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By E. Schilawski ,Deputy Clerk

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

GLEN ETHERINGTON, on behalf of the State of California, as a private attorney general,

Plaintiff,

vs.

PREMIER FOOD SERVICES, INC., a Corporation; SMG HOLDINGS, LLC, a Limited Liability Company; PREMIER FOOD SERVICES, LLC, a Limited Liability Company; PREMIER FOOD SERVICES MANAGEMENT GROUP, LLC, a Limited Liability Company; SMG, a corporation; SMG FOOD AND BEVERAGE, LLC, a Limited Liability Company; SMG MANAGEMENT I, LLC, a Limited Liability Company; SMG MANAGEMENT II, LLC, a Limited Liability Company and DOES 1 through 50, inclusive,

Defendants.

Case No. 26CU014200C

REPRESENTATIVE ACTION COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code § 2699 for violations of Labor Code §§ 204, 210, 226(a), 226.7, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).

Plaintiff Glen Etherington ("PLAINTIFF"), on behalf of the people of the State of California and as an "aggrieved employee" acting as a private attorney general under the Labor Code Private Attorney General Act of 2004, § 2699, ("PAGA") only, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFF brings this action against defendants Premier Food Services, Inc., SMG Holdings, LLC, Premier Food Services, LLC, Premier Food Services Management Group, LLC, SMG, SMG Food And Beverage, LLC, SMG Management I, LLC and SMG Management II, LLC (referred to as "DEFENDANT") seeking only to recover PAGA civil penalties on behalf of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as permitted by California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special damages for those violations, but simply the civil penalties permitted by California Labor Code § 2699.

2. California has enacted the PAGA which permits PLAINTIFF to bring an action for PAGA penalties *only*, which is the precise and sole nature of this action.

3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT's violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be construed as attempting to obtain any relief that would not be available in a PAGA-only action.

4. PLAINTIFF is not suing in his individual capacity; he is proceeding herein solely under the PAGA, on behalf of the State of California for all aggrieved employees. Nothing in this complaint should be construed as PLAINTIFF suing in his individual capacity.

THE PARTIES

5. Premier Food Services, Inc. is a corporation that at all relevant times mentioned

herein conducted and continues to conduct substantial business in California. SMG Holdings, LLC is a limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business in California. Premier Food Services, LLC is a limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business in California. Premier Food Services Management Group, LLC is a limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business in California. SMG is a corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in California. SMG Food And Beverage, LLC is a limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business in California. SMG Management I, LLC is a limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business in California. SMG Management II, LLC is a limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business in California.

6. Premier Food Services, Inc., SMG Holdings, LLC, Premier Food Services, LLC, Premier Food Services Management Group, LLC, SMG, SMG Food And Beverage, LLC, SMG Management I, LLC and SMG Management II, LLC were the joint employers of PLAINTIFF as evidenced by paycheck, standardized company employment handbooks, by standardized policies and procedures, by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein, and are therefore collectively referred to herein as ("DEFENDANT"). DEFENDANT owns and operates a food services management business.

7. PLAINTIFF is currently employed by DEFENDANT in California. PLAINTIFF's employment with DEFENDANT started in June of 2023. PLAINTIFF has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

8. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to all individuals who are or previously were employed by Premier Food Services, Inc. and/or SMG Holdings, LLC and/or Premier Food Services, LLC and/or Premier Food Services Management Group, LLC and/or SMG and/or SMG Food And Beverage, LLC and/or SMG Management I, LLC and/or SMG Management II, LLC in California, including any employees staffed with Premier Food Services, Inc., and/or SMG Holdings, LLC and/or Premier Food Services, LLC and/or Premier Food Services Management Group, LLC and/or SMG and/or SMG Food And Beverage, LLC and/or SMG Management I, LLC and/or SMG Management II, LLC in California by a third party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of October 16, 2024 until a date as determined by the Court (the "PAGA PERIOD").

9. PLAINTIFF, on behalf of all AGGRIEVED EMPLOYEES presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action pursuant to Labor Code § 2699 seeking fixed civil penalties for DEFENDANT's violation of California Labor Code §§ 204, 210, 226(a), 226.7, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699.

10. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information

and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

11. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and all the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and the AGGRIEVED EMPLOYEES are paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. As a result, PLAINTIFF and the AGGRIEVED

EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by working without their time being correctly recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business records.

13. State law provides that employees must be paid overtime and meal and rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and the AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to specific elements of an employee's performance.

14. The second component of PLAINTIFF's and the AGGRIEVED EMPLOYEES' compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and the AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANT. The non-discretionary incentive program provided all employees paid on an hourly basis with incentive compensation when the employees met the various performance goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest break premium pay. Management and supervisors described the incentive program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and the AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted in a underpayment of overtime compensation and meal and rest break premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES by DEFENDANT.

15. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED EMPLOYEES were required from time to time to perform work as

ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and the AGGRIEVED EMPLOYEES. PLAINTIFF and the AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANT's corporate policy and practice.

16. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES were also required from time to time to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and the AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu thereof. Additionally, the applicable California Wage Order requires employers to provide employees with off-duty rest periods, which the California Supreme Court defined as time during which an employee is relieved from all work related duties and free from employer control. In so doing, the Court held that the requirement under California law that employers authorize and permit all employees to take rest period means that employers must relieve employees of all duties and relinquish control over how employees spend their time which includes control over the locations where employees may take their rest period. Employers cannot impose controls that prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which states

PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during their rest period.

17. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, meaning the time during which an employee was subject to the control of an employer, including all the time the employee was permitted or suffered to permit this work. DEFENDANT required these employees to work off the clock without paying them for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES were under compensated for all time worked. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited time worked by working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime wage rates. To the extent that the time worked off the clock does not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to

identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period. When the hours shown on the wage statements were added up, they did not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Additionally, DEFENDANT violated Cal. Lab. Code Section 226(a)(8) by failing to correctly list the name of the legal entity that employs PLAINTIFF and other AGGRIEVED EMPLOYEES. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226. As a result, DEFENDANT from time to time provided PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

19. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period. Cal. Lab. Code § 210 provides:

> [I]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

20. DEFENDANT from time to time failed to pay PLAINTIFF and the AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal. Lab. Code § 204(d), including but not limited to the "Hourly" regular wage payments.

21. DEFENDANT underpaid sick pay wages to PLAINTIFF and the AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-discretionary remuneration, including, but not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay,

DEFENDANT underpays sick pay to PLAINTIFF and the AGGRIEVED EMPLOYEES at their base rates of pay.

22. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt employees be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

23. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-discretionary incentive wages which increased their regular rate of pay. However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

24. DEFENDANT intentionally and knowingly failed to reimburse and indemnify PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

25. In the course of their employment PLAINTIFF and the AGGRIEVED EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal cellular phones and purchase & maintain uniforms as a result of and in furtherance of their job duties as employees for DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones and purchase & maintenance of uniforms for DEFENDANT's benefit. Specifically,

PLAINTIFF and the AGGRIEVED EMPLOYEES were required by DEFENDANT to use their personal cellular phones and purchase & maintain work uniforms. As a result, in the course of their employment with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but were not limited to, costs related to the use of their personal cellular phones and purchase & maintenance of uniforms all on behalf of and for the benefit of DEFENDANT.

26. California Labor Code § 351 establishes the requirements for an employer regarding the payment of gratuities. Specifically, gratuities are the sole property of the employees. California Labor Code § 351 expressly prohibits employers and their agents from collecting, taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the term "gratuity" as including any money that has been paid or given or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink or articles sold or served to such patron. Labor Code § 353 requires employers to keep accurate records of all gratuities they receive, directly or indirectly.

27. Although tip pooling is not expressly prohibited by the Labor Code, employees who mandate tip pooling must only distribute pooled tips to employees in the "chain of service." By distributing tips to DEFENDANT directly and to their agents who were not in the "chain of service," DEFENDANT has violated and continues to violate the legal requirements for handling pooled tips.

