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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Treva Cutts, Deputy Clerk

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SAN DIEGO**

11
12 JENNIFER PHAN, an individual, on
13 behalf of herself and on behalf of all
14 persons similarly situated; ALEJANDRO
15 OCHOA, an individual, on behalf of
16 himself and on behalf of all persons
17 similarly situated; LEOPOLDO
18 VAZQUEZ, an individual, on behalf of
19 himself, and on behalf of all persons
20 similarly situated,

21 Plaintiffs,

22 v.

23 BARTELL HOTELS, a California Limited
24 Partnership; BARTELL HOTELS
25 MANAGEMENT COMPANY, a
26 California Corporation; LA JOLLA
27 VILLAGE INN ASSOCIATES, a
28 California Limited Partnership; and DOES
1-50, Inclusive,

Defendant(s).

Case No.: 37-2022-00009712-CU-OE-
CTL _____

**REPRESENTATIVE ACTION FIRST
AMENDED COMPLAINT FOR:**

- 1) Civil Penalties Pursuant to Labor Code §2699, *et seq.*, for violations of Labor Code §§ 201, 202, 203, 204, 210, 218.6, 221, 226, 226.3, 226(a), 226(a)(8), 226.3, 226.7, 227.3, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and the California Code of Regulations

Judge: Hon. Richard S. Whitney
Dept: C-68

Date Action Filed: March 14, 2022
Trial Date: None Set

Plaintiffs JENNIFER PHAN, ALEJANDRO OCHOA, and LEOPOLDO VAZQUEZ
("PLAINTIFFS"), on behalf of the people of the State of California and as "AGGRIEVED

1 EMPLOYEES” acting as a private attorney general under the Labor Code Private Attorney
2 General Action of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information and belief,
3 except for her own acts and knowledge which are based on personal knowledge, the
4 following:

5 INTRODUCTION

6 1. PLAINTIFFS brings this action against BARTELL HOTELS, a California
7 Limited Partnership and BARTELL HOTELS MANAGEMENT COMPANY, a California
8 Corporation; and LA JOLLA VILLAGE INN ASSOCIATES, a California Limited
9 Partnership (“DEFENDANT” or “DEFENDANTS”) seeking only to recover PAGA civil
10 penalties for each PLAINTIFF, and on behalf of all current and former aggrieved employees
11 that worked for DEFENDANTS. PLAINTIFFS do **not seek to recover anything other**
12 **than penalties as permitted by California Labor Code § 2699.** To the extent that statutory
13 violations are mentioned for wage violations, PLAINTIFFS do not seek underlying general
14 and/or special damages for those violations in this action, but simply the civil penalties
15 permitted by California Labor Code § 2699. Notwithstanding, PLAINTIFF JENNIFER
16 PHAN is not abandoning her right to pursue her individual claims for, *inter alia*,
17 Defendants’ alleged wage violations, pregnancy discrimination and sex discrimination,
18 and/or general or special damages arising from those violations, and she fully intends to, at
19 a future date, pursue claims for those individual claims and damages. Notwithstanding,
20 PLAINTIFF ALEJANDRO OCHOA is not abandoning his right to pursue his individual
21 claims for, *inter alia*, Defendants’ alleged wage violations, and/or general or special
22 damages arising from those violations, and he fully intends to, at a future date, pursue claims
23 for those individual claims and damages. Notwithstanding, PLAINTIFF LEOPOLDO
24 VAZQUEZ is not abandoning his right to pursue his individual claims for, *inter alia*,
25 Defendants’ alleged wage violations and/or general or special damages arising from those
26 violations, and he fully intends to, at a future date, pursue claims for those individual claims
27 and damages.

28 2. California has enacted the PAGA to permit an individual to bring an action on

1 behalf of herself/himself and on behalf of others for PAGA penalties *only*, which is the
2 precise and sole nature of this action.

3 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for
4 DEFENDANTS’ violations under PAGA and solely for the relief as permitted by PAGA –
5 that is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing
6 in this complaint should be construed as attempting to obtain any relief that would not be
7 available in a PAGA-only action.

8 **PRELIMINARY ALLEGATIONS**

9 1. Defendant BARTELL HOTELS (“DEFENDANT” or “DEFENDANTS”),
10 is a California Limited Partnership and at all relevant times mentioned herein conducted
11 and continues to conduct substantial and regular business in California.

12 2. Defendant BARTELL HOTELS MANAGEMENT COMPANY
13 (“DEFENDANT” or “DEFENDANTS”) is a California Corporation and at all relevant
14 times mentioned herein conducted and continues to conduct substantial and regular
15 business in California.

16 3. Defendant LA JOLLA VILLAGE INN ASSOCIATES (“DEFENDANT” or
17 “DEFENDANTS”), a California Limited Partnership and at all relevant times mentioned
18 herein conducted and continues to conduct substantial and regular business in California.

19 4. DEFENDANTS are California companies and at all relevant times
20 mentioned herein operate restaurants and hotels in San Diego County in the State of
21 California.

22 5. PLAINTIFF Jennifer Phan was employed by DEFENDANT in California as
23 a non-exempt employee entitled to accurate wage statements, minimum wages, overtime
24 pay and meal and rest periods from July 2021 to August 2021.

25 6. PLAINTIFF Alejandro Ochoa was employed by DEFENDANT in
26 California as a non-exempt employee entitled to accurate wage statements, minimum
27 wages, overtime pay and meal and rest periods from 1998 to February 2022.
28

1 7. PLAINTIFF Leopoldo Vazquez was employed by DEFENDANT in
2 California as a non-exempt employee entitled to accurate wage statements, minimum
3 wages, overtime pay and meal and rest periods from July 1996 to February 2022.

4 8. Through this action, PLAINTIFF alleges that DEFENDANTS engaged in a
5 systematic pattern of wage and hour violations under the California Labor Code and
6 Industrial Welfare Commissions (“IWC”) Wage Orders, all of which contribute to
7 DEFENDANTS’ deliberate unfair competition.

8 9. PLAINTIFFS are informed and believe, and thereon allege, that
9 DEFENDANTS have increased their profits by violating state wage and hour laws, by
10 among other things:

- 11 a. Failing to pay all wages (including minimum wages, overtime and double
12 overtime wages);
- 13 b. Failing to provide lawful meal periods or compensation in lieu thereof;
- 14 c. Failing to authorize or permit lawful rest breaks or provide compensation in
15 lieu thereof;
- 16 d. Failing to provide accurate itemized wage statements;
- 17 e. Failing to provide accurate gratuities.

18 10. PLAINTIFFS were at all times during their employment with
19 DEFENDANTS entitled to be paid minimum wages and entitled to the legally required
20 off-duty meal, rest periods and paid training. PLAINTIFFS from time to time were unable
21 to take off duty meal and rest periods as a result of DEFENDANTS’ work obligations.
22 PLAINTIFFS were also required to be paid for their COVID-19 checks, meal periods, rest
23 periods and training. DEFENDANTS did not separately and/or properly compensate
24 PLAINTIFFS for their COVID-19 checks, meal periods, rest periods and training.
25 PLAINTIFFS were at all times relevant mentioned herein classified by DEFENDANTS as
a non-exempt employee paid in whole or in part on an hourly basis.

