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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/21/2022 at 01:31:00 PM
Clerk of the Superior Court
By Jose Hernandez, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JULIANA BERGARA, individually, and on
behalf of aggrieved employees pursuant to
the Private Attorneys General Act
("PAGA");

Plaintiff,

v.

BREAD & CIE, INC., a California
corporation; BREAD & CIE WHOLESALE,
LLC, a California limited liability company;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 37-2022-00001960-CU-OE-CTL

Assigned for all purposes to:
Hon. Timothy Taylor
Dept. C-72

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES**

- (1) Violation of California Labor Code §§
2698, *et seq.* (Private Attorneys
General Act of 2004);
- (2) Violation of California Business &
Professions Code §§ 17200, *et seq.*

COMES NOW, Plaintiff MATHEW LANTZ (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and on behalf of all aggrieved employees pursuant to the Private Attorneys General Act, alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of San Diego. The majority of the acts and omissions alleged herein relating to Plaintiff took place in the State of California, County of San Diego. Defendants employed Plaintiff within the State of California, County of San Diego.

PARTIES

5. Plaintiff JULIANA BERGARA is an individual residing in the State of California, County of San Diego.

6. Defendant BREAD & CIE, INC., at all times herein mentioned, was and is, upon information and belief, a California corporation headquartered in the State of California, and at all times herein mentioned, was and is, an employer whose employees are engaged throughout the State of California, including the County of San Diego.

1 7. Defendant BREAD & CIE WHOLESALE, LLP, at all times herein mentioned,
2 was and is, upon information and belief, a California limited liability company headquartered
3 in the State of California, and at all times herein mentioned, was and is, an employer whose
4 employees are engaged throughout the State of California, including the County of San Diego.

5 8. At all relevant times, Defendants BREAD & CIE, INC. and BREAD & CIE, LLP
6 were the “employer” of Plaintiff within the meaning of all applicable California laws and
7 statutes.

8 9. At all times herein relevant, Defendants BREAD & CIE, INC., BREAD & CIE
9 WHOLESALE, LLP, and DOES 1 through 100, and each of them, were the agents, partners,
10 joint venturers, joint employers, representatives, servants, employees, successors-in-interest,
11 co-conspirators and assigns, each of the other, and at all times relevant hereto were acting
12 within the course and scope of their authority as such agents, partners, joint venturers, joint
13 employers, representatives, servants, employees, successors, co-conspirators and assigns, and
14 all acts or omissions alleged herein were duly committed with the ratification, knowledge,
15 permission, encouragement, authorization, and consent of each defendant designated herein.

16 10. The true names and capacities, whether corporate, associate, individual or
17 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who sues
18 said defendants by such fictitious names. Plaintiff is informed and believes, and based on that
19 information and belief alleges, that each of the Defendants designated as a DOE is legally
20 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
21 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
22 Plaintiff will seek leave of court to amend this Complaint to show the true names and
23 capacities when the same have been ascertained.

24 11. Defendants BREAD & CIE, INC., BREAD & CIE WHOLESALE, LLP, and
25 DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

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1 12. Plaintiff further alleges that Defendants directly or indirectly controlled or
2 affected the working conditions, wages, working hours, and conditions of employment of
3 Plaintiff and the other class members so as to make each of said Defendants employers and
4 employers liable under the statutory provisions set forth herein.

5 **CLASS ACTION ALLEGATIONS**

6 13. Plaintiff brings this action on his own behalf and on behalf of all other members
7 of the general public similarly situated, and, thus, seeks class certification under Code of Civil
8 Procedure section 382.

9 14. The proposed class is defined as follows:

10 All current and former hourly-paid or non-exempt employees of Defendants
11 within the State of California at any time during the period from July 22, 2017¹
12 to final judgment.

13 15. Plaintiff reserves the right to establish subclasses as appropriate.

14 16. The class is ascertainable and there is a well-defined community of interest in
15 the litigation:

16 a. Numerosity: The class members are so numerous that joinder of all class
17 members is impracticable. The membership of the entire class is
18 unknown to Plaintiff at this time; however, the class is estimated to be
19 greater than fifty (50) individuals and the identity of such membership is
20 readily ascertainable by inspection of Defendants' employment records.