28. During the PAGA PERIOD, DEFENDANT failed and continues to fail to accurately calculate and pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their gratuities earned while working for DEFENDANT. DEFENDANT systematically, unlawfully and unilaterally failed to accurately calculate wages for gratuities earned by the PLAINTIFF and the AGGRIEVED EMPLOYEES in order to avoid paying these employees the correct compensation. As a result, the PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited wages due them for regularly working without all compensation they earned being paid to them. DEFENDANT's uniform policy and practice to not pay the

AGGRIEVED EMPLOYEES all of their gratuities owed to them in accordance with applicable California state law is evidenced by DEFENDANT's business records.

29. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to compensate the PLAINTIFF and the AGGRIEVED EMPLOYEES for all of their gratuities earned while working in the "chain of service" for DEFENDANT . This uniform policy and practice of DEFENDANT was intended to purposefully avoid the payment of the correct gratuity compensation as required by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted accordingly. Alternatively, to the extent that DEFENDANT contends the money

paid to PLAINTIFF and other AGGRIEVED EMPLOYEES was a mandatory service charge and not a "gratuity," DEFENDANT's method for calculating the correct overtime rate failed to comply with applicable law. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an hourly rate plus the additional service charge or gratuity that DEFENDANT required their customers to pay to PLAINTIFF and the AGGRIEVED EMPLOYEES. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES' compensation was DEFENDANT's mandatory gratuity percentage program that paid the PLAINTIFF and other AGGRIEVED EMPLOYEES a gratuity percentage based on the total amount of a customer's bill. The mandatory gratuity program ran by DEFENDANT provided "for the convenience of all members, a gratuity percentage, as determined from time to time by DEFENDANT may be added to all food and beverage sales including cart sales." However, when calculating the regular rate of pay in order to pay overtime to PLAINTIFF and the AGGRIEVED EMPLOYEES, DEFENDANT failed and still fails to include the gratuity percentage as part of the employees' "regular rate of pay" for purposes of calculating overtime pay. Management and supervisors described the gratuity percentage to potential and new employees as part of the compensation package. As a matter of law, the mandatory gratuity percentage received by the PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment of overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANT .

JURISDICTION AND VENUE

30. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10.

31. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFF and other AGGRIEVED EMPLOYEES.

FIRST CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698]

(By PLAINTIFF and Against All Defendants)

32. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

33. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution,

but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

34. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to all individuals who are or previously were employed by Premier Food Services, Inc. and/or SMG Holdings, LLC and/or Premier Food Services, LLC and/or Premier Food Services Management Group, LLC and/or SMG and/or SMG Food And Beverage, LLC and/or SMG Management I, LLC and/or SMG Management II, LLC in California, including any employees staffed with Premier Food Services, Inc., and/or SMG Holdings, LLC and/or Premier Food Services, LLC and/or Premier Food Services Management Group, LLC and/or SMG and/or SMG Food And Beverage, LLC and/or SMG Management I, LLC and/or SMG Management II, LLC in California by a third party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of October 16, 2024 until a date as determined by the Court (the "PAGA PERIOD").

35. On October 16, 2025, PLAINTIFF gave written notice by electronic mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. *See* **Exhibit #1**, attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

36. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the

AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required expenses, and (f) failed to only distribute pooled tips to employees in the "chain of service", all in violation of the applicable Labor Code sections listed in Labor Code §§ 204, 210, 226(a), 226.7, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.[1] PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on other AGGRIEVED EMPLOYEES.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the State of California and with respect to other AGGRIEVED EMPLOYEES:
   - A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and,
   - B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699.

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[1]Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).

Dated: March 13, 2026 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Norman Blumenthal

Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw

Attorneys for Plaintiff

EXHIBIT 1

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WRITERS EXT: 1004

October 16, 2025
CA3756

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Premier Food Services, Inc.
Certified Mail #9589071052702856168603
CSC - Lawyers Incorporating Service
Koy Saechao
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

RE: Notice Of Violations Of California Labor Code Sections §§ 204, 210, 226(a), 226.7, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California, and Violation of Applicable Industrial Welfare Commission Wage Order(s) brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