26 11. PLAINTIFFS, and such persons that may be added from time to time who satisfy the
27 requirements and exhaust the administrative procedures under the Private Attorney General
28 Act, bring this Representative Action on behalf of the State of California with respect to

1 themselves and all individuals who are or previously were employed by DEFENDANTS in
2 California (the "AGGRIEVED EMPLOYEES") during the time period of October 13, 2020
3 until the present (the "PAGA PERIOD").

4 12. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
5 presently or formerly employed by DEFENDANTS during the PAGA PERIOD, brings this
6 representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for
7 DEFENDANTS' violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 201,
8 218.6, 221, 226, 226(a), 226(a)(8), 226.3, 226.7, 227.3, 246 *et seq.*, 351, 353, 510, 512, 558,
9 1194, 1197, 1197.1, 1198, 2802, and the applicable Wage Orders. Based upon the foregoing,
10 PLAINTIFFS and all AGGRIEVED EMPLOYEES are aggrieved employees within the
11 meaning of Labor Code § 2699, *et seq.*

12 13. The true names and capacities, whether individual, corporate, subsidiary, partnership,
13 associate or otherwise of Defendants DOES 1 through 50, inclusive, are presently unknown
14 to PLAINTIFFS who therefore sues these Defendants by such fictitious names pursuant to
15 Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege
16 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
17 PLAINTIFFS are informed and believe, and based upon that information and belief alleges,
18 that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
19 responsible in some manner for one or more of the events and happenings that proximately
20 caused the injuries and damages hereinafter alleged.

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

1 **THE CONDUCT**

2 15. During the PAGA PERIOD, DEFENDANTS failed to accurately calculate and pay
3 PLAINTIFFS and other AGGRIEVED EMPLOYEES for all their time worked, including
4 minimum, overtime, and double overtime wages. DEFENDANTS unlawfully and
5 unilaterally failed to accurately calculate wages for time worked and penalties for meal and
6 rest periods owed to PLAINTIFFS and other AGGRIEVED EMPLOYEES in order to avoid
7 paying these employees the correct compensation. As a result, PLAINTIFFS and other
8 AGGRIEVED EMPLOYEES forfeited wages due to them for working without
9 compensation at the correct minimum wage and overtime rates. DEFENDANTS' uniform
10 policy and practice to not pay the AGGRIEVED EMPLOYEES the correct compensation
11 for all time worked in accordance with applicable law is evidence by DEFENDANTS'
12 business records.

13 16. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS are
14 required to pay PLAINTIFFS and AGGRIEVED EMPLOYEES for all their time worked,
15 meaning the time during which an employee is subject to the control of an employer,
16 including all the time the employee is suffered or permitted to work. DEFENDANTS
17 required PLAINTIFFS and AGGRIEVED EMPLOYEES to work without paying them for
18 all the time they are under DEFENDANTS' control. Specifically, DEFENDANTS required
19 PLAINTIFFS to work while clocked out. As a result, the PLAINTIFFS and other
20 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by
21 regularly working without their time being accurately recorded and without compensation
22 at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and
23 practice not to pay PLAINTIFFS and other AGGRIEVED EMPLOYEES for all time
24 worked is evidenced by DEFENDANTS' business records. From time to time,
25 PLAINTIFFS were also often interrupted by work assignments during their meal and rest
26 breaks. Indeed there were many days where PLAINTIFFS did not receive a partial meal
27 break. Further, during the PAGA PERIOD, DEFENDANTS required PLAINTIFFS and
28 other AGGRIEVED EMPLOYEES to wait in line and submit to mandatory temperature

1 checks for COVID-19 screening and also complete a COVID -19 questionnaire regarding
2 whether these employees had any symptoms prior to clocking into DEFENDANTS'
3 timekeeping systems for the workday.

4 17. In violation of the applicable sections of the California Labor Code and the
5 requirements of the Industrial Welfare Commission ("IWC") Wage Orders, DEFENDANTS
6 as a matter of company policy, practice and procedure, intentionally and knowingly failed
7 to compensate PLAINTIFFS and the other AGGRIEVED EMPLOYEES at the correct rate
8 of pay for all overtime worked and correct meal premium pay for all meal period violations.
9 This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the
10 payment of the correct overtime compensation as required by California law which allowed
11 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
12 complied with the law. To the extent equitable tolling operates to toll claims by the
13 AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be
14 adjusted accordingly.

15 18. During the PAGA PERIOD, DEFENDANTS failed to provide all the legally required
16 off-duty meal breaks to PLAINTIFFS and the other Aggrieved Employees as required by
17 the applicable Wage Order and Labor Code. The nature of the work performed by
18 PLAINTIFFS and Aggrieved Employees did not prevent these employees from being
19 relieved of all of their duties for the legally required off-duty meal periods. DEFENDANTS'
20 meal period policies and practices were unlawful because PLAINTIFFS and other
21 Aggrieved Employees were far too over-booked and overworked to take a timely off-duty
22 thirty (30) minute meal period. As a result of their rigorous work schedules, PLAINTIFFS
23 and other Aggrieved Employees were often not fully relieved of duty by DEFENDANTS
24 for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFFS and
25 the Aggrieved Employees with legally required meal breaks prior to their fifth (5th) hour of
26 work is evidenced by DEFENDANTS' business records. As a result, PLAINTIFFS and
27 other members of the Aggrieved Employees forfeited meal breaks without additional
28 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

1 19. Further, DEFENDANTS failed to provide PLAINTIFFS and Aggrieved Employees
2 with a second off-duty meal period on workdays in which these employees were required by
3 DEFENDANT to work ten (10) hours of work from time to time. As a result,
4 DEFENDANTS' failure to provide PLAINTIFFS and the Aggrieved Employees with
5 legally required meal breaks is evidenced by DEFENDANTS' business records which
6 contain no record of these breaks.

7 20. In addition, DEFENDANTS failed to compensate PLAINTIFFS and Aggrieved
8 Employees for their rest periods as required by the applicable Wage Order and Labor Code.
9 DEFENDANTS did not have a policy or practice which paid for off-duty rest periods to
10 PLAINTIFFS and the other Aggrieved Employees. As a result, DEFENDANTS' failure to
11 provide PLAINTIFFS and the Aggrieved Employees with all the legally required paid rest
12 periods is evidenced by DEFENDANTS business records.

13 21. On numerous occasions, PLAINTIFFS and other Aggrieved Employees were
14 required to work while not clocked in. DEFENDANTS maintained a company-wide policy
15 of refusing to pay Aggrieved Employees, like PLAINTIFFS, for all hours worked, including
16 Covid-19 screenings, and even during training. Specifically, DEFENDANTS maintained a
17 company-wide pattern and practice of altering employees' timecards to eliminate numerous
18 hours worked. As a result, DEFENDANTS failed to compensate PLAINTIFFS and the
19 Aggrieved Employees wages for all hours worked.