21 b. Typicality: Plaintiff's claims are typical of all other class members'
22 claims as demonstrated herein. Plaintiff will fairly and adequately protect
23 the interests of the other class members with whom he has a well-defined
24 community of interest.

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¹ Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial
28 Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of
 action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Accordingly,
 Plaintiff's claims were tolled during that time period.

1 c. Adequacy: Plaintiff will fairly and adequately protect the interests of
2 each class member, with whom he has a well-defined community of
3 interest and typicality of claims, as demonstrated herein. Plaintiff has no
4 interest that is antagonistic to the other class members. Plaintiff's
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiff has
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.

11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual joinder
13 of all class members is impractical.

14 e. Public Policy Considerations: Certification of this lawsuit as a class
15 action will advance public policy objectives. Employers of this great
16 state violate employment and labor laws every day. Current employees
17 are often afraid to assert their rights out of fear of direct or indirect
18 retaliation. However, class actions provide the class members who are
19 not named in the complaint anonymity that allows for the vindication of
20 their rights.

21 17. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

- 24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the California Labor Code, was willful;
26 b. Whether Defendants failed to pay their hourly-paid or non-exempt
27 employees within the State of California for all hours worked, missed
28 meal periods and rest breaks in violation of California law;

- 1 c. Whether Defendants required Plaintiff and the other class members to
2 work over eight (8) hours per day and/or over forty (40) hours per week
3 and failed to pay the legally required overtime compensation to Plaintiff
4 and the other class members;
- 5 d. Whether Defendants properly calculated the regular rate for Plaintiff and
6 the other class members to worked overtime and earned incentive pay;
- 7 e. Whether Defendants deprived Plaintiff and the other class members of
8 meal and/or rest periods or required Plaintiff and the other class members
9 to work during meal and/or rest periods without compensation;
- 10 f. Whether Defendants failed to pay minimum wages to Plaintiff and the
11 other class members for all hours worked;
- 12 g. Whether Defendants failed to reimburse Plaintiff and the other class
13 members for necessary business-related expenses and costs;
- 14 h. Whether Defendants' conduct was willful or reckless;
- 15 i. Whether Defendants engaged in unfair business practices in violation of
16 California Business & Professions Code section 17200, *et seq.*;
- 17 j. The appropriate amount of restitution resulting from Defendants'
18 violation of California law; and

19 **GENERAL ALLEGATIONS**

20 18. During the relevant time period set forth herein, Defendants employed Plaintiff
21 and other persons as hourly-paid or non-exempt employees within the State of California.

22 19. Defendants, jointly and severally, employed Plaintiff as an hourly-paid non-
23 exempt employee during the relevant statutory period in the State of California, County of Los
24 Angeles.

25 20. Defendants had the authority to hire and terminate Plaintiff and the other class
26 members; to set work rules and conditions governing Plaintiff's and other class members'
27 employment; and to supervise their daily employment activities.

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1 21. Defendants exercised sufficient authority over the terms and conditions of
2 Plaintiff and other class members' employment for them to be joint employers of Plaintiff and
3 the other class members.

4 22. Defendants directly hired and paid wages and benefits to Plaintiff and the other
5 class members.

6 23. Defendants continue to employ hourly-paid or non-exempt employees within the
7 State of California.

8 24. Plaintiff and the other class members worked over eight (8) hours in a day, and/or
9 forty (40) hours in a week during their employment with Defendants.

10 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid
12 or non-exempt employees within the State of California. This scheme involved, inter alia,
13 failing to pay them for all hours worked, missed meal periods, and missed rest breaks in
14 violation of California law.

15 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knew or should have known that Plaintiff and the other class members were entitled to receive
17 certain wages for overtime compensation and that Plaintiff and the other class members were
18 not receiving wages for overtime compensation.

