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Clerk of the Napa Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF NAPA

EDGAR ALEJANDRO SILVA-BRANBILA,
on behalf of himself and all others similarly
situated,

Plaintiff,

v.

BARRY CALLEBAUT USA, LLC a California
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 21CV000337

**CLASS & REPRESENTATIVE ACTION
COMPLAINT:**

- (1) WAGE STATEMENT VIOLATIONS;
- (2) FAILURE TO PAY ALL OVERTIME
WAGES;
- (3) WAITING TIME PENALTIES;
- (4) UNFAIR COMPETITION IN
VIOLATION OF BUSINESS AND
PROFESSIONS CODE 17200 ET SEQ;
and
- (5) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT

DEMAND FOR JURY TRIAL

1 Plaintiff Edgar Alejandro Silva-Branbila (“Plaintiff”) on behalf of himself, and all other
2 similarly situated non-exempt employees, brings this class and representative action lawsuit against
3 defendant Barry Callebaut USA, LLC (“Defendant”), and DOES 1-50, inclusive (collectively
4 “Defendants”), and complains and alleges as follows:

5 **INTRODUCTION**

6 1. Defendant Barry Callebaut USA, LLC is a world leading manufacturer, producer,
7 and distributor of cocoa/chocolate with a manufacturing plant in American Canyon, California.
8 Plaintiff brings this class and representative action against Defendants for violations of the
9 California Labor Code. As set forth below, Plaintiff alleges that Defendants failed to provide
10 Plaintiff and other similarly situated non-exempt employees with accurate itemized wage
11 statements, which, amongst other things, failed to include the correct applicable hourly and
12 corresponding overtime rates in effect during the pay period in direct violation of Labor Code §
13 226(a)(9). Additional, Plaintiff alleges that Defendants failed to correctly pay him and other
14 similarly situated non-exempt employees at the proper overtime rate for all overtime hours worked
15 due to Defendants’ uniform failure to include all forms of compensation/renumeration, including,
16 but not limited to, Shift Premium Pay in calculating the regular rate of pay for purposes of overtime
17 compensation. As a result of Defendants’ failure to pay all overtime wages due, Plaintiff also brings
18 claims for waiting time penalties on behalf of himself and all other similarly situated non-exempt
19 employees. Based on these violations, Plaintiff now brings this class and representative action to
20 recover unpaid wages, penalties, restitution, and other related relief on behalf of himself and all
21 others similarly situated.

22 **JURISDICTION AND VENUE**

23 2. Plaintiff, on behalf of himself and all other similarly situated non-exempt employees
24 hereby brings this class action for recovery of unpaid wages and penalties for violations of the
25 California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226 (e), 226.3, 510, 1174.4, 1194, 1194.2,
26 1197.1, 1199, amongst others, and all applicable Industrial Welfare Commission Wage Orders
27 (“Wage Order”). This class action is brought pursuant to California Code of Civil Procedure § 382.
28

1 This Court has jurisdiction over Defendants' violations of the California Labor Code and applicable
2 Wage Orders because the amount in controversy exceeds this Court's jurisdictional minimum.

3 3. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
4 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the City of
5 American Canyon, County of Napa. Defendants own, maintain offices, transact business, have an
6 agent or agents within the County of Napa, and/or otherwise are found within the County of Napa,
7 and Defendants are within the jurisdiction of this Court for purposes of service of process.

8 **PARTIES**

9 4. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is
10 a California resident residing in the State of California. Defendants employed Plaintiff as a non-
11 exempt employee "Machine Operator" in the County of Napa.

12 5. Plaintiff was, and is, subject to Defendants' uniform policies and/or practices
13 complained of herein and has been deprived of the rights guaranteed to him by California Labor
14 Code §§ 201-203, 204, 210, 221, 226(a), 226 (e), 226.3, 510, 1174, 1174.4, 1194, 1194.2, 1197.1,
15 1199, amongst others, and all applicable Industrial Welfare Commission Wage Orders ("Wage
16 Order").