20 22. Under California law, every employer shall pay to each employee, on the established
21 payday for the period involved, not less than the applicable minimum wage for all hours
22 worked in the payroll period, whether the remuneration is measured by time, piece,
23 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the
24 time during which an employee is subject to the control of an employer, and includes all the
25 time the employee is suffered or permitted to work, whether or not required to do so.

26 23. From time to time, when DEFENDANTS did not accurately record PLAINTIFFS'
27 and other Aggrieved Employees' missed meal and rest breaks and/or also failed to pay the
28 proper minimum wages, the wage statements issued to PLAINTIFFS and other Aggrieved

1 Employees by DEFENDANTS violated California law, and in particular, Labor Code
2 Section 226(a). Aside, from the violations listed above in this paragraph, DEFENDANTS
3 failed to issue PLAINTIFFS and Aggrieved Employees an itemized wage statement that
4 lists all the requirements under California Labor Code 226 *et seq.*

5 24. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally,
6 knowingly and systematically failed to reimburse and indemnify PLAINTIFFS and the other
7 Aggrieved Employees for required business expenses incurred by the PLAINTIFFS and
8 other Aggrieved Employees in direct consequence of discharging their duties on behalf of
9 DEFENDANT. Under California Labor Code Section 2802, employers are required to
10 indemnify employees for all expenses incurred in the course and scope of their employment.
11 Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
12 employee for all necessary expenditures or losses incurred by the employee in direct
13 consequence of the discharge of his or her duties, or of his or her obedience to the directions
14 of the employer, even though unlawful, unless the employee, at the time of obeying the
15 directions, believed them to be unlawful."

16 25. In violation of the applicable sections of the California Labor Code and the
17 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS
18 as a matter of company policy, practice and procedure, intentionally, knowingly and
19 systematically failed to compensate PLAINTIFFS and the other Aggrieved Employees for
20 missed meal and rest periods. This uniform policy and practice of DEFENDANTS is
21 intended to purposefully avoid the payment for all time worked as required by California
22 law which allows DEFENDANTS to illegally profit and gain an unfair advantage over
23 competitors who complied with the law. To the extent equitable tolling operates to toll
24 claims by the Aggrieved Employees against DEFENDANTS, the PAGA PERIOD should
25 be adjusted accordingly.

26 26. As a result of DEFENDANTS' intentional disregard of the obligation to meet this
27 burden, DEFENDANTS failed to properly calculate and/or pay all required compensation
28 for work performed by the AGGRIEVED EMPLOYEES and violated the California Labor

1 Code and regulations promulgated thereunder as herein alleged.

2 27. Specifically as to PLAINTIFFS, DEFENDANTS failed to provide all the legally
3 required off-duty meal breaks to them and paid rest periods to them as required by the
4 applicable Wage Order and Labor Code. DEFENDANTS failed to compensate
5 PLAINTIFFS for their missed meal and rest breaks. The nature of the work performed by
6 PLAINTIFF did not prevent them from being relieved of all of her duties for the legally
7 required off-duty meal periods. Further, DEFENDANTS failed to provide PLAINTIFFS
8 with a second off-duty meal period each workday in which PLAINTIFFS was required by
9 DEFENDANTS to work ten (10) hours of work. As a result, DEFENDANTS' failure to
10 provide PLAINTIFFS with the legally required second off-duty meal period is evidenced by
11 DEFENDANTS' business records. From time to time, and as a result of DEFENDANTS
12 not accurately recording all missed meal and rest periods, and failing to pay minimum wages
13 due for all time worked, the wage statements issued to PLAINTIFFS by DEFENDANTS
14 violated California law, and in particular, Labor Code Section 226(a). To date,
15 DEFENDANTS have yet to pay PLAINTIFF all of their wages due to them and all premiums
16 due to them for missed meal and rest breaks and DEFENDANTS have failed to pay any
17 penalty wages owed to her under California Labor Code Section 203.

18 28. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
19 employees with an accurate itemized wage statement in writing showing, among other
20 things, gross wages earned and all applicable hourly rates in effect during the pay period and
21 the corresponding amount of time worked at each hourly rate. From time to time,
22 DEFENDANTS violated Cal. Lab. Code § 226 by failing to provide accurate wage
23 statements. Additionally, DEFENDANTS violated Cal. Lab. Code § 226(a)(8) by failing
24 to list the correct legal entity that employed PLAINTIFFS. DEFENDANTS failed to issue
25 to PLAINTIFFS an itemized wage statement that lists all the requirements under California
26 Labor Code 226 *et seq.* As a result, DEFENDANTS provided PLAINTIFFS and the other
27 AGGRIEVED EMPLOYEES with wage statements which violate Cal. Lab. Code § 226 *et*
28 *seq.*

1 29. 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
5 the payroll period. DEFENDANTS from time to time failed to pay PLAINTIFFS and other
6 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of
7 the payroll period.

8 30. During the PAGA PERIOD, pursuant to DEFENDANTS’ company policies and
9 practices, PLAINTIFFS and other AGGRIEVED EMPLOYEES were forced to forfeit
10 gratuities left for them by customers to DEFENDANTS’ agents who provided no service to
11 the customers that resulted in the gratuity. DEFENDANTS routinely added anywhere from
12 18%-22% service charges to its food and beverages banquet bills. These service charges
13 were in the form of automatic charges which customers are required to pay, and which
14 reasonably appear to be gratuities for the service staff. It is typical and customary in the
15 hospitality industry that establishments impose gratuity charges in the range of 18%-22% of
16 the food and beverage bill. Thus, when customers have paid these charges, it is reasonable
17 for them to have believed they were gratuities to be paid to the service staff. Indeed, because
18 many of these charges are depicted to customers, and the custom in the food and beverage
19 industry that gratuities in the range of 18%-22% are paid for food and beverage service,
20 customers have paid these charges reasonably believing they were remitted to the service
21 staff. However, DEFENDANTS have not remitted the total proceeds of these gratuities to
22 the non-managerial employees who serve the food and beverages. Instead, DEFENDANTS
23 have a policy and practice of retaining for itself a portion of these gratuities and/or using a
24 portion of these gratuities to pay managers or other non-service employees. As a result,
25 PLAINTIFFS and AGGREIVED EMPLOYEES have not received the total proceeds of the
26 gratuities, to which they are entitled to under California law.

27 31. DEFENDANTS are generally in the business of owning and operating hotels,
28 and restaurants. In addition, DEFENDANTS also provides banquet services to large groups,

1 such as wedding parties and other banquet events. During the PAGA PERIOD,
2 PLAINTIFFS and other AGGRIEVED EMPLOYEES were in the “chain of service” and
3 earned gratuities based on their service for their customers. However, PLAINTIFFS and
4 AGGRIEVED EMPLOYEES were forced to forfeit portions of their gratuities, which said
5 gratuities were kept by DEFENDANT and their agents who were not in the chain of service
6 from which the gratuity resulted. PLAINTIFFS and other AGGRIEVED EMPLOYEES
7 contend that any gratuities kept by DEFENDANTS were illegal and in violation of
8 California law because PLAINTIFFS and other AGGRIEVED EMPLOYEES not
9 DEFENDANTS, provided the service for to whom the gratuity should have been paid.