"Aggrieved Employees" refers to all individuals who are or previously were employed by Premier Food Services, Inc. and/or SMG Holdings, LLC and/or Premier Food Services, LLC and/or Premier Food Services Management, LLC and/or SMG and/or SMG Food And Beverage, LLC and/or SMG Management I, LLC and/or SMG Management II, LLC (collectively referred to as "Defendant") in California, including any employees staffed with Premier Food Services, Inc. and/or SMG Holdings, LLC and/or Premier Food Services, LLC and/or Premier Food Services Management, LLC and/or SMG and/or SMG Food And Beverage, LLC and/or SMG Management I, LLC and/or SMG Management II, LLC by a third party, and classified as non-exempt employees during the time period of October 16, 2024 until a date as determined by the Court ("PAGA Period"). Our offices represent Glen Etherington ("Plaintiff") and other Aggrieved Employees in a lawsuit against Defendant. Plaintiff has been employed by Defendant in California since June of 2023. Plaintiff remains a seasonal employee as his employment term stretches from June through September. Plaintiff works for Defendant as a Bartender at the Del Mar Fairgrounds located at 2260 Jimmy Durante Boulevard, Del Mar, California 92014.

Plaintiff has been at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their

missed meal and rest breaks, for all of their time spent working off the clock as described further below, and for businesses expenses incurred but not reimbursed.

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California Labor Code § 351 establishes the requirements for an employer regarding the payment of gratuities. Specifically, gratuities are the sole property of the employees. California Labor Code § 351 expressly prohibits employers and their agents from collecting, taking, or receiving any portion of a gratuity. Although tip pooling is not expressly prohibited by the Labor Code, employees who mandate tip pooling must only distribute pooled tips to employees in the "chain of service." By distributing tips to Defendant directly and to their agents who were not in the "chain of service," Defendant violated and continue to violate the legal requirements for handling pooled tips

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As a part of Plaintiff's job, he was required by Defendant to wear a series of all black uniforms. During the PAGA Period, Plaintiff and other Aggrieved Employees were required to purchase such clothes. Despite requiring Plaintiff and other Aggrieved Employees to purchase their uniforms to perform the job, Defendant failed to reimburse Plaintiff for all of his uniform related expenses that he incurred as a result of his job duties for Defendant in violation of Cal. Lab. Code Section 2802. Further, Defendant would call plaintiff directly on his cell phone regarding work-related issues during the PAGA Period and Defendant failed to reimburse Plaintiff for the costs associated with his cell phone use in violation of Cal. Lab. Code Section 2802.

During the PAGA period Plaintiff and other Aggrieved Employees were not able to always take the legally required meal and rest periods which is in violation of Cal. Labor Codes Sections 226.7 and 512. In all cases, Plaintiff had to stay on task and on time with Defendant's stringent schedule and attend to the constant flow of customers, in addition to continuously making drinks for the adjacent restaurant, thereby foregoing all of his rest breaks in the process. As such, Plaintiff never received a single rest break during his entire employment term. A review of Plaintiff's pay stubs reveals that Defendant failed to pay Plaintiff for all of his rest and meal break violations. As a result of the above, Defendant violated Cal. Labor Code Sections 226.7, 512 & 1198.

Pursuant to Labor Code § 204 & 210, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages, including the minimum, overtime and meal and rest break penalties described above. Plaintiff was also paid "Retroactive" wages for work performed weeks and/or months earlier in violation of Cal. Lab. Code Section 204. Plaintiff further contends that Defendant failed to provide him and other Aggrieved Employees with accurate wage statements in violation of California Labor Code section 226(a). Plaintiff and the Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a)(9). The wage statements Defendant provided to Plaintiff and the Aggrieved employees failed to identify the number of hours worked and hourly rates, including for but not limited to, "Retroactive" wage payments and "Retro Tips" wage payments. Additionally, Defendant violated Cal. Lab. Code Section 226(a)(8) by failing to correctly list the name of the legal entity that employs Plaintiff and other Aggrieved Employees.

Defendant also paid Plaintiff and other Aggrieved Employees non-discretionary incentive compensation wages during the PAGA Period in which Defendant failed to

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If you have any questions of concerns, please do not hesitate to contact me at the above number and email address.