19 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 failed to provide Plaintiff and the other class members the required rest and meal periods
21 during the relevant time period as required under the Industrial Welfare Commission Wage
22 Orders and thus they are entitled to any and all applicable penalties.

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1 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 all timely and complete meal periods or payment of one additional hour of pay at Plaintiff's
4 and the other class members' regular rate of pay when a meal period was missed, late or
5 interrupted, and that Plaintiff and the other class members did not receive all timely and proper
6 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal
7 period was missed.

8 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knew or should have known that Plaintiff and other class members were entitled to receive all
10 timely rest periods without interruption or payment of one additional hour of pay at Plaintiff
11 and the other class members' regular rate of pay when a rest period was missed, late or
12 interrupted, and that Plaintiff and the other class members did not receive all rest periods or
13 payment of one additional hour of pay at their regular rate of pay when a rest period was
14 missed.

15 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knew or should have known that Plaintiff and the other class members were entitled to receive
17 at least minimum wages for compensation and that Plaintiff and the other class members were
18 not receiving at least minimum wages for all hours worked.

19 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Plaintiff and the other class members were entitled to
21 reimbursement for necessary business-related expenses.

22 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 knew or should have known that Defendants had to keep complete and accurate payroll records
24 for Plaintiff and the other class members in accordance with California law, but, in fact, did
25 not keep complete and accurate payroll records for Plaintiff and the other class members.

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33. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that they had a duty to compensate Plaintiff and the other class members pursuant to California law, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and the other class members that they were properly denied wages, all in order to increase Defendants' profits.

34. During the relevant time period set forth herein, Defendants failed to pay overtime wages to Plaintiff and the other class members for all hours worked. Plaintiff and other class members were required to work more than eight (8) hours per day and/or forty (40) hours per week without overtime compensation.

35. During the relevant time period set forth herein, Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to Plaintiff and the other class members.

36. During the relevant time period set forth herein, Defendants failed to pay Plaintiff and the other class members at least minimum wages for all hours worked.

37. During the relevant time period set forth herein, Defendants failed to properly compensate Plaintiff and the other class members pursuant to California law in order to increase Defendants' profits.

38. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 2698, *et seq.*)

(Against BREAD & CIE, INC., BREAD & CIE WHOLESALE, LLC, and DOES 1 through 100)

39. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 38, and each and every part thereof with the same force and effect as though fully set forth herein.

1 40. PAGA expressly establishes that any provision of the California Labor Code
2 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
3 departments, divisions, commissions, boards, agencies or employees for a violation of the
4 California Labor Code, may be recovered through a civil action brought by an aggrieved
5 employee on behalf of himself or herself, and other current or former employees.

6 41. On September 23, 2021, Plaintiff provided written notice to the LWDA and
7 Defendants of the specific provisions of the Labor Code he contends were violated, and the
8 theories supporting his contentions. Attached hereto as **Exhibit 1** and incorporated by
9 reference is a copy of the September 23, 2021, written notice to the LWDA. Plaintiff believes
10 that on or about November 29, 2021, the sixty-five (65) day notice period expired as to all
11 Defendants, and the LWDA did not take any action to investigate or prosecute this matter.
12 Therefore, Plaintiff exhausted the statutory time period to bring this action.

13 42. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved
14 employees” as defined by California Labor Code § 2699(c) in that they are all current and
15 former hourly-paid or non-exempt employees of Defendants within the State of California
16 who worked for Defendants at any time during the period from September 23, 2020 to the
17 present, and one or more of the alleged violations was committed against them.

18 **Failure to Pay Minimum and Overtime Wages**

19 43. At all times relevant herein, Defendants were required to compensate their
20 non-exempt employees minimum wages for all hours worked and overtime wages for all
21 hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek,
22 pursuant to the mandate of Labor Code §§ 510, 1194, 1197, and 1198.

23 44. As a policy and practice, Defendants failed to compensate Plaintiff and the
24 other aggrieved current and former employees for all hours worked, resulting in a failure to
25 pay all minimum wages and overtime wages, where applicable.