10 32. California Labor Code § 351 establishes the requirements for an employer regarding
11 the payment of gratuities. Specifically, gratuities are the sole property of the employees.
12 California Labor Code § 351 expressly prohibits employers and their agents from collecting,
13 taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the
14 term “gratuity” as including any money that has been paid or given or left for an employee
15 by a patron of a business over and above the actual amount due the business for services
16 rendered or for goods, food, drink or articles sold or served to such patron. Labor Code §
17 353 requires employers to keep accurate records of all gratuities they receive, directly or
18 indirectly.

19 33. Although tip pooling is not expressly prohibited by the Labor Code, employees who
20 mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
21 By distributing tips to DEFENDANTS directly and to their agents who were not in the
22 “chain of service,” DEFENDANTS have violated and continue to violate the legal
23 requirements for handling pooled tips and violated the holding in *O’Grady v. Merchant*
24 *Exchange Productions, Inc.*, No. A148513 (Court of Appeals of California, First District,
25 Division Two.)

26 34. DEFENDANTS’ conduct, as set forth above, in failing to remit to non-
27 managerial banquet service employees the total proceeds of gratuities added to banquet
28 customers’ bills constitutes a violation of California Labor Code Section 351. This violation

1 is enforceable pursuant to the California Unfair Competition Law, Cal. Bus. And Prof. Code
2 17200 *et seq.* DEFENDANTS' conduct constitutes unlawful, unfair, and/or fraudulent
3 business acts or practices, in that DEFENDANTS have violated California Labor Code
4 Section 351 in not remitting to the non-managerial service employees the total gratuities that
5 were charged to customers. PLAINTIFFS and the AGGRIEVED EMPLOYEES have been
6 damaged in an amount according to proof at trial, including the loss of gratuities to which
7 they were entitled and seek all penalties, fees and costs of suit.

8 35. By reason of this uniform conduct applicable to PLAINTIFFS and all
9 AGGRIEVED EMPLOYEES, DEFENDANTS engaged in a company-wide policy and
10 procedure which fails to accurately calculate and record the correct compensation for all
11 time worked by PLAINTIFFS and other AGGRIEVED EMPLOYEES. The proper
12 calculation of these employees' compensation is the DEFENDANTS' burden. As a result of
13 DEFENDANTS' intentional disregard of the obligation to meet this burden,
14 DEFENDANTS fail to properly calculate and/or pay all required compensation for work
15 performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code and
16 regulations promulgated thereunder as herein alleged.

17 36. All of the conduct and violations alleged herein occurred during the PAGA
18 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
19 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seeks penalties for those violations
20 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
21 (2018) 30 Cal App. 5th 504.

22 **JURISDICTION AND VENUE**

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

25 38. Venue is proper in this Court pursuant to California Code of Civil Procedure,
26 Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant
27 times maintained restaurants and hotels in this County and/or conducts substantial business
28

1 in this County, and (ii) committed the wrongful conduct herein alleged in this County
2 against AGGRIEVED EMPLOYEES.

3 **FIRST CAUSE OF ACTION**

4 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**

5 **[Cal. Lab. Code §§ 2698 *et seq.*]**

6 **(Alleged by PLAINTIFF against all DEFENDANTS)**

7 39. PLAINTIFFS reallege and incorporates by this reference, as though fully set
8 forth herein, the prior paragraphs of this Complaint.

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

19 41. For all provisions of the Labor Code except those for which a civil penalty
20 is specifically provided, Labor Code § 2699(f) imposes upon DEFENDANRS a penalty of
21 one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial
22 violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
23 for each subsequent pay period in which DEFENDANTS' violated these provisions of the
24 Labor Code.

25 42. PLAINTIFF, and such persons that may be added from time to time who
26 satisfy the requirements and exhaust the administrative procedures under the Private
27 Attorney General Act, bring this Representative Action on behalf of the State of California
28 with respect to herself and all individuals who are or previously were employed by

1 DEFENDANTS in California during the time period of May 19, 2020 until the present (the
2 "AGGRIEVED EMPLOYEES").

3 43. On March 9, 2022, PLAINTIFFS gave written notice by online submission
4 to the Labor and Workforce Development Agency (the "Agency") and by certified
5 mail to the employer of the specific provisions of this code alleged to have been violated
6 as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated
7 by this reference herein. The statutory waiting period for PLAINTIFFS to add these
8 allegations and Parties to the Complaint has expired. As a result, pursuant to Section
9 2699.3, PLAINTIFFS may now commence a representative civil action under PAGA
10 pursuant to Section 2699 as the proxy of the State of California with respect to all
11 AGGRIEVED EMPLOYEES as herein defined.

12 44. The policies, acts and practices heretofore described were and are an
13 unlawful business act or practice because DEFENDANTS (a) failed to pay PLAINTIFF
14 and other AGGRIEVED EMPLOYEES all earned wages, including by not limited to,
15 minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other
16 AGGRIEVED EMPLOYEES legally required meal and rest breaks and failed to pay
17 premium wages for unlawful meal periods and rest periods, (c) failed to provide accurate
18 itemized wage statements, (d) failed to pay gratuities, (e) failed to keep accurate records
19 of hours worked; and (f) failed to timely pay wages, all in violation of the applicable Labor
20 Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§
21 201- 204, 201, 226, 226.3, 226(a), 226(a)(8), 226.7, 351, 510, 512, 558, 1174, 1174.5, and
22 1175, 182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802 and the applicable Industrial Wage
23 Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
24 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
25 Private Attorney General Act of 2004 as the representative of the State of California for
26 the illegal conduct perpetrated on PLAINTIFFS and the other AGGRIEVED
27 EMPLOYEES.

28 45. Some or all of the conduct and violations alleged herein occurred during the
PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did

1 not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those
2 violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks*
3 *Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA,*
4 *Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person
5 affected by **at least one** Labor Code violation committed by an employer—to **pursue**
6 **penalties for all the Labor Code violations committed by that employer.**”], Emphasis
7 added, reh'g denied (June 13, 2018).)

8 **PRAYER FOR RELIEF**

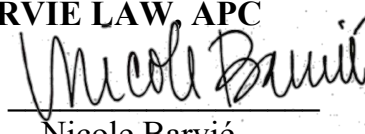
9 WHEREFORE, Plaintiffs prays for a judgment against each Defendants, jointly and
10 severally, as follows:

- 11 1. On behalf of the State of California and with respect to all AGGRIEVED
12 EMPLOYEES:
- 13 a. Recovery of civil penalties as prescribed by the Labor Code Private
14 Attorneys General Act of 2004; and
15 b. An award of penalties, attorneys’ fees and costs of suit, as allowable under
16 the law, including, but not limited to, pursuant to Labor Code § 226, §1194
17 and §2699(g); and
18 c. For such other relief as the Court deems just and proper.