Respectfully,

/s/ *Nicholas J. De Blouw*
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WRITERS EXT:
1004

October 16, 2025
CA3756

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Premier Food Services, LLC
Certified Mail #9589071052702856215475
CSC - Lawyers Incorporating Service
Koy Saechao
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

RE: Notice Of Violations Of California Labor Code Sections §§ 204, 210, 226(a), 226.7, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California, and Violation of Applicable Industrial Welfare Commission Wage Order(s) brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

"Aggrieved Employees" refers to all individuals who are or previously were employed by Premier Food Services, Inc. and/or SMG Holdings, LLC and/or Premier Food Services, LLC and/or Premier Food Services Management, LLC and/or SMG and/or SMG Food And Beverage, LLC and/or SMG Management I, LLC and/or SMG Management II, LLC (collectively referred to as "Defendant") in California, including any employees staffed with Premier Food Services, Inc. and/or SMG Holdings, LLC and/or Premier Food Services, LLC and/or Premier Food Services Management, LLC and/or SMG and/or SMG Food And Beverage, LLC and/or SMG Management I, LLC and/or SMG Management II, LLC by a third party, and classified as non-exempt employees during the time period of October 16, 2024 until a date as determined by the Court ("PAGA Period"). Our offices represent Glen Etherington ("Plaintiff") and other Aggrieved Employees in a lawsuit against Defendant. Plaintiff has been employed by Defendant in California since June of 2023. Plaintiff remains a seasonal employee as his employment term stretches from June through September. Plaintiff works for Defendant as a Bartender at the Del Mar Fairgrounds located at 2260 Jimmy Durante Boulevard, Del Mar, California 92014.

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Pursuant to Labor Code § 204 & 210, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages, including the minimum, overtime and meal and rest break penalties described above. Plaintiff was also paid "Retroactive" wages for work performed weeks and/or months earlier in violation of Cal. Lab. Code Section 204. Plaintiff further contends that Defendant failed to provide him and other Aggrieved Employees with accurate wage statements in violation of California Labor Code section 226(a). Plaintiff and the Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a)(9). The wage statements Defendant provided to Plaintiff and the Aggrieved employees failed to identify the number of hours worked and hourly rates, including for but not limited to, "Retroactive" wage payments and "Retro Tips" wage payments. Additionally, Defendant violated Cal. Lab. Code Section 226(a)(8) by failing to correctly list the name of the legal entity that employs Plaintiff and other Aggrieved Employees.

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Labor and Workforce Development Agency
Online Filing

Premier Food Services Management Group, LLC
Certified Mail #9589071052702856215482
CSC - Lawyers Incorporating Service
Koy Saechao
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

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"Aggrieved Employees" refers to all individuals who are or previously were employed by Premier Food Services, Inc. and/or SMG Holdings, LLC and/or Premier Food Services, LLC and/or Premier Food Services Management, LLC and/or SMG and/or SMG Food And Beverage, LLC and/or SMG Management I, LLC and/or SMG Management II, LLC (collectively referred to as "Defendant") in California, including any employees staffed with Premier Food Services, Inc. and/or SMG Holdings, LLC and/or Premier Food Services, LLC and/or Premier Food Services Management, LLC and/or SMG and/or SMG Food And Beverage, LLC and/or SMG Management I, LLC and/or SMG Management II, LLC by a third party, and classified as non-exempt employees during the time period of October 16, 2024 until a date as determined by the Court ("PAGA Period"). Our offices represent Glen Etherington ("Plaintiff") and other Aggrieved Employees in a lawsuit against Defendant. Plaintiff has been employed by Defendant in California since June of 2023. Plaintiff remains a seasonal employee as his employment term stretches from June through September. Plaintiff works for Defendant as a Bartender at the Del Mar Fairgrounds located at 2260 Jimmy Durante Boulevard, Del Mar, California 92014.

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Defendant also paid Plaintiff and other Aggrieved Employees non-discretionary

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incentive compensation wages during the PAGA Period in which Defendant failed to correctly include these payments into Plaintiff's regular rate for the purposes of calculating the correct overtime, meal break violation pay, and sick pay and as a result violated Labor Code Sections 226.7, 246, 510 and 512. For example, Defendant paid Plaintiff several non-discretionary incentive wages including but not limited to, "Service Charges" and "BIRTHDAY" in the PAGA Period and Plaintiff also worked overtime and/or was paid a meal period violation and/or sick pay during that pay period. Defendant failed to include these wages into Plaintiff's regular rate and as a result Plaintiff was not paid proper wages during the PAGA Period.