17 6. Plaintiff is informed and believes, and based thereon alleges, that during the four
18 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
19 continue to do) business in the State of California, County of Napa. Defendants operate a large
20 chocolate factory located at 1175 Commerce Blvd., American Canyon, 94503.

21 7. Plaintiff does not know the true names or capacities, whether individual, partner, or
22 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
23 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
24 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
25 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
26 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
27 and proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices,
28 wrongs, injuries and damages complained of herein.

8. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

9. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

COMMON FACTUAL ALLEGATIONS

10. Defendants are world leading chocolate manufacturers, producers, and distributors of cocoa/chocolate across the United States and California.

11. Plaintiff worked for Defendants as a non-exempt employee Machine Operator out of the American Canyon facility from on or about 2018 until his separation on or about February 15, 2021. Plaintiff and other non-exempt employees were responsible for all aspects of Defendants' manufacturing and production in California.

12. First, as to Plaintiff and other non-exempt employees, Defendants failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a). Labor Code § 226(a) obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;

- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...; and
- (9) **all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...**

13. At all relevant times, the wage statements provided by Defendants to Plaintiff and other non-exempt employees failed and continue to fail to provide the correct applicable hourly rates in effect during the pay period in direct violation of Labor Code § 226(a)(9).

14. Specifically, Defendants have a payroll practice of paying Shift Premium Pay in a lump sum amount, but its wage statements fail to state the hourly rate and hours worked for such Shift Premium Pay in violation of Labor Code § 226(a)(9). Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff's wage statement from Defendants. Plaintiff is informed and believes that Defendants uniformly deceived Plaintiff and other non-exempt employees through their wage statements, which failed to include the actual applicable hourly rates in effect and required information about Shift Premium pay during all pay periods. As someone who was provided with multiple wage statements from Defendant, Plaintiff is an aggrieved employee.

15. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

16. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other non-exempt employees may also recover Labor Code § 226.3 penalties for Defendant's violations of Labor Code § 226(a). As such, the wage statements Defendant issued to Plaintiff and other non-exempt employees are in violation of Labor Code § 226 (a)(9). Defendants have violated Labor Code §226(a)(9) with respect to Plaintiff and other non-exempt employees. Consequently, because Defendant failed to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §§ 226(e).

1 17. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were
2 also not properly paid at the correct overtime rate for all hours worked in excess of eight (8) hours
3 per workday and/or forty (40) hours per workweek due to Defendants' uniform failure to include all
4 forms of compensation/renumeration, including, but not limited to, Shift Premium Pay in calculating
5 the regular rate of pay for purposes of overtime compensation.

6 18. Under the California Labor Code (as well as the FLSA), courts have held that
7 regularly paid non-discretionary Shift Premium Pay/Bonuses must be included in determining an
8 employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The Americana*
9 *Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must
10 be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d
11 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiffs under California and
12 federal law on the grounds, that Defendants improperly calculated overtime by excluding annual
13 bonuses paid to employees from the "regular rate of compensation"].)

14 19. Here, at all relevant times, Defendants consistently paid aggrieved employees Shift
15 Premium Pay and overtime pay, however the Shift Premium Pay was uniformly omitted when
16 calculating aggrieved employees' regular rate of pay for overtime purposes. Attached hereto as
17 **Exhibit A** is a true and correct copy of Plaintiff wage statement indicating "Shift 3 Prem" and an
18 inadequate and unlawful overtime rate.

19 20. Labor Code § 510 requires an employer to compensate an employee who works more
20 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
21 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate
22 of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
23 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
24 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
25 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours
26 in any workday or more than 40 hours in any workweek unless the employee receives one and one-
27 half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the
28 workweek.

1 21. By their policy of requiring Plaintiff and other non-exempt employees to work in
2 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
3 them at the rate of one-half (11/2) their regular rate of pay, Defendants willfully violated the
4 provisions of Labor Code § 510 and the applicable Wage Orders.