18 Dated: June 30, 2022

19 **BARVIÉ LAW, APC**

20 **By:**



21 Nicole Barvié
22 Attorney for Plaintiffs
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EXHIBIT 1

March 9, 2022

VIA ONLINE FILING TO LWDA and CERTIFIED MAIL TO DEFENDANT

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

Bartell Hotels, L.P. c/o Richard Bartell 4875 N Harbor Dr. 5th Floor San Diego, CA 92106 <i>Sent Via Certified Mail</i>	Bartell Hotels Management Company c/o Richard Bartell 4875 N Harbor Dr. 5th Floor San Diego, CA 92106 <i>Sent Via Certified Mail</i>
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Re: **Notice of Violation of California Labor Code Sections 201, 202, 203, 204 et seq. 210, 218.6, 221, 226, 226.3, 226(a), 226(a)(8), 226.7, 227.3, 246 et seq., 351, 353, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2802, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

Our offices represent Plaintiffs Jennifer Phan, Alejandro Ochoa and Leopoldo Vazquez (“Plaintiffs”), and other aggrieved employees in a proposed lawsuit against Bartell Hotels, a California Limited Partnership and Bartell Hotels Management Company, a California Corporation (“Defendants”).

Plaintiff Jennifer Phan originally sent a PAGA Notice on October 13, 2021, which gave notice to the LWDA and Defendant Bartell Hotels Management Company to enable Plaintiff to proceed with the Complaint against Bartell Hotels Management Company as authorized by California Labor Code § 2600, *et seq.*





The Amended Notice is intended to amend Plaintiff Jennifer Phan's Original PAGA Notice and to add two additional Plaintiffs, Alejandro Ochoa and Leopoldo Vazquez (hereinafter "Plaintiffs"), and one additional Defendant, Bartell Hotels, a California Limited Partnership (hereinafter "Defendants").

- Plaintiff Jennifer Phan was employed by Defendants in California beginning July 21, 2021 to August 11, 2021 as a non-exempt employee.
- Plaintiff Alejandro Ochoa was employed by Defendants in California beginning on or about 1998 to February 2022 as a non-exempt employee.
- Plaintiff Leopoldo Vasquez was employed by Defendants in California beginning July 1996 to February 2022 as a non-exempt employee.

Plaintiffs are entitled to payment of all wages and the legally required meal and rest breaks, as well as certain non-discretionary incentive payments. Defendants, however, unlawfully failed to record and pay Plaintiffs and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Defendants also failed to correctly calculate Plaintiffs' regular rate of pay for purposes of payment of overtime, double overtime, meal premiums, and sick time pay. Further, Defendants failed to timely pay Plaintiffs and other aggrieved employees for earned wages. Moreover, Defendants failed to pay Plaintiffs during pre-shift Covid- 19 screening. Further, Defendants failed to provide gratuities in violation of Cal. Labor Code § 351. As a consequence of the aforementioned violations, Plaintiffs further contend that Defendants failed to provide accurate wage statements to them, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204 *et seq.* 210, 218.6, 221, 226, 226.3, 226(a), 226(a)(8), 226.3, 226.7, 227.3, 246 *et seq.*, 351, 353, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2802, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiffs seek to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendants during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiffs against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiffs, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore



incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entitles and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to 558 and 1197.1—Plaintiffs reserve any and all rights to add, substitute, or change the name of employer entitles and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiffs continues their investigation, with the full intent and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entitles and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiffs to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

Nicole Barvié
Attorney for Plaintiff

1 **BARVIÉ LAW, APC**
2 NICOLE BARVIÉ, State Bar No. 282352
3 nicole@barvielaw.com
4 550 West B Street, 4th Floor
5 San Diego, CA 92101-3598
6 Telephone: 858.255.0928

7 Attorney for Plaintiffs

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SAN DIEGO**

11
12 JENNIFER PHAN, an individual, on
13 behalf of herself and on behalf of all
14 persons similarly situated; ALEJANDRO
15 OCHOA, an individual, on behalf of
16 himself and on behalf of all persons
17 similarly situated; LEOPOLDO
18 VAZQUEZ, an individual, on behalf of
19 himself, and on behalf of all persons
20 similarly situated,

21 Plaintiffs,

22 v.

23 BARTELL HOTELS, a California Limited
24 Partnership; BARTELL HOTELS
25 MANAGEMENT COMPANY, a
26 California Corporation; and DOES 1-50,
27 Inclusive,

28 Defendant(s).

Case No. _____

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1) Civil Penalties Pursuant to Labor Code §2699, *et seq.*, for violations of Labor Code §§ 201, 202, 203, 204, 210, 218.6, 221, 226, 226.3, 226(a), 226(a)(8), 226.3, 226.7, 227.3, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and the California Code of Regulations

Judge:
Dept:

Date Action Filed:

Plaintiffs JENNIFER PHAN, ALEJANDRO OCHOA, and LEOPOLDO VAZQUEZ (“PLAINTIFFS”), on behalf of the people of the State of California and as “AGGRIEVED EMPLOYEES” acting as a private attorney general under the Labor Code Private Attorney

1 General Action of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information and belief,
2 except for her own acts and knowledge which are based on personal knowledge, the
3 following:

4 INTRODUCTION

5 1. PLAINTIFFS brings this action against BARTELL HOTELS, a California
6 Limited Partnership and BARTELL HOTELS MANAGEMENT COMPANY, a California
7 Corporation; (“DEFENDANT” or “DEFENDANTS”) seeking only to recover PAGA civil
8 penalties for each PLAINTIFF, and on behalf of all current and former aggrieved employees
9 that worked for DEFENDANTS. PLAINTIFFS do **not seek to recover anything other**
10 **than penalties as permitted by California Labor Code § 2699.** To the extent that statutory
11 violations are mentioned for wage violations, PLAINTIFFS do not seek underlying general
12 and/or special damages for those violations in this action, but simply the civil penalties
13 permitted by California Labor Code § 2699. Notwithstanding, PLAINTIFF JENNIFER
14 PHAN is not abandoning her right to pursue her individual claims for, *inter alia*,
15 Defendants’ alleged wage violations, pregnancy discrimination and sex discrimination,
16 and/or general or special damages arising from those violations, and she fully intends to, at
17 a future date, pursue claims for those individual claims and damages.

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

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

26 PRELIMINARY ALLEGATIONS

27 1. Defendant BARTELL HOTELS (“DEFENDANT” or “DEFENDANTS”),
28 is a California Limited Partnership and at all relevant times mentioned herein conducted

1 and continues to conduct substantial and regular business in California.

2 2. Defendant BARTELL HOTELS MANAGEMENT COMPANY
3 (“DEFENDANT” or “DEFENDANTS”) is a California Corporation and at all relevant
4 times mentioned herein conducted and continues to conduct substantial and regular
5 business in California.

6 3. DEFENDANTS are California companies and at all relevant times
7 mentioned herein operates restaurants and hotels in San Diego County in the State of
8 California.

9 4. PLAINTIFF Jennifer Phan was employed by DEFENDANT in California as
10 a non-exempt employee entitled to accurate wage statements, minimum wages, overtime
11 pay and meal and rest periods from July 2021 to August 2021.

12 5. PLAINTIFF Alejandro Ochoa was employed by DEFENDANT in
13 California as a non-exempt employee entitled to accurate wage statements, minimum
14 wages, overtime pay and meal and rest periods from 1998 to February 2022.