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1 **Failure to Provide Meal Periods and Rest Breaks**

2 45. In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendants
3 were required to authorize and permit their non-exempt employees to take a 10-minute rest
4 break for every four (4) hours worked or major fraction thereof, and were further required to
5 provide their non-exempt employees with a 30-minute meal period for every five (5) hours
6 worked.

7 46. As a policy and practice, Defendants failed to provide Plaintiff and the other
8 aggrieved current and former employees with legally-mandated meal periods and rest breaks
9 and failed to pay proper compensation for this failure.

10 **Failure to Timely Pay Wages During Employment**

11 47. At all times relevant herein, Defendants were required to pay their employees
12 within a specified time period pursuant to the mandate of Labor Code § 204.

13 48. As a policy and practice, Defendants failed to pay Plaintiff and the other
14 aggrieved current and former employees all wages due and owing them within the required
15 time period.

16 **Failure to Timely Pay Wages Upon Termination**

17 49. At all times relevant herein, Defendants were required to pay their employees
18 all wages owed in a timely fashion at the end of employment pursuant to California Labor
19 Code §§ 201 to 204.

20 50. As a result of Defendants' Labor Code violations alleged above, Defendants
21 failed to pay Plaintiff and the other aggrieved former employees their final wages pursuant
22 to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to Labor
23 Code § 203.

24 **Failure to Provide Complete and Accurate Wage Statements**

25 51. At all times relevant herein, Defendants were required to keep *accurate* records
26 regarding their California employees pursuant to the mandate of Labor Code §§ 226, 1174
27 and 1776.

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1 52. As a result of Defendants' various Labor Code violations, Defendants failed to
2 keep accurate records regarding Plaintiff and the other aggrieved current and former
3 employees. For example, Defendants failed in their affirmative obligation to keep accurate
4 records regarding Plaintiff and the other aggrieved current and former employees' gross
5 wages earned, total hours worked, all deductions, net wages earned, and all applicable
6 hourly rates and the number of hours worked at each hourly rate.

7 **Failure to Provide Paid Sick Days**

8 53. At all times relevant herein, Defendants were required to provide their
9 employees with paid sick days pursuant to Labor Code § 246.

10 54. As a policy and practice, Defendants failed to provide Plaintiff and other
11 aggrieved current and former employees with paid sick days pursuant to Labor Code § 246.

12 **Failure to Reimburse Business Expenses**

13 55. At all times relevant herein, Defendants were required to reimburse its
14 employees for any and all necessary expenditures or losses incurred by the employees in
15 direct consequences of the discharge or his or her duties pursuant to the mandate of Labor
16 Code §§ 2800 and 2802.

17 56. As a policy and practice, Defendants failed to reimburse Plaintiff and the other
18 aggrieved current and former employees for all business expenses incurred and owing them
19 within the required time period.

20 **Penalties**

21 57. Pursuant to California Labor Code § 2699, Plaintiff, individually, and on
22 behalf of the other current and former aggrieved employees, requests and is entitled to
23 recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and
24 costs, including but not limited to:

- 25 a. Penalties under California Labor Code § 2699 in the amount of a hundred
26 dollars (\$100) for each aggrieved employee per pay period for the initial
27 violation, and two hundred dollars (\$200) for each aggrieved employee per
28 pay period for each subsequent violation;

- 1 b. Penalties under California Code of Regulations Title 8 § 11040 in the amount
2 of fifty dollars (\$50) for each aggrieved employee per pay period for the
3 initial violation, and one hundred dollars (\$100) for each aggrieved
4 employee per pay period for each subsequent violation;
- 5 c. Penalties under California Labor Code § 210 in addition to, and entirely
6 independent and apart from, any other penalty provided in the California
7 Labor Code in the amount of a hundred dollars (\$100) for each aggrieved
8 employee per pay period for the initial violation, and two hundred dollars
9 (\$200) for each aggrieved employee per pay period for each subsequent
10 violation;
- 11 d. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars
12 (\$100) for each aggrieved employee per pay period for the initial violation,
13 and two hundred fifty dollars (\$250) for each aggrieved employee per pay
14 period for each subsequent violation;
- 15 e. Any and all additional penalties as provided by the Labor Code and/or other
16 statutes; and
- 17 f. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699,
18 and any other applicable statute.