5 22. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
6 fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution
7 of wages, and liquidated damages as follows: (1) for any initial violation that is intentionally
8 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which
9 the employee is underpaid. . . [and] (2) [f]or each subsequent violation for the same specific offense,
10 two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the
11 employee is underpaid regardless of whether the initial violation is intentionally committed.

12 23. As set forth above, Defendants failed to compensate Plaintiff and other non-exempt
13 employees for all overtime wages at the proper overtime rates and also by failing to include all forms
14 of compensation/renumeration, including but not limited to, Shift Premium pay when calculating
15 the regular rate of pay used in overtime calculations. As a result of this practice, Plaintiff and other
16 non-exempt employees are not compensated at the appropriate premium overtime rate for all
17 overtime hours that they work in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and
18 applicable Wage Orders. Accordingly, to the extent permitted by law, Plaintiff and other non-
19 exempt employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1.

20 24. As a result of Defendants' failure to provide Plaintiff and other non-exempt
21 employees with all overtime wages at the legal overtime rate, Defendants intentionally failed and
22 continue to fail to furnish non-exempt employees with itemized wage statements that accurately
23 reflect the correct amount of gross wages earned, net wages earned, or the applicable hourly rates
24 in effect during the pay period as required by Labor Code §§ 226(a)(1)(2)(5)(9). Consequently,
25 because Defendants failed to comply with Labor Code § 226(a) and applicable Wage Orders,
26 Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code
27 §§ 226(e).

25. Finally, because of, Defendants' failure to pay all overtime wages at the legal overtime rate, Defendants also failed and continue to fail to pay Plaintiff and other non-exempt employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203 and applicable Wage Orders.

CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- (1) All individuals who are or were employed as hourly, non-exempt employees by Defendants in the State of California, and who worked overtime hours and received Shift Premium Pay, from four years prior to the filing of the Complaint through the date of judgment and/or approval of settlement (the “Overtime Class”)
- (2) All individuals who are or were employed as hourly, non-exempt employees by Defendants in the State of California, and who received at least one wage statement from Defendants, from one year prior to the filing of the Complaint through the date of judgment and/or approval of settlement (the “Wage Statement Class”)
- (3) All individuals in the Overtime Class who have left Defendants’ employ, during three years prior to the filing of the Complaint through the date of judgment and/or approval of settlement (the “Waiting Time Penalty Class”)
(collectively “Classes”)

27. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

28. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated non-exempt employees, which predominate over questions affecting only individual members including, without limitation to:

- 1 1. Whether Defendants' pay policies/practices resulted in a failure to pay members of
- 2 the Classes for all overtime wages at the appropriate premium rate;
- 3 2. Whether Defendants furnished legally compliant wage statements to members of the
- 4 Classes pursuant to Labor Code § 226; and
- 5 3. Whether Defendants failed to timely pay Plaintiff and members of the Waiting Time
- 6 Penalty Class.

7 29. **Predominance of Common Questions:** Common questions of law and fact
8 predominate over questions that affect only individual members of the Classes. The common
9 questions of law set forth above are numerous and substantial and stem from Defendants' uniform
10 policies and/or practices applicable to each individual class member, such as Defendants' uniform
11 policy/practice of failing to adequately pay for all overtime hours at the appropriate premium rate(s),
12 and Defendants' failure to provide accurate itemized wage statements. As such, the common
13 questions predominate over individual questions concerning each individual class member's
14 showing as to his or her eligibility for recovery or as to the amount of his or her damages.

15 30. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
16 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
17 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged
18 herein, Plaintiff, like the members of the Classes, was deprived of overtime wages as a result of
19 Defendants' unlawful pay policy/practices and was not provided accurate itemized wage statements.

20 31. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
21 to represent fairly and adequately the interests of the members of the Classes. Moreover, Class
22 Counsel is ready, willing and able to fully and adequately represent the members of the Classes and
23 Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and
24 federal court in the past and are committed to vigorously prosecuting this action on behalf of the
25 members of the Classes.