15 6. PLAINTIFF Leopoldo Vazquez was employed by DEFENDANT in
16 California as a non-exempt employee entitled to accurate wage statements, minimum
17 wages, overtime pay and meal and rest periods from July 1996 to February 2022.

18 7. Through this action, PLAINTIFF alleges that DEFENDANTS engaged in a
19 systematic pattern of wage and hour violations under the California Labor Code and
20 Industrial Welfare Commissions (“IWC”) Wage Orders, all of which contribute to
21 DEFENDANTS’ deliberate unfair competition.

22 8. PLAINTIFFS are informed and believe, and thereon allege, that
23 DEFENDANTS have increased their profits by violating state wage and hour laws, by
24 among other things:

- 25 a. Failing to pay all wages (including minimum wages, overtime and double
26 overtime wages);
- 27 b. Failing to provide lawful meal periods or compensation in lieu thereof;
- 28 c. Failing to authorize or permit lawful rest breaks or provide compensation in
lieu thereof;

- d. Failing to provide accurate itemized wage statements;
- e. Failing to provide accurate gratuities.

9. PLAINTIFFS were at all times during their employment with DEFENDANTS entitled to be paid minimum wages and entitled to the legally required off-duty meal, rest periods and paid training. PLAINTIFFS from time to time were unable to take off duty meal and rest periods as a result of DEFENDANTS' work obligations. PLAINTIFFS were also required to be paid for their COVID-19 checks, meal periods, rest periods and training. DEFENDANTS did not separately and/or properly compensate PLAINTIFFS for their COVID-19 checks, meal periods, rest periods and training. PLAINTIFFS were at all times relevant mentioned herein classified by DEFENDANTS as a non-exempt employee paid in whole or in part on an hourly basis.

10. PLAINTIFFS, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by DEFENDANTS in California (the "AGGRIEVED EMPLOYEES") during the time period of October 13, 2020 until the present (the "PAGA PERIOD").

11. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES presently or formerly employed by DEFENDANTS during the PAGA PERIOD, brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANTS' violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 201, 218.6, 221, 226, 226(a), 226(a)(8), 226.3, 226.7, 227.3, 246 *et seq.*, 351, 353, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, and the applicable Wage Orders. Based upon the foregoing, PLAINTIFFS and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

12. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of Defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFFS who therefore sues these Defendants by such fictitious names pursuant to

1 Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege
2 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
3 PLAINTIFFS are informed and believe, and based upon that information and belief alleges,
4 that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
5 responsible in some manner for one or more of the events and happenings that proximately
6 caused the injuries and damages hereinafter alleged.

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

15 THE CONDUCT

16 14. During the PAGA PERIOD, DEFENDANTS failed to accurately calculate and pay
17 PLAINTIFFS and other AGGRIEVED EMPLOYEES for all their time worked, including
18 minimum, overtime, and double overtime wages. DEFENDANTS unlawfully and
19 unilaterally failed to accurately calculate wages for time worked and penalties for meal and
20 rest periods owed to PLAINTIFFS and other AGGRIEVED EMPLOYEES in order to avoid
21 paying these employees the correct compensation. As a result, PLAINTIFFS and other
22 AGGRIEVED EMPLOYEES forfeited wages due to them for working without
23 compensation at the correct minimum wage and overtime rates. DEFENDANTS' uniform
24 policy and practice to not pay the AGGRIEVED EMPLOYEES the correct compensation
25 for all time worked in accordance with applicable law is evidence by DEFENDANTS'
26 business records.

27 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS are
28 required to pay PLAINTIFFS and AGGRIEVED EMPLOYEES for all their time worked,

1 meaning the time during which an employee is subject to the control of an employer,
2 including all the time the employee is suffered or permitted to work. DEFENDANTS
3 required PLAINTIFFS and AGGRIEVED EMPLOYEES to work without paying them for
4 all the time they are under DEFENDANTS' control. Specifically, DEFENDANTS required
5 PLAINTIFFS to work while clocked out. As a result, the PLAINTIFFS and other
6 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by
7 regularly working without their time being accurately recorded and without compensation
8 at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and
9 practice not to pay PLAINTIFFS and other AGGRIEVED EMPLOYEES for all time
10 worked is evidenced by DEFENDANTS' business records. From time to time,
11 PLAINTIFFS were also often interrupted by work assignments during their meal and rest
12 breaks. Indeed there were many days where PLAINTIFFS did not receive a partial meal
13 break. Further, during the PAGA PERIOD, DEFENDANTS required PLAINTIFFS and
14 other AGGRIEVED EMPLOYEES to wait in line and submit to mandatory temperature
15 checks for COVID-19 screening and also complete a COVID -19 questionnaire regarding
16 whether these employees had any symptoms prior to clocking into DEFENDANTS'
17 timekeeping systems for the workday.

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

1 17. During the PAGA PERIOD, DEFENDANTS failed to provide all the legally required
2 off-duty meal breaks to PLAINTIFFS and the other Aggrieved Employees as required by
3 the applicable Wage Order and Labor Code. The nature of the work performed by
4 PLAINTIFFS and Aggrieved Employees did not prevent these employees from being
5 relieved of all of their duties for the legally required off-duty meal periods. DEFENDANTS'
6 meal period policies and practices were unlawful because PLAINTIFFS and other
7 Aggrieved Employees were far too over-booked and overworked to take a timely off-duty
8 thirty (30) minute meal period. As a result of their rigorous work schedules, PLAINTIFFS
9 and other Aggrieved Employees were often not fully relieved of duty by DEFENDANTS
10 for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFFS and
11 the Aggrieved Employees with legally required meal breaks prior to their fifth (5th) hour of
12 work is evidenced by DEFENDANTS' business records. As a result, PLAINTIFFS and
13 other members of the Aggrieved Employees forfeited meal breaks without additional
14 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

15 18. Further, DEFENDANTS failed to provide PLAINTIFFS and Aggrieved Employees
16 with a second off-duty meal period on workdays in which these employees were required by
17 DEFENDANT to work ten (10) hours of work from time to time. As a result,
18 DEFENDANTS' failure to provide PLAINTIFFS and the Aggrieved Employees with
19 legally required meal breaks is evidenced by DEFENDANTS' business records which
20 contain no record of these breaks.

21 19. In addition, DEFENDANTS failed to compensate PLAINTIFFS and Aggrieved
22 Employees for their rest periods as required by the applicable Wage Order and Labor Code.
23 DEFENDANTS did not have a policy or practice which paid for off-duty rest periods to
24 PLAINTIFFS and the other Aggrieved Employees. As a result, DEFENDANTS' failure to
25 provide PLAINTIFFS and the Aggrieved Employees with all the legally required paid rest
26 periods is evidenced by DEFENDANTS business records.

27 20. On numerous occasions, PLAINTIFFS and other Aggrieved Employees were
28 required to work while not clocked in. DEFENDANTS maintained a company-wide policy

1 of refusing to pay Aggrieved Employees, like PLAINTIFFS, for all hours worked, including
2 Covid-19 screenings, and even during training. Specifically, DEFENDANTS maintained a
3 company-wide pattern and practice of altering employees' timecards to eliminate numerous
4 hours worked. As a result, DEFENDANTS failed to compensate PLAINTIFFS and the
5 Aggrieved Employees wages for all hours worked.

