

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858) 551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

BRADLEY LUTAT, on behalf of the State
of California, as a private attorney
general,

Plaintiff,

vs.

BARRY'S BOOTCAMP, LLC, a California
Limited Liability Company; BARRY'S
BOOTCAMP SAN DIEGO LLC, a
California Limited Liability Company;
BARRY'S BAY AREA, LLC, a Limited
Liability Company; and Does 1 through 50,
Inclusive,

Defendants.

Case No. 37-2020-00044771-CU-OE-CTL

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.*, for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 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)

1 Plaintiff Bradley Lutat (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 7 **INTRODUCTION**

8 1. PLAINTIFF brings this action against Defendants Barry’s Bootcamp, LLC and/or
9 Barry’s Bootcamp San Diego, LLC and/or Barry’s Bay Area, LLC (“DEFENDANT”) seeking
10 only to recover PAGA civil penalties for himself, and on behalf of all current and former
11 aggrieved employees that worked for DEFENDANT. PLAINTIFF does **not seek to recover**
12 **anything other than penalties as permitted by California Labor Code § 2699**. To the extent
13 that statutory violations are mentioned for wage violations, PLAINTIFF does not seek
14 underlying general and/or special damages for those violations, but simply the civil penalties
15 permitted by California Labor Code § 2699.

16 2. California has enacted the PAGA to permit an individual to bring an action on
17 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
18 nature of this action.

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

24 25 **THE PARTIES**

26 4. Defendant Barry’s Bootcamp, LLC is a limited liability company and at all
27 relevant times mentioned herein conducted and continues to conduct substantial and regular
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1 business throughout California.

2 5. Defendant Barry's Bootcamp San Diego LLC is a limited liability company and
3 at all relevant times mentioned herein conducted and continues to conduct substantial and
4 regular business throughout California.

5 6. Defendant Barry's Bay Area, LLC is a limited liability company and at all relevant
6 times mentioned herein conducted and continues to conduct substantial and regular business
7 throughout California.

8 7. PLAINTIFF alleges there has existed a unity of interest and ownership between
9 these Defendants such that any individuality and separateness between the entities has ceased.
10 Defendants Barry's Bootcamp, LLC, Barry's Bootcamp San Diego LLC and Barry's Bay Area,
11 LLC are therefore alter egos of each other. Adherence to the fiction of the separate existence
12 of would permit an abuse of the corporative privilege, and would promote injustice by
13 protecting Barry's Bootcamp, LLC, Barry's Bootcamp San Diego LLC and Barry's Bay Area,
14 LLC from liability for the wrongful acts committed by them. As evidenced by PLAINTIFF's
15 paychecks and company documents, Defendants Barry's Bootcamp, LLC, Barry's Bootcamp
16 San Diego LLC and Barry's Bay Area, LLC were joint employers of PLAINTIFF and are
17 referred to herein as ("DEFENDANT").

18 8. PLAINTIFF further alleges that Defendants Barry's Bootcamp, LLC, Barry's
19 Bootcamp San Diego, LLC and Barry's Bay Area, LLC are alter egos of each other for the
20 following reasons:

21 (A) On the California Secretary of State's website
22 (<https://businesssearch.sos.ca.gov/>) Defendant Barry's Bootcamp, LLC,
23 Barry's Bootcamp San Diego LLC and Barry's Bay Area, LLC have the
24 same entity address and/or mailing address;

25 (B) On information and belief Defendants Barry's Bootcamp, LLC, Barry's
26 Bootcamp San Diego LLC and Barry's Bay Area, LLC utilize the same
27 standardized employment forms and issue the same employment policies;

1 and,

2 (D) Barry's Bootcamp, LLC, Barry's Bootcamp San Diego LLC and Barry's
3 Bay Area, LLC all have the same agent for service of process and both
4 have the same Chief Executive Officer.

5 9. DEFENDANT provides physical training, workout classes and guides to its clients
6 amongst other services.

