to respond to customer requests. The Employer failed to reimburse for these personal mobile device-related expenses. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.) As such, the Employer violated Labor Code §§ 450 and 2802 and owes penalties under Labor Code § 2699(f). Similarly, the Employer failed to reimburse the Employee for the provision and maintenance of tools and equipment, including cleaning supplies. Here, such tools and equipment are necessary to the performance of the job, and the Employee and other aggrieved employees did not always earn at least two times the minimum wage. As such, the Employer violated Labor Code § 2802 and owes penalties under Labor Code § 2699(f).

Ninth, regarding wage statements, under Labor Code § 226 and the applicable Industrial Wage Order, the Employer is required to include certain information on a paystub. Here, because of the Employer failed to pay all wages as set forth above, Employer issued wage statements that inaccurately reflected hours worked and/or wages earned by the Employee and other aggrieved employees, and the Employer has derivatively violated Labor Code § 226 and owes penalties under Labor Code §§ 2699(f) and/or 226.3.

Tenth, the Employer failed to always provide the Employee and other aggrieved employees with paid sick days paid at the regular rate of pay. The Employer paid the Employee and other aggrieved employees certain forms of non-discretionary pay, including but not limited to bonuses, commissions, and/or incentive pay. However, the Employer did not include all forms of remuneration in the sick pay rate in violation of Labor Code § 246(l) and owes penalties under Labor Code §§ 2699(a)/(f), 248.5, and/or 558.

Under Labor Code § 2699.3(a)(2)(A), please advise within 65 calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations.

Further, under Labor Code § 2699.3(c)(2)(A), the Employer may cure the alleged violations within 33 calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

In addition, this letter clearly sets forth the Employee's grievances and proposed remedies, under the Labor Code, PAGA, and otherwise, as set forth above. The Employee would like to engage in reasonable efforts to settle this dispute before filing a civil action against the Employer. The Employee gives the Employer the opportunity, prior to the expiration of the deadline for the LWDA to investigate, to meet the Employee's demands and settle this dispute.

We understand that if we do not receive a response within 65 calendar days of the postmark and filing date of this notice that the LWDA intends to investigate these allegations and/or a notice from the Employer that the alleged violations are cured, and/or if the alleged violations are not cured, then the Employee may immediately thereafter commence a civil action against the Employer under Labor Code § 2699.

Thank you for your consideration.

Regards,

Gregg Lander

Emil Davtyan
Gregg Lander
Vanessa M. Ruggles

cc: (via Certified Mail)
RAR Hotel Management, Inc.
11025 Vista Sorrento Parkway
San Diego, CA 92130