26 32. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
27 important public interest in establishing minimum working conditions and standards in California.
28 These laws and labor standards protect the average working employee from exploitation by

1 employers who have the responsibility to follow the laws and who may seek to take advantage of
2 superior economic and bargaining power in setting onerous terms and conditions of employment.
3 The nature of this action and the format of laws available to Plaintiff and members of the Classes
4 make the class action format a particularly efficient and appropriate procedure to redress the
5 violations alleged herein. If each employee were required to file an individual lawsuit, Defendants
6 would necessarily gain an unconscionable advantage since they would be able to exploit and
7 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
8 legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy
9 would also discourage the assertion of lawful claims by employees who would be disinclined to file
10 an action against their former and/or current employer for real and justifiable fear of retaliation and
11 permanent damages to their careers at subsequent employment. Further, the prosecution of separate
12 actions by the individual class members, even if possible, would create a substantial risk of
13 inconsistent or varying verdicts or adjudications with respect to the individual class members against
14 Defendants herein; and which would establish potentially incompatible standards of conduct for
15 Defendants; and/or legal determinations with respect to individual class members which would, as
16 a practical matter, be dispositive of the interest of the other class members not parties to
17 adjudications or which would substantially impair or impede the ability of the class members to
18 protect their interests. Further, the claims of the individual members of the Classes are not
19 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs
20 and expenses attending thereto. As such, the Classes identified in Paragraph 24 are maintainable as
21 Classes under § 382 of the Code of Civil Procedure.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

24 **(AGAINST ALL DEFENDANTS)**

25 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 34. Labor Code § 226(a) states in pertinent part the following:

27 “(a) An employer, semimonthly or at the time of each payment of wages,
28 shall furnish to his or her employee, either as a detachable part of the check,

1 draft, or voucher paying the employee's wages, or separately if wages are
2 paid by personal check or cash, an accurate itemized statement in writing
3 showing (1) gross wages earned, (2) total hours worked by the employee,
4 except as provided in subdivision (j), (3) the number of piece-rate units
5 earned and any applicable piece rate if the employee is paid on a piece-rate
6 basis, (4) all deductions, provided that all deductions made on written orders
7 of the employee may be aggregated and shown as one item, (5) net wages
8 earned, (6) the inclusive dates of the period for which the employee is paid,
9 (7) the name of the employee and only the last four digits of his or her social
10 security number or an employee identification number other than a social
11 security number, (8) the name and address of the legal entity that is the
employer and, if the employer is a farm labor contractor, as defined in
subdivision (b) of Section 1682, the name and address of the legal entity
that secured the services of the employer, and (9) all applicable hourly rates
in effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee. . .”

12 35. As set forth above, Defendants issued and continue to issue wage statements to its
13 non-exempt employees including Plaintiff, and members of the Classes that are inadequate under
14 Labor Code § 226(a). As detailed herein above, first, Defendants violated Labor Code § 226(a)(9) by
15 using a payroll practice paying Shift Premium Pay in a lump sum amount but failing to state the
16 hourly rate and hours worked for such Shift Premium Pay.

17 36. Additionally, due to Defendants' failure to properly calculate the regular rate of pay
18 for overtime purposes, Defendants' wage statements also fail to include required information on
19 Plaintiff and the Classes' wage statements, including, but not limited to, the gross wages earned, the
20 net wages earned and the correct applicable hourly rates ineffect in violation of Labor Code §§
21 226(a)(1)(5)(9).

22 37. Defendants' failure to comply with section 226(a) of the Labor Code was knowing
23 and intentional.

24 38. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff
25 and members of the Classes in violation of section 226(a) of the Labor Code, Plaintiff, members of
26 the Classes are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100,
27 up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each member of
28

1 the Classes from Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable
2 attorneys' fees.

3 **SECOND CAUSE OF ACTION**
4 **FAILURE TO PAY ALL OVERTIME WAGES**
5 **(AGAINST ALL DEFENDANTS)**

6 39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 40. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and 1198,
8 which provide that non-exempt employees are entitled to overtime wages for all overtime hours
9 worked and provide a private right of action for the failure to pay all overtime compensation for
10 overtime work performed.