7 10. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
8 employee entitled to overtime pay and meal and rest periods from August of 2019 to December
9 of 2019. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT
10 as a non-exempt employee.

11 11. PLAINTIFF, and such persons that may be added from time to time who satisfy
12 the requirements and exhaust the administrative procedures under the Private Attorney General
13 Act, brings this Representative Action on behalf of the State of California with respect to
14 himself and all individuals who worked for Barry's Bootcamp, LLC and/or Barry's Bootcamp
15 San Diego LLC and/or Barry's Bay Area, LLC in California and classified as non-exempt
16 employees ("AGGRIEVED EMPLOYEES") during the time period of October 1, 2019, until
17 a date as determined by the Court (the "PAGA PERIOD").

18 12. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
19 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
20 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
21 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
22 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
23 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order. Based upon the
24 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
25 the meaning of Labor Code § 2699, *et seq.*¹

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

13. 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.

14. 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 the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

15. During the PAGA PERIOD, DEFENDANT failed to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all their time worked, including minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately calculate wages for time worked and penalties for meal and rest periods owed to PLAINTIFF and other AGGRIEVED EMPLOYEES in order to avoid paying these employees the correct compensation. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for working without compensation at the correct minimum wage and overtime rates. DEFENDANT's uniform policy and practice to not pay the AGGRIEVED EMPLOYEES

1 the correct compensation for all time worked in accordance with applicable law is evidenced
2 by DEFENDANT's business records.

3 16. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
4 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
5 meaning the time during which an employee is subject to the control of an employer, including
6 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
7 and AGGRIEVED EMPLOYEES to work without paying them for all the time they are under
8 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while
9 clocked out for what should be PLAINTIFF's off duty meal period in order to attend to and
10 provide fitness services for DEFENDANT's clients. As a result, the PLAINTIFF and other
11 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by regularly
12 working without their time being accurately recorded and without compensation at the
13 applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice
14 not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is
15 evidenced by DEFENDANT's business records.

16 17. In violation of the applicable sections of the California Labor Code and the
17 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
18 a matter of company policy, practice and procedure, intentionally and knowingly failed to
19 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES at the correct rate of pay
20 for all overtime worked and correct meal premium pay for all meal period violations. This
21 uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
22 of the correct overtime compensation as required by California law which allowed
23 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
24 with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
25 EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

26 18. As a result of their rigorous work schedules, PLAINTIFF and other
27 AGGRIEVED EMPLOYEES were from time to time unable to take off duty meal breaks and
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1 were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
2 EMPLOYEES are required to perform work as ordered by DEFENDANT for more than five
3 (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT fails
4 to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
5 from time to time in which these employees are required by DEFENDANT to work ten (10)
6 hours of work. PLAINTIFF and the other AGGRIEVED EMPLOYEES therefore forfeit meal
7 breaks without the correct meal premium compensation and in accordance with
8 DEFENDANT's strict corporate policy and practice.

9 19. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
10 were also required to work in excess of four (4) hours without being provided ten (10) minute
11 rest periods. Further, these employees are denied their first rest periods of at least ten (10)
12 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest
13 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,
14 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of
15 ten (10) hours or more. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not
16 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
17 PLAINTIFF and other AGGRIEVED EMPLOYEES are periodically denied their proper rest
18 periods by DEFENDANT and DEFENDANT's managers.

19 20. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
20 employees with an accurate itemized wage statement in writing showing, among other things,
21 gross wages earned and all applicable hourly rates in effect during the pay period and the
22 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
23 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
24 gross wages earned. Aside from the violations listed above, DEFENDANT fails to issue to
25 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
26 Code 226 *et seq.* As a result, DEFENDANT provided PLAINTIFF and the other AGGRIEVED
27 EMPLOYEES with wage statements which violate Cal. Lab. Code § 226.

1 21. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
2 employment are due and payable twice during each calendar month, on days designated in
3 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
4 requires employers to pay employees all wages owed within seven (7) days of the close of the
5 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
6 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
7 payroll period.

