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December 19, 2024

VIA ONLINE SUBMISSION

Stewart Knox, Secretary
California Labor & Workforce
Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

VIA CERTIFIED MAIL

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ATS Eats, LLC
Attn: Legal Department
819 Grant Avenue
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NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE SECTION 2698, *ET SEQ.*

To: The California Labor and Workforce Development Agency; ATS Eats, LLC doing business as Blue Barn Gourmet

From: Rafael Guerrero Mendez, on behalf of himself and all other current and former hourly nonexempt employees for violations of the California Labor Code

To Whom It May Concern:

Abramson Labor Group has been retained by former employee Rafael Guerrero Mendez ("Mr. Guerrero") to seek compensation and all other available relief, including civil penalties on his behalf and on the behalf of all those similarly aggrieved (collectively with Mr. Guerrero, "Claimants") who have been injured by ATS Eats, LLC doing business as Blue Barn Gourmet ("Blue Barn") violations of the California Labor Code. Mr. Guerrero, on behalf of himself and all other similarly aggrieved current and former hourly nonexempt employees of Blue Barn, intend to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Factual Statement:

Blue Barn operates five Blue Barn restaurant locations in California, each of which offers patrons a casual dining atmosphere, including beer and wine, as well as pick-up/to-go orders, whether placed online, on the phone, or in person. Blue Barn's is operating three San Francisco restaurants in Cole Valley, Russian Hill, and the Marina District, as well as one in Corte Madero and another in Novato.

Claimant Mr. Guerrero worked at Blue Barn's San Francisco location from approximately May 2012 to September 1, 2024 as an hourly, nonexempt employee in the positions of Prep Cook/Cook/Keyholder (earning $19.00 per hour plus pooled gratuities). Mr. Guerrero, on behalf of himself and all other similarly aggrieved current and former employees in California in various positions, are or were generally engaged in serving restaurant patrons and providing labor at Blue Barn's various restaurant locations. As part of his employment with Blue Barn, Mr. Guerrero and Claimant and other hourly, nonexempt employees, collectively, "hourly nonexempt employees," are or were assigned to and required to suffer and permitted to work without pay, while performing tasks collectively including, but not limited to, unlocking the restaurant doors to open the restaurant to employees and locking the doors at the end of business hours and again to let employees out at the closing of the restaurant; greeting and seating guests; taking customers' orders; running food and bar drinks to customers; pre-bussing and bussing tables; preparing salads and sandwiches and other food items; cooking food on the grill; cleaning the kitchen stations; processing customers' payments; customer service; training new servers; dishwashing; and taking out the trash.

Claimant Mr. Guerrero regularly worked 5-6 days per week for 9 hours or more hours per day. During the entire course of his employment, Blue Barn failed to provide Mr. Guerrero and continues to fail to provide those similarly aggrieved with some overtime pay and compliant meal periods and rest breaks. Blue Barn has also failed to remit all gratuities paid by customers and failed to pay minimum wages to Mr. Guerrero and other hourly, nonexempt employees in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and section 4 of IWC Wage Order No. 5-2001. As a consequence of failing to pay minimum wages, Blue Barn has failed to comply with Labor Code sections 226.7, 510, and 512, and sections 3, 11, and 12 of all applicable Industrial Welfare Commission ("IWC") Wage Orders, including but not limited to, IWC Wage Order No. 5-2001. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, Blue Barn has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

Blue Barn has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Blue Barn has failed and continues to fail to provide timely, accurate wage statements to Mr. Guerrero and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by Blue Barn, including Mr. Guerrero, Blue Barn violated Labor Code section 203 by failing to timely pay all wages due upon separation. Mr. Guerrero is informed and believes that such violations are ongoing, systematic, and continuous. Mr. Guerrero intend to bring an action against Blue Barn under the Private Attorneys General Act ("PAGA") to recover wages and penalties as provided by California law.[1]

Theories of Labor Code Violations and Remedies:

Claimant Mr. Guerrero was employed by Blue Barn from approximately May 2012 to September 1, 2024 as an hourly, nonexempt employee holding the positions of Prep Cook/Cook/Keyholder. For a period of at least four (4) years prior to August 2024, but for our purposes here, one (1) year prior, Blue Barn has violated and continues to violate the California Labor Code sections as detailed below.

Claimants also were at all times entitled to payment of **minimum wages**. Blue Barn has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and sections 4 and 5 of IWC Wage Order No. 5-2001. First, Claimants worked while off-the-clock—meaning they were not punched in for work—and therefore, those working hours were not recorded and then compensated. This off-the-clock time primarily occurred (1) locking and unlocking the restaurant off-the-clock along with other closing duties like discarding trash, including employees' wait times to be let out of the restaurant on closing shifts; (2) after clocking out at the end of their pre-scheduled shift times because being clocked in past those hours was discouraged, and Blue Barn had conflicting policies, which were to complete all duties before leaving and to clock out at your scheduled shift-end regardless of whether work remained that must be completed. Consequently, Claimants clocked out and continued working to complete any remaining tasks such as taking out the trash, cleaning, locking the doors so patrons cannot enter, as set forth earlier. Accordingly, Claimants were not paid for that time spent working off the clock. That is, Defendant implemented policies and enforced practices requiring Claimants to perform compensable work while clocked out, the effects of which Defendant could have mitigated by adjusting expectations and/or by adding more staff to reduce the expected daily workload. However, Defendant instead chose to instruct Claimants to continue working while clocked out, and as explained in the two paragraphs to follow, to take meal periods late and to skip all rest breaks. In effect, these policies and practices cause Claimants to have noncompliant meal periods and to remain on-duty during rest breaks, and therefore, constitute a failure on Blue Barn's part to provide compliant rest breaks. With that, Blue Barn's corresponding failure to provide premium pay at the correct regular rate, if any premiums were paid at all, in lieu of compliant meal periods and rest breaks constitutes Blue Barn's failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. Second, Blue Barn's failure to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks,

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[1] Without limitation, Mr. Guerrero, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

> The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

as explained in further detail below, also constitutes a failure to pay minimum wages to Claimants. For all of the foregoing reasons, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and section 20 of IWC Wage Order No. 5-2001.