11 41. At all times relevant herein, Defendants were required to properly pay Plaintiff and
12 members of the Classes for all overtime wages earned pursuant to California Labor Code § 1194
13 and applicable Wage Orders. Section 3 of the applicable Wage Orders require an employer to pay
14 the correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty
15 (40) hours per workweek.

16 42. Here, Defendants failed to include all forms of compensation/renumeration,
17 including, but not limited to, Shift Premium Pay when calculating the regular rate of pay for
18 purposes of overtime compensation. As a result, Defendants caused Plaintiff and members of the
19 Classes to work overtime hours but did not compensate Plaintiff and members of the Classes
20 correctly in accordance with California law.

21 43. Defendants failed to conform their pay practices to the requirements of California
22 law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay
23 policies/practices of failing to include any and all Shift Premium Pay when calculating non-exempt
24 employees' regular rate of pay for overtime purposes.

25 44. The foregoing policies and practices are unlawful and allow Plaintiff and the
26 members of the Classes in a civil action for the unpaid amount of overtime premiums owing,
27 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to
28

1 California Labor Code §§ 204, 510, 558, 1194, and 1198, applicable Wage Orders, and Code of
2 Civil Procedure § 1021.5.

3 **THIRD CAUSE OF ACTION**

4 **WAITING TIME PENALTIES**

5 **(AGAINST ALL DEFENDANTS)**

6 45. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 46. The actionable period for this cause of action is three years prior to the filing of this
8 Complaint through the present, and on-going until the violation are corrected or the class is certified.

9 47. Sections 201 and 202 of the California Labor Code require Defendants to pay all
10 compensation due and owing to Plaintiff and the Waiting Timeline Penalty Class during the
11 actionable period for this cause of action at or around the time that their employment is or was
12 terminated or ended.

13 48. Section 203 of the California Labor Code provides that if an employer willfully fails
14 to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202,
15 then the employer is liable for penalties in the form of continued compensation up to thirty (30)
16 workdays.

17 49. Defendants willfully failed to pay Plaintiff and the Waiting Timeline Penalty Class
18 for all hours worked including all overtime wages, prior to or upon termination or separation from
19 employment with Defendants as required by California Labor Code §§ 201 and 202.

20 50. As a result, Defendants are liable to Plaintiff and the Waiting Timeline Penalty Class
21 for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Timeline
22 Penalty Class pursuant to California Labor Code § 203. See, e.g. DLSE Manual, 4.3.4 (Failure to pay
23 any sort of wages due upon termination entitles an employee to recover waiting time penalties).

24 **FOURTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION BUSINESS & PROFESSIONS CODE § 17200 *et seq.***

26 **(AGAINST ALL DEFENDANTS)**

27 51. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

52. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay for all overtime hours worked, by failing to provide accurate wage statements, and by failing to pay Plaintiff and members of the Waiting Time Class all earned wages at the time of their separation.

53. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

54. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

55. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

56. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current hourly non-exempt employees and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil Procedure § 1021.5.

FIFTH CAUSE OF ACTION

(PRIVATE ATTORNEYS GENERAL ACT LABOR CODE § 2698 *et seq.*)

(AGAINST ALL DEFENDANTS)

57. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

58. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action

1 against Defendants to recover civil penalties due to Plaintiff, other aggrieved employees, and the
2 State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not
3 limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per aggrieved
4 employee per pay period for those violations of the Labor Code for which no civil penalty is
5 specifically provided based on the following Labor Code violations:

- 6 a. Failing to provide Plaintiff and other aggrieved employees all overtime compensation
7 at the appropriate premium rate in violation of Labor Code § 204, 510, 1194 & 1198;
- 8 b. Failing to compensate Plaintiff and other aggrieved employees with all earnings at
9 their separation of employment in violation of Labor Code §§ 201-203;
- 10 c. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate,
11 itemized wage statements in violations of Labor Code § 226(a).