8 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
9 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
10 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
11 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
12 2802, employers are required to indemnify employees for all expenses incurred in the course
13 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
14 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
15 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
16 directions of the employer, even though unlawful, unless the employee, at the time of obeying
17 the directions, believed them to be unlawful."

18 23. In the course of their employment PLAINTIFF and other AGGRIEVED
19 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
20 personal cellular phones as a result of and in furtherance of their job duties as employees for
21 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
22 associated with the use of their personal cellular phones for DEFENDANT's benefit.
23 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required by
24 DEFENDANT to use their personal cellular phones to for work related issues, including, but
25 not limited to, clocking into PayCom to login his hours for work. As a result, in the course of
26 his employment with DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES
27 incurred unreimbursed business expenses which include, but are not limited to, costs related to
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1 the use of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

2 24. By reason of this uniform conduct applicable to PLAINTIFF and all
3 AGGRIEVED EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure
4 which fails to accurately calculate and record the correct compensation for all time worked by
5 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
6 employees' compensation is the DEFENDANT's burden. As a result of DEFENDANT's
7 intentional disregard of the obligation to meet this burden, DEFENDANT fails to properly
8 calculate and/or pay all required compensation for work performed by the AGGRIEVED
9 EMPLOYEES and violated the California Labor Code and regulations promulgated thereunder
10 as herein alleged.

11 25. All of the conduct and violations alleged herein occurred during the PAGA
12 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
13 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
14 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
15 AJDAR 12157 (Certified for Publication 12/19/18).

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17 **JURISDICTION AND VENUE**

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

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

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1 **FIRST CAUSE OF ACTION**

2 **For Violation of the Private Attorneys General Act**

3 **[Cal. Lab. Code §§ 2698, *et seq.*]**

4 **(By PLAINTIFF and Against All Defendants)**

5 28. PLAINTIFF incorporates by reference the allegations set forth in the prior
6 paragraphs as though fully set forth at this point.

7 29. PAGA is a mechanism by which the State of California itself can enforce state
8 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
9 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
10 fundamentally a law enforcement action designed to protect the public and not to benefit private
11 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
12 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
13 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
14 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
15 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
16 subject to arbitration.

17 30. PLAINTIFF, and such persons that may be added from time to time who satisfy
18 the requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, brings this Representative Action on behalf of the State of California with respect to
20 himself and all individuals who are or previously were employed by Barry's Bootcamp, LLC
21 and/or Barry's Bootcamp San Diego LLC and/or Barry's Bay Area, LLC in California and
22 classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during the time
23 period of October 1, 2019 until a date as determined by the Court (the "PAGA PERIOD").

24 31. On October 1, 2020, PLAINTIFF gave written notice by electronic mail to the
25 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
26 employer of the specific provisions of this code alleged to have been violated as required by
27 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
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1 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
2 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
3 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

4 32. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
6 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
7 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
8 to pay wages when due, (e) failed to pay minimum wages, and, (f) failed to reimburse for
9 necessary business expenses incurred, all in violation of the applicable Labor Code sections
10 listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512,
11 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section
12 11040, Subdivision 5(A)-(B) and the applicable Industrial Wage Order(s), and thereby gives
13 rise to civil penalties as a result of such conduct.² PLAINTIFF hereby seeks recovery of only
14 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
15 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
16 the other AGGRIEVED EMPLOYEES.

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18 **PRAYER FOR RELIEF**

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

21 1. On behalf of the State of California and with respect to all AGGRIEVED
22 EMPLOYEES:

23 A) Recovery of civil penalties as prescribed by the Labor Code Private
24 Attorneys General Act of 2004; and,

25 B) An award of attorneys' fees and cost of suit, as allowable under the
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27 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 law, including, but not limited to, pursuant to Labor Code §2699.

2 Dated: December 7, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
3 LLP

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6 By: /s/ Norman Blumenthal
7 Norman B. Blumenthal
8 Attorneys for Plaintiff

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