Claimants were at all times entitled to unpaid off-duty, uninterrupted **meal periods**. As explained in the preceding paragraph, Blue Barn failed to authorize and permit timely, full-length meal periods for Mr. Guerrero and all other similarly aggrieved employees as required by Labor Code sections 226.7 and 512 and section 11 of IWC Wage Order No. 5-2001. Mr. Guerrero and all similarly aggrieved persons were regularly unable to timely commence their 30-minute meal periods—before the end of the fifth hour. Despite that, Blue Barn did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant meal periods for each workday on which they occurred. In fact, Mr. Guerrero's final—or near final—paycheck issued August 23, 2024 reveals that Blue Barn failed to pay him a single meal period premium the entire year. Accordingly, since Blue Barn required Mr. Guerrero and others similarly situated to commence their meal periods late in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code sections 558, section 20 of IWC Wage Order No. 5-2001, and 2699(f).

Claimants were at all times entitled to take paid, off duty 10-minute **rest breaks**. Blue Barn failed to authorize and permit Mr. Guerrero and all other similarly aggrieved employees to take any full-length, off-duty rest breaks as required by Labor Code sections 226.7 and section 12 of IWC Wage Order No. 5-2001. Blue Barn enforced a policy that did not permit Claimants from taking any of their rest breaks because the restaurant was very busy and would be short-staffed if personnel took rest breaks. As such, Claimants were not able to take their requisite number of 10-minute rest breaks based on their shift duration; Claimants regularly worked through their rest breaks. Blue Barn did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant rest breaks for each workday on which they occurred. In fact, Mr. Guerrero's final—or near final—paycheck issued August 23, 2024 reveals that Blue Barn failed to pay him a single rest break premium the entire year. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and section 20 of IWC Wage Order No. 5-2001. Furthermore, since Blue Barn required their hourly nonexempt employees to perform work during rest periods in violation of Labor Code section 226.7(b), Claimants seek all available penalties set forth in Labor Code sections 558 and 2699.

At all times relevant herein, Claimants were entitled to the payment of **overtime**. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Blue Barn was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over 12 hours per workday and eight hours on the seventh day of a workweek. Mr. Guerrero occasionally worked and Claimants regularly worked overtime hours. Blue Barn has failed to and continues to fail to pay Claimants overtime wages owed for off-the-clock time worked that should have been compensated as overtime, yet regularly required them to work these overtime hours without premium pay under Labor Code section 1194. In short, during the entire course of their employment, Blue Barn failed to provide Mr. Guerrero and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 5-2001, section 3.

Claimants were at all times entitled to receive all gratuities paid to or left for employees by patrons regardless of the form in which the gratuity was delivered, which shall not be deducted by credit card fees assessed to Blue Barn by credit card companies. Cal. Lab. Code § 351. Labor Code section provides in pertinent part that "[n]o employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity. . . . Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company." Blue Barn failed to remit all gratuities owed to Claimants, including Mr. Guerrero, as required by Labor Code section 351. First, Blue Barn engaged in improper tip withholding practices by reducing the gratuities collected by the amount credit card companies assessed to Blue Barn on those particular transactions. Second, Blue Barn pooled tips and included in those tip pools supervisors who are not entitled to share in the tip pool. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Pursuant to Labor Code sections 201–203, Claimants who have since separated from Blue Barn, including Mr. Guerrero, were entitled to be paid all **wages owed upon separation** within the statutorily allotted time—immediately (resignation with notice and termination) or within 72 hours (resignation without notice). Claimants, including Mr. Guerrero, did not receive his final pay of all wages within the requisite time based on the circumstances of his separation nor did he receive all wages Blue Barn owed Mr. Guerrero based on Blue Barn's prior failings to pay all wages owed every pay period, including but not limited to minimum and overtime wages, all meal and rest premiums owed, and all gratuities customers paid, as explained above. On September 8, 2024, Blue Barn paid Mr. Guerrero his final wages seven days after his termination on September 1, 2024 via direct deposit at the time of Blue Barn's regular payroll schedule, not immediately upon termination as required by law.

Claimants were at all times entitled to be provided timely and accurate **wage statements** from Blue Barn pursuant to Labor Code section 226. First, Mr. Guerrero's wage statements do not reflect the correct legal name of Defendant—ATS Eats, LLC—his paystubs are missing the comma. Second, because Blue Barn failed to pay Claimants all of their meal period and rest break premiums for noncompliant meal periods and rest breaks and failed to pay Claimants minimum wages for all hours worked before, during, and after their shifts and for all overtime wages due, Claimants' wage statements were inaccurate in reflecting meal period and rest break premiums owed, overtime and minimum wages, and all hours worked every pay period. As a consequence, Claimants' wage statements also do not reflect the accurate amount of net and gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Blue Barn's uniform failure to pay overtime and minimum wages, failure to authorize and permit full-length, off-duty rest breaks and meal periods or pay Claimants adequate premium compensation in lieu thereof, failure to remit all gratuities, failure to furnish timely and accurate wage statements, and failure to timely pay all wages upon separation violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512, 1182.12, 1194, and 1197, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys' fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Guerrero, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Blue Barn for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

Should you require any additional information, please feel free to contact me.

Sincerely,

ABRAMSON LABOR GROUP

Cheryl Kenner

Cheryl A. Kenner