19 **SECOND CAUSE OF ACTION**

20 **(Violation of California Business & Professions Code §§ 17200, *et seq.*)**

21 **(Against BREAD & CIE, INC., BREAD & CIE WHOLESALE, LLP, and DOES 1**
22 **through 100)**

23 58. Plaintiff incorporates by reference the allegations contained in paragraphs 1
24 through 57, and each and every part thereof with the same force and effect as though fully set
25 forth herein.

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1 59. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
2 unlawful and harmful to Plaintiff, the other class members, to the general public, and
3 Defendants' competitors. Accordingly, Plaintiff seeks to enforce important rights affecting
4 the public interest within the meaning of Code of Civil Procedure section 1021.5.

5 60. Defendants' activities as alleged herein are violations of California law, and
6 constitute unlawful business acts and practices in violation of California Business &
7 Professions Code section 17200, *et seq.*

8 61. A violation of California Business & Professions Code section 17200, *et seq.*
9 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
10 policy and practice of requiring Plaintiff and the other class members work overtime hours
11 without paying them proper compensation violates California Labor Code sections 510 and
12 1198. Additionally, Defendants' policy and practice of requiring Plaintiff and the other class
13 members to work through their meal and rest periods without paying them proper
14 compensation violates California Labor Code sections 226.7 and 512(a). Defendants also
15 violated California Labor Code sections 1194, 1197, 2800 and 2802.

16 62. As a result of the herein described violations of California law, Defendants
17 unlawfully gained an unfair advantage over other businesses.

18 63. Plaintiff and the other class members have been personally injured by
19 Defendants' unlawful business acts and practices as alleged herein, including but not
20 necessarily limited to the loss of money and/or property.

21 64. Pursuant to California Business & Professions Code section 17200, *et seq.*,
22 Plaintiff and the other class members are entitled to restitution of the wages withheld and
23 retained by Defendants during a period that commences four years prior to the filing of this
24 Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section
25 1021.5 and other applicable laws; and an award of costs.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of all other members of the
3 general public similarly situated, and on behalf of all aggrieved employees pursuant to the
4 Private Attorneys General Act, prays for relief and judgment against Defendants, jointly and
5 severally, as follows:

6 **Class Certification**

- 7 1. That this action be certified as a class action as to the Second Cause of Action;
8 2. That Plaintiff be appointed as representative of the Class;
9 3. That counsel for Plaintiff be appointed as Class Counsel; and
10 4. That Defendants provide to Class Counsel immediately the names and most
11 current contact information (address, e-mail and telephone numbers) of all class members.

12 **As to the First Cause of Action**

- 13 5. That the Court declare, adjudge and decree that Defendants violated California
14 Labor Code sections 2698, *et seq.*, the PAGA, for civil penalties pursuant to Defendants'
15 violations of Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510,
16 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802;
17 6. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code
18 Sections 210, 1194, and 2699, and any other applicable statute; and
19 7. For such other and further relief as the Court may deem just and proper.

20 **As to the Second Cause of Action**

- 21 8. That the Court declare, adjudge and decree that Defendants violated California
22 Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and the
23 other class members all overtime compensation due to them, failing to provide all meal and
24 rest periods to Plaintiff and the other aggrieved employees, and failing to pay at least minimum
25 wages to Plaintiff and the other class members.
26 9. For restitution of unpaid wages to Plaintiff and the other class members and all
27 pre-judgment interest from the day such amounts were due and payable;

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1 10. For the appointment of a receiver to receive, manage and distribute any and all
2 funds disgorged from Defendants and determined to have been wrongfully acquired by
3 Defendants as a result of violation of California Business and Professions Code sections
4 17200, *et seq.*;

5 11. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Code of Civil Procedure section 1021.5;

7 12. For injunctive relief to ensure compliance with this section, pursuant to
8 California Business and Professions Code sections 17200, *et seq.*; and

9 13. For such other and further relief as the court may deem just and proper.