6 21. Under California law, every employer shall pay to each employee, on the established
7 payday for the period involved, not less than the applicable minimum wage for all hours
8 worked in the payroll period, whether the remuneration is measured by time, piece,
9 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the
10 time during which an employee is subject to the control of an employer, and includes all the
11 time the employee is suffered or permitted to work, whether or not required to do so.

12 22. From time to time, when DEFENDANTS did not accurately record PLAINTIFFS'
13 and other Aggrieved Employees' missed meal and rest breaks and/or also failed to pay the
14 proper minimum wages, the wage statements issued to PLAINTIFFS and other Aggrieved
15 Employees by DEFENDANTS violated California law, and in particular, Labor Code
16 Section 226(a). Aside, from the violations listed above in this paragraph, DEFENDANTS
17 failed to issue PLAINTIFFS and Aggrieved Employees an itemized wage statement that
18 lists all the requirements under California Labor Code 226 *et seq.*

19 23. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally,
20 knowingly and systematically failed to reimburse and indemnify PLAINTIFFS and the other
21 Aggrieved Employees for required business expenses incurred by the PLAINTIFFS and
22 other Aggrieved Employees in direct consequence of discharging their duties on behalf of
23 DEFENDANT. Under California Labor Code Section 2802, employers are required to
24 indemnify employees for all expenses incurred in the course and scope of their employment.
25 Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties, or of his or her obedience to the directions
28 of the employer, even though unlawful, unless the employee, at the time of obeying the

1 directions, believed them to be unlawful."

2 24. In violation of the applicable sections of the California Labor Code and the
3 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS
4 as a matter of company policy, practice and procedure, intentionally, knowingly and
5 systematically failed to compensate PLAINTIFFS and the other Aggrieved Employees for
6 missed meal and rest periods. This uniform policy and practice of DEFENDANTS is
7 intended to purposefully avoid the payment for all time worked as required by California
8 law which allows DEFENDANTS to illegally profit and gain an unfair advantage over
9 competitors who complied with the law. To the extent equitable tolling operates to toll
10 claims by the Aggrieved Employees against DEFENDANTS, the PAGA PERIOD should
11 be adjusted accordingly.

12 25. As a result of DEFENDANTS' intentional disregard of the obligation to meet this
13 burden, DEFENDANTS failed to properly calculate and/or pay all required compensation
14 for work performed by the AGGRIEVED EMPLOYEES and violated the California Labor
15 Code and regulations promulgated thereunder as herein alleged.

16 26. Specifically as to PLAINTIFFS, DEFENDANTS failed to provide all the legally
17 required off-duty meal breaks to them and paid rest periods to them as required by the
18 applicable Wage Order and Labor Code. DEFENDANTS failed to compensate
19 PLAINTIFFS for their missed meal and rest breaks. The nature of the work performed by
20 PLAINTIFF did not prevent them from being relieved of all of her duties for the legally
21 required off-duty meal periods. Further, DEFENDANTS failed to provide PLAINTIFFS
22 with a second off-duty meal period each workday in which PLAINTIFFS was required by
23 DEFENDANTS to work ten (10) hours of work. As a result, DEFENDANTS' failure to
24 provide PLAINTIFFS with the legally required second off-duty meal period is evidenced by
25 DEFENDANTS' business records. From time to time, and as a result of DEFENDANTS
26 not accurately recording all missed meal and rest periods, and failing to pay minimum wages
27 due for all time worked, the wage statements issued to PLAINTIFFS by DEFENDANTS
28 violated California law, and in particular, Labor Code Section 226(a). To date,

1 DEFENDANTS have yet to pay PLAINTIFF all of their wages due to them and all premiums
2 due to them for missed meal and rest breaks and DEFENDANTS have failed to pay any
3 penalty wages owed to her under California Labor Code Section 203.

4 27. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
5 employees with an accurate itemized wage statement in writing showing, among other
6 things, gross wages earned and all applicable hourly rates in effect during the pay period and
7 the corresponding amount of time worked at each hourly rate. From time to time,
8 DEFENDANTS violated Cal. Lab. Code § 226 by failing to provide accurate wage
9 statements. Additionally, DEFENDANTS violated Cal. Lab. Code § 226(a)(8) by failing
10 to list the correct legal entity that employed PLAINTIFFS. DEFENDANTS failed to issue
11 to PLAINTIFFS an itemized wage statement that lists all the requirements under California
12 Labor Code 226 *et seq.* As a result, DEFENDANTS provided PLAINTIFFS and the other
13 AGGRIEVED EMPLOYEES with wage statements which violate Cal. Lab. Code § 226 *et*
14 *seq.*

15 28. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
16 employment are due and payable twice during each calendar month, on days designated in
17 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
18 requires employers to pay employees all wages owed within seven (7) days of the close of
19 the payroll period. DEFENDANTS from time to time failed to pay PLAINTIFFS and other
20 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of
21 the payroll period.

22 29. During the PAGA PERIOD, pursuant to DEFENDANTS’ company policies and
23 practices, PLAINTIFFS and other AGGRIEVED EMPLOYEES were forced to forfeit
24 gratuities left for them by customers to DEFENDANTS’ agents who provided no service to
25 the customers that resulted in the gratuity. DEFENDANTS routinely added anywhere from
26 18%-22% service charges to its food and beverages banquet bills. These service charges
27 were in the form of automatic charges which customers are required to pay, and which
28 reasonably appear to be gratuities for the service staff. It is typical and customary in the

1 hospitality industry that establishments impose gratuity charges in the range of 18%-22% of
2 the food and beverage bill. Thus, when customers have paid these charges, it is reasonable
3 for them to have believed they were gratuities to be paid to the service staff. Indeed, because
4 many of these charges are depicted to customers, and the custom in the food and beverage
5 industry that gratuities in the range of 18%-22% are paid for food and beverage service,
6 customers have paid these charges reasonably believing they were remitted to the service
7 staff. However, DEFENDANTS have not remitted the total proceeds of these gratuities to
8 the non-managerial employees who serve the food and beverages. Instead, DEFENDANTS
9 have a policy and practice of retaining for itself a portion of these gratuities and/or using a
10 portion of these gratuities to pay managers or other non-service employees. As a result,
11 PLAINTIFFS and AGGREIVED EMPLOYEES have not received the total proceeds of the
12 gratuities, to which they are entitled to under California law.

13 30. DEFENDANTS are generally in the business of owning and operating hotels,
14 and restaurants. In addition, DEFENDANTS also provides banquet services to large groups,
15 such as wedding parties and other banquet events. During the PAGA PERIOD,
16 PLAINTIFFS and other AGGRIEVED EMPLOYEES were in the “chain of service” and
17 earned gratuities based on their service for their customers. However, PLAINTIFFS and
18 AGGRIEVED EMPLOYEES were forced to forfeit portions of their gratuities, which said
19 gratuities were kept by DEFENDANT and their agents who were not in the chain of service
20 from which the gratuity resulted. PLAINTIFFS and other AGGRIEVED EMPLOYEES
21 contend that any gratuities kept by DEFENDANTS were illegal and in violation of
22 California law because PLAINTIFFS and other AGGRIEVED EMPLOYEES not
23 DEFENDANTS, provided the service for to whom the gratuity should have been paid.