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October 16, 2025
CA3756

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Labor and Workforce Development Agency
Online Filing

SMG
Certified Mail #9589071052702856210050
300 Conshohocken State
Suite 450
West Conshohocken, PA 19428

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WRITERS EXT: 1004

October 16, 2025
CA3756

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Labor and Workforce Development Agency
Online Filing

SMG
Certified Mail #9589071052702856168610
CSC - Lawyers Incorporating Service
Koy Saechao
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

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RE: Notice Of Violations Of California Labor Code Sections §§ 204, 210, 226(a), 226.7, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California, and Violation of Applicable Industrial Welfare Commission Wage Order(s) brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

"Aggrieved Employees" refers to all individuals who are or previously were employed by Premier Food Services, Inc. and/or SMG Holdings, LLC and/or Premier Food Services, LLC and/or Premier Food Services Management, LLC and/or SMG and/or SMG Food And Beverage, LLC and/or SMG Management I, LLC and/or SMG Management II, LLC (collectively referred to as "Defendant") in California, including any employees staffed with Premier Food Services, Inc. and/or SMG Holdings, LLC and/or Premier Food Services, LLC and/or Premier Food Services Management, LLC and/or SMG and/or SMG Food And Beverage, LLC and/or SMG Management I, LLC and/or SMG Management II, LLC by a third party, and classified as non-exempt employees during the time period of October 16, 2024 until a date as determined by the Court ("PAGA Period"). Our offices represent Glen Etherington ("Plaintiff") and other Aggrieved Employees in a lawsuit against Defendant. Plaintiff has been employed by Defendant in California since June of 2023. Plaintiff remains a seasonal employee as his employment term stretches from June through September. Plaintiff works for Defendant as a Bartender at the Del Mar Fairgrounds located at 2260 Jimmy Durante Boulevard, Del Mar, California 92014.

Plaintiff has been at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their

missed meal and rest breaks, for all of their time spent working off the clock as described further below, and for businesses expenses incurred but not reimbursed.

As to Plaintiff's off the clock work, he parked off-site and he was often miles away at the horse stables at Via de la Valle. From there, Plaintiff fought traffic to get back to the fair/racetrack. Defendant provided transportation to and from Plaintiff's vehicle, further exerting their domain and control over Plaintiff during this unpaid period of time. Generally, during fair season, Plaintiff estimates that it took him 30-60 minutes from the time when he parked his car to the moment he was able to clock in. Race track season provided a brief respite as Plaintiff's unpaid time amounted to 15-20 minutes upon arrival to eventual clock in. This very same process repeated itself after Plaintiff clocked out for the day as he made the long trek to return to his vehicle after clocking out for the day so Plaintiff's unpaid time ranged from 30-120 minutes on a daily basis.

Yet the extent of Plaintiff's unpaid off the clock time didn't end there, hardly so. In fact, once Plaintiff arrived at the fairgrounds, he also had to make his way through a security checkpoint before finally reaching the actual clock in area. Considering the sheer number of employees, Plaintiff again had to wait before actually clocking in as Defendant only had a paltry three clock in portals. Additionally, Defendant encouraged Plaintiff to arrive early to prepare glassware, liquor, cash, and otherwise so he would be ready to go once he clocked in and as Defendant's customers arrived. **In a common theme, most of this set-up was done off the clock and therefore went unpaid by Defendant** in violation of Cal. Lab. Codes Sections 510, 1194, 1197, 1197.1 and 1198.

California Labor Code § 351 establishes the requirements for an employer regarding the payment of gratuities. Specifically, gratuities are the sole property of the employees. California Labor Code § 351 expressly prohibits employers and their agents from collecting, taking, or receiving any portion of a gratuity. Although tip pooling is not expressly prohibited by the Labor Code, employees who mandate tip pooling must only distribute pooled tips to employees in the "chain of service." By distributing tips to Defendant directly and to their agents who were not in the "chain of service," Defendant violated and continue to violate the legal requirements for handling pooled tips

As to the tip pooling, Defendant used Clover as the operating system between bartender to customer and Plaintiff believes he was properly compensated via this system. The problems lie in the areas in which Plaintiff had no visibility, there are two-fold. First, Plaintiff had no visibility to the Aloha system which was the operating entity for the sales between servers and other customers. As such, Plaintiff saw his tips range widely on a day-to-day basis as sometimes servers took proper care of the bartenders and other times they did not. The discrepancy took place despite the fact that Plaintiff was entitled to his proper share of tips, and visibility to this operating system, by way of his collectively bargained contract with his union. Plaintiff often alerted Defendant to this fact and asked for more visibility, and in turn, more tip money from such sales yet was repeatedly denied

access to such figures. This same clandestine process repeated itself when there was a private event on-site.