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11 Dated: March 21, 2022

JUSTICE LAW CORPORATION

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14 By: _____

Douglas Han
Shunt Tatavos-Gharajeh
Simone Rudolf-Dib
Attorneys for Plaintiff

EXHIBIT 1

September 23, 2021

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: BREAD & CIE, INC. AND BREAD & CIE WHOLESALE, LLC

Dear Representative:

We have been retained to represent Juliana Bergara against Bread & Cie, Inc. and Bread & Cie Wholesale, LLC (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "B&C").

Ms. Bergara is pursuing her California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Bergara may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Bread & Cie, Inc. is a California corporation located at 350 University Ave. Suites B & C San Diego, California 92103. Bread & Cie Wholesale, LLC is a California limited liability company located at 4901 Pacific Highway San Diego, California 92110.

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¹ Ms. Bergara does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Ms. Bergara will amend this notice when the true names and capacities are known. Ms. Bergara is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Ms. Bergara and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

LWDA

September 23, 2021

Page 2 of 7

B&C employed Ms. Bergara as an hourly-paid non-exempt Pastry Packer within one year of the date of this letter (until in or around January of 2021²) in the State of California. B&C directly controlled the wages, hours and/or working conditions of Ms. Bergara and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Ms. Bergara may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of B&C within the State of California.

B&C failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Bergara has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at B&C, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

B&C has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

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² Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Ms. Bergara's PAGA cause of action is tolled.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Ms. Bergara and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. B&C failed to compensate Ms. Bergara and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, donning and doffing uniforms, waiting in line to clock-in, and during meal breaks. B&C also failed to include non-discretionary bonuses and incentives in aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Ms. Bergara and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate 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. During the relevant time period, B&C failed to pay Ms. Bergara and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate 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.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, B&C routinely required Ms. Bergara and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with B&C's policies and expectations. B&C failed to provide coverage to Ms. Bergara and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Lastly, B&C also failed to authorize and permit Ms. Bergara and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, B&C failed to compensate Ms. Bergara and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at Ms. Bergara and other aggrieved employees' regular rate of pay.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, B&C failed to pay Ms. Bergara and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, B&C failed to pay Ms. Bergara and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, B&C did not provide Ms. Bergara and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from B&C were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Ms. Bergara and other aggrieved employees, (2) total hours worked by Ms. Bergara and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Ms. Bergara and other aggrieved employees (4) all deductions for Ms. Bergara and other aggrieved employees, (5) net wages earned by Ms. Bergara and other aggrieved employees, (6) the inclusive dates of the period for which Ms. Bergara and other aggrieved employees are paid, (7) the name of the aggrieved 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 Ms. Bergara and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Ms. Bergara and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, B&C failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Ms. Bergara and other aggrieved employees.

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California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, B&C did not provide Ms. Bergara and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, donning and doffing uniforms, waiting in line to clock-in and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Ms. Bergara and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by B&C, including for purchasing equipment they were required to wear while working and using their personal cellular phones to communicate with supervisors.

We believe that Ms. Bergara and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

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Ms. Bergara will seek these penalties on her own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of B&C within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", with a long horizontal flourish extending to the right.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Charles Kaufman
c/o Bread & Cie, Inc.
350 University Ave. Suites B & C
San Diego, California 92103
Agent for Service of Process for Bread & Cie, Inc.

Charles Kaufman
c/o Bread & Cie Wholesale, LLC
4901 Pacific Highway
San Diego, California 92110
Agent for Service of Process for Bread & Cie Wholesale, LLC

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On March 23, 2022, I served the foregoing document described as

FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES

for the following case: **Bergara v. Bread & Cie, Inc. et. al**
LWDA/Court Case No.: **LWDA Case No.: CM- 845745-21**
Court Case No.: 37-2022-00001960-CU-OE-CTL
San Diego County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 23, 2022, at Pasadena, California.



Mariah Anderson