12 59. Pursuant to Labor Code § 2699.3(a), on March 9, 2021, Plaintiff gave written notice
13 by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail
14 to Defendant Barry Callebaut, LLC of the specific provisions of the Labor Code alleged to have
15 been violated, including the facts and theories to support the alleged violations. Therefore, once
16 more than sixty-five (65) days have passed since that date, Plaintiff will have fully satisfied the
17 administrative prerequisites to file suit under the PAGA and this Complaint will be deemed amended
18 to include the PAGA allegations enumerated above. Once this occurs, Plaintiff seeks to recover all
19 applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys’ fees,
20 costs, and/or other damages as permitted by PAGA through a representative action pursuant to the
21 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Plaintiff
22 is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil
23 Procedure § 382

24 60. Plaintiff was compelled to retain the services of counsel to file this court action to
25 protect his interests and the interests of other non-exempt employees, and to assess and collect the
26 civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys’ fees and costs, which
27 he is entitled to receive under California Labor Code § 2699.

28 ///

1 **PRAYER FOR RELIEF**

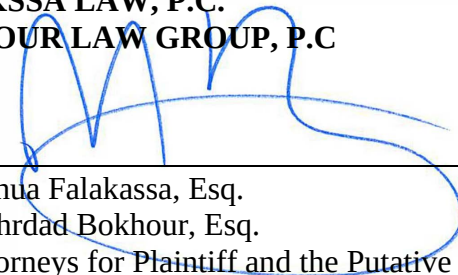
2 **WHEREFORE**, Plaintiff prays for judgment for himself and for all others on whose behalf
3 this suit is brought against Defendants, as follows:

- 4 1. For an order certifying the proposed Classes;
- 5 2. For an order appointing Plaintiff as representative of the Classes;
- 6 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 7 4. Upon the First Cause of Action, penalties pursuant to Labor Code § 226(a), and
8 reasonable costs and attorneys' fees;
- 9 5. Upon the Second Cause of Action, for compensatory, consequential, general and
10 special damages according to proof pursuant to Labor Code §§ 510, 1182.12, 1194, 1194.2, 1197;
- 11 6. Upon the Third Cause of action, for statutory waiting time penalties pursuant to Labor
12 Code §§ 201-203;
- 13 7. Upon the Fourth Cause of Action, for restitution to Plaintiff and members of the
14 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
15 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
- 16 8. Upon the Fifth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
17 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)
18 including, but not limited to: (1) \$100.00 for each initial violation and \$200 for each subsequent
19 violation per employee per pay period for those violations of the Labor Code for which no civil
20 penalty is specifically provided under the Labor Code;
- 21 9. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
22 § 218.6 and Civil Code §§ 3287 and 3289;
- 23 10. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
24 218.5, 226, and Code of Civil Procedure § 1021.5; and
- 25 11. For such other and further relief, the Court may deem just and proper.

26 ///

1 Dated: March 10, 2021

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C

3 By: 

4 Joshua Falakassa, Esq.

5 Mehrdad Bokhour, Esq.

6 Attorneys for Plaintiff and the Putative Classes

EXHIBIT “A”

CO. FILE DEPT. CLOCK VCHR. NO. 060
STP 004274 600000 AMCA 0000210060 1

Earnings Statement



BARRY CALLEBAUT USA LLC.
600 W.CHICAGO AVE,SUITE 860
CHICAGO, IL 60654
COMPANY PH #:312-496-7410

Period Beginning: 05/10/2020
Period Ending: 05/16/2020
Pay Date: 05/21/2020

Taxable Marital Status: Married
Exemptions/Allowances:
Federal: 5
CA: 5

EDGAR ALEJANDRO SILVA-BRANBILA
788 SUNSET AVENUE
10
SUISUN CITY CA 94585

Social Security Number: XXX-XX-5779

Earnings	rate	hours	this period	year to date
Regular	20.5100	40.00	820.40	14,439.04
Overtime	30.7650	2.38	73.22	4,145.27
Meal	20.5100	3.00	61.53	1,415.19
Shift 3 Prem			38.45	
BIRTHDAY				164.08
Double-Dnu				118.96
Holiday				1,148.56
PTO				2,092.02
Gross Pay			\$993.60	24,317.45