As a part of Plaintiff's job, he was required by Defendant to wear a series of all black uniforms. During the PAGA Period, Plaintiff and other Aggrieved Employees were required to purchase such clothes. Despite requiring Plaintiff and other Aggrieved Employees to purchase their uniforms to perform the job, Defendant failed to reimburse Plaintiff for all of his uniform related expenses that he incurred as a result of his job duties for Defendant in violation of Cal. Lab. Code Section 2802. Further, Defendant would call plaintiff directly on his cell phone regarding work-related issues during the PAGA Period and Defendant failed to reimburse Plaintiff for the costs associated with his cell phone use in violation of Cal. Lab. Code Section 2802.

During the PAGA period Plaintiff and other Aggrieved Employees were not able to always take the legally required meal and rest periods which is in violation of Cal. Labor Codes Sections 226.7 and 512. In all cases, Plaintiff had to stay on task and on time with Defendant's stringent schedule and attend to the constant flow of customers, in addition to continuously making drinks for the adjacent restaurant, thereby foregoing all of his rest breaks in the process. As such, Plaintiff never received a single rest break during his entire employment term. A review of Plaintiff's pay stubs reveals that Defendant failed to pay Plaintiff for all of his rest and meal break violations. As a result of the above, Defendant violated Cal. Labor Code Sections 226.7, 512 & 1198.

Pursuant to Labor Code § 204 & 210, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages, including the minimum, overtime and meal and rest break penalties described above. Plaintiff was also paid "Retroactive" wages for work performed weeks and/or months earlier in violation of Cal. Lab. Code Section 204. Plaintiff further contends that Defendant failed to provide him and other Aggrieved Employees with accurate wage statements in violation of California Labor Code section 226(a). Plaintiff and the Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a)(9). The wage statements Defendant provided to Plaintiff and the Aggrieved employees failed to identify the number of hours worked and hourly rates, including for but not limited to, "Retroactive" wage payments and "Retro Tips" wage payments. Additionally, Defendant violated Cal. Lab. Code Section 226(a)(8) by failing to correctly list the name of the legal entity that employs Plaintiff and other Aggrieved Employees.

Defendant also paid Plaintiff and other Aggrieved Employees non-discretionary incentive compensation wages during the PAGA Period in which Defendant failed to

correctly include these payments into Plaintiff's regular rate for the purposes of calculating the correct overtime, meal break violation pay, and sick pay and as a result violated Labor Code Sections 226.7, 246, 510 and 512. For example, Defendant paid Plaintiff several non-discretionary incentive wages including but not limited to, "Service Charges" and "BIRTHDAY" in the PAGA Period and Plaintiff also worked overtime and/or was paid a meal period violation and/or sick pay during that pay period. Defendant failed to include these wages into Plaintiff's regular rate and as a result Plaintiff was not paid proper wages during the PAGA Period.

This notice is provided to enable Plaintiff to proceed with a Complaint against Defendant as authorized by California Labor Code section 2699. The lawsuit will consist of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

If you have any questions of concerns, please do not hesitate to contact me at the above number and email address.

Respectfully,

/s/ *Nicholas J. De Blouw*
Nicholas J. De Blouw Esq.

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WRITERS E-MAIL: **Nick@bamlawca.com** | **WRITERS EXT: 1004**

October 16, 2025
CA3756

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

SMG Management II, LLC
Certified Mail #9589071052702856215468
CSC - Lawyers Incorporating Service
Koy Saechao
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

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If you have any questions of concerns, please do not hesitate to contact me at the above number and email address.

Respectfully,

/s/ *Nicholas J. De Blouw*
Nicholas J. De Blouw Esq.