Net Pay	\$811.41
Checking	-811.41
Net Check	\$0.00

* Excluded from federal taxable wages

Your federal taxable wages this period are \$942.80

Other Benefits and Information

	this period	total to date
Gtl	0.73	16.06
Curr Er Match		32.62
Ytd 401K Match		724.26

Important Notes

COMPANY PH #:312-496-7410

BASIS OF PAY: HOURLY

Deductions	Statutory	
	Federal Income Tax	-30.05
	Social Security Tax	-60.76
	Medicare Tax	-14.21
	CA State Income Tax	-0.28
	CA SUI/SDI Tax	-9.80
	Other	
	Dental Pretax	-7.41*
	Vision	-6.84*
	Vol Spouse Life	-0.62
	Voluntary Life	-4.15
	401K	-37.28*
	401K Loans	-10.79
	Fitness Reimb E	-300.00
	Health Pretax	64.57
	Hsa Deduction	15.00
	Shoe/Boot Deduc	41.95

BARRY CALLEBAUT USA LLC.
600 W.CHICAGO AVE,SUITE 860
CHICAGO, IL 60654
COMPANY PH #:312-496-7410

Advice number: 00000210060
Pay date: 05/21/2020

Deposited to the account of	account number	transit ABA	amount
EDGAR ALEJANDRO SILVA-BRANBILA	xxxxxxx5958	xxxx xxxx	\$811.41

THIS IS NOT A CHECK

NON-NEGOTIABLE

CO. FILE DEPT. CLOCK VCHR. NO. 060
STP 004274 600000 AMCA 0000240060 1

Earnings Statement



BARRY CALLEBAUT USA LLC.
600 W.CHICAGO AVE,SUITE 860
CHICAGO, IL 60654
COMPANY PH #:312-496-7410

Period Beginning: 05/31/2020
Period Ending: 06/06/2020
Pay Date: 06/11/2020

Taxable Marital Status: Married
Exemptions/Allowances:
Federal: 5
CA: 5

EDGAR ALEJANDRO SILVA-BRANBILA
788 SUNSET AVENUE
10
SUISUN CITY CA 94585

Social Security Number: XXX-XX-5779

Earnings	rate	hours	this period	year to date
Regular	20.5100	40.00	820.40	16,821.69
Overtime	30.7650	3.07	94.45	4,368.93
Shift 3 Prem			23.90	
BIRTHDAY				164.08
Double-Dnu				118.96
Holiday				1,312.64
Meal				1,415.19
PTO				2,092.02
Gross Pay			\$938.75	27,170.31

Net Pay	\$766.81
Checking	-766.81
Net Check	\$0.00

* Excluded from federal taxable wages

Your federal taxable wages this period are \$887.68

Other Benefits and Information

	this period	total to date
Gtl	0.73	18.25
Curr Er Match		32.86
Ytd 401K Match		824.11

Important Notes

COMPANY PH #:312-496-7410

BASIS OF PAY: HOURLY

Deductions	Statutory	
	Federal Income Tax	-24.54
	Social Security Tax	-57.37
	Medicare Tax	-13.42
	CA SUI/SDI Tax	-9.25
	CA State Income Tax	
	Other	
	Dental Pretax	-7.41*
	Vision	-6.84*
	Vol Spouse Life	-0.62
	Voluntary Life	-4.15
	401K	-37.55*
	401K Loans	-10.79
	Fitness Reimb E	-300.00
	Health Pretax	64.57
	Hsa Deduction	15.00
	Shoe/Boot Deduc	41.95

BARRY CALLEBAUT USA LLC.
600 W.CHICAGO AVE,SUITE 860
CHICAGO, IL 60654
COMPANY PH #:312-496-7410

Advice number: 00000240060
Pay date: 06/11/2020

Deposited to the account of	account number	transit ABA	amount
EDGAR ALEJANDRO SILVA-BRANBILA	xxxxxxx5958	xxxx xxxx	\$766.81

THIS IS NOT A CHECK

NON-NEGOTIABLE