24 31. California Labor Code § 351 establishes the requirements for an employer regarding
25 the payment of gratuities. Specifically, gratuities are the sole property of the employees.
26 California Labor Code § 351 expressly prohibits employers and their agents from collecting,
27 taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the
28 term “gratuity” as including any money that has been paid or given or left for an employee

1 by a patron of a business over and above the actual amount due the business for services
2 rendered or for goods, food, drink or articles sold or served to such patron. Labor Code §
3 353 requires employers to keep accurate records of all gratuities they receive, directly or
4 indirectly.

5 32. Although tip pooling is not expressly prohibited by the Labor Code, employees who
6 mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
7 By distributing tips to DEFENDANTS directly and to their agents who were not in the
8 “chain of service,” DEFENDANTS have violated and continue to violate the legal
9 requirements for handling pooled tips and violated the holding in *O’Grady v. Merchant*
10 *Exchange Productions, Inc.*, No. A148513 (Court of Appeals of California, First District,
11 Division Two.)

12 33. DEFENDANTS’ conduct, as set forth above, in failing to remit to non-
13 managerial banquet service employees the total proceeds of gratuities added to banquet
14 customers’ bills constitutes a violation of California Labor Code Section 351. This violation
15 is enforceable pursuant to the California Unfair Competition Law, Cal. Bus. And Prof. Code
16 17200 *et seq.* DEFENDANTS’ conduct constitutes unlawful, unfair, and/or fraudulent
17 business acts or practices, in that DEFENDANTS have violated California Labor Code
18 Section 351 in not remitting to the non-managerial service employees the total gratuities that
19 were charged to customers. PLAINTIFFS and the AGGRIEVED EMPLOYEES have been
20 damaged in an amount according to proof at trial, including the loss of gratuities to which
21 they were entitled and seek all penalties, fees and costs of suit.

22 34. By reason of this uniform conduct applicable to PLAINTIFFS and all
23 AGGRIEVED EMPLOYEES, DEFENDANTS engaged in a company-wide policy and
24 procedure which fails to accurately calculate and record the correct compensation for all
25 time worked by PLAINTIFFS and other AGGRIEVED EMPLOYEES. The proper
26 calculation of these employees’ compensation is the DEFENDANTS’ burden. As a result of
27 DEFENDANTS’ intentional disregard of the obligation to meet this burden,
28 DEFENDANTS fail to properly calculate and/or pay all required compensation for work

1 performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code and
2 regulations promulgated thereunder as herein alleged.

3 35. All of the conduct and violations alleged herein occurred during the PAGA
4 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
5 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seeks penalties for those violations
6 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
7 (2018) 30 Cal App. 5th 504.

8 **JURISDICTION AND VENUE**

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

11 37. Venue is proper in this Court pursuant to California Code of Civil Procedure,
12 Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant
13 times maintained restaurants and hotels in this County and/or conducts substantial business
14 in this County, and (ii) committed the wrongful conduct herein alleged in this County
15 against AGGRIEVED EMPLOYEES.

16 **FIRST CAUSE OF ACTION**

17 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**

18 **[Cal. Lab. Code §§ 2698 *et seq.*]**

19 **(Alleged by PLAINTIFF against all DEFENDANTS)**

20 38. PLAINTIFFS reallege and incorporates by this reference, as though fully set
21 forth herein, the prior paragraphs of this Complaint.

22 39. PAGA is a mechanism by which the State of California itself can enforce
23 state labor laws through the employee suing under the PAGA who does so as the proxy or
24 agent of the state's labor law enforcement agencies. An action to recover civil penalties
25 under PAGA is fundamentally a law enforcement action designed to protect the public and
26 not to benefit private parties. The purpose of the PAGA is not to recover damages or
27 restitution, but to create a means of "deputizing" citizens as private attorneys general to
28 enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it

1 was ... in the public interest to allow aggrieved employees, acting as private attorneys
2 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1).
3 Accordingly, PAGA claims cannot be subject to arbitration.

4 40. For all provisions of the Labor Code except those for which a civil penalty
5 is specifically provided, Labor Code § 2699(f) imposes upon DEFENDANRS a penalty of
6 one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial
7 violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
8 for each subsequent pay period in which DEFENDANTS' violated these provisions of the
9 Labor Code.

10 41. PLAINTIFF, and such persons that may be added from time to time who
11 satisfy the requirements and exhaust the administrative procedures under the Private
12 Attorney General Act, bring this Representative Action on behalf of the State of California
13 with respect to herself and all individuals who are or previously were employed by
14 DEFENDANTS in California during the time period of May 19, 2020 until the present (the
15 "AGGRIEVED EMPLOYEES").

16 42. On March 9, 2022, PLAINTIFFF gave written notice by online submission
17 to the Labor and Workforce Development Agency (the "Agency") and by certified
18 mail to the employer of the specific provisions of this code alleged to have been violated
19 as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated
20 by this reference herein. The statutory waiting period for PLAINTIFFS to add these
21 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
22 PLAINTIFFS may now commence a representative civil action under PAGA pursuant to
23 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
24 EMPLOYEES as herein defined.

25 43. The policies, acts and practices heretofore described were and are an
26 unlawful business act or practice because DEFENDANTS (a) failed to pay PLAINTIFF
27 and other AGGRIEVED EMPLOYEES all earned wages, including by not limited to,
28 minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other
AGGRIEVED EMPLOYEES legally required meal and rest breaks and failed to pay

1 premium wages for unlawful meal periods and rest periods, (c) failed to provide accurate
2 itemized wage statements, (d) failed to pay gratuities, (e) failed to keep accurate records
3 of hours worked; and (f) failed to timely pay wages, all in violation of the applicable Labor
4 Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§
5 201- 204, 201, 226, 226.3, 226(a), 226(a)(8), 226.7, 351, 510, 512, 558, 1174, 1174.5, and
6 1175, 182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802 and the applicable Industrial Wage
7 Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
8 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
9 Private Attorney General Act of 2004 as the representative of the State of California for
10 the illegal conduct perpetrated on PLAINTIFFS and the other AGGRIEVED
11 EMPLOYEES.

12 44. Some or all of the conduct and violations alleged herein occurred during the
13 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did
14 not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those
15 violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks*
16 *Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA,*
17 *Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person
18 affected by **at least one** Labor Code violation committed by an employer—to **pursue**
19 **penalties for all the Labor Code violations committed by that employer.**”], Emphasis
20 added, reh'g denied (June 13, 2018).)

21 PRAYER FOR RELIEF

22 WHEREFORE, Plaintiffs prays for a judgment against each Defendants, jointly and
23 severally, as follows:

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

- 26 a. Recovery of civil penalties as prescribed by the Labor Code Private
27 Attorneys General Act of 2004; and
28 b. An award of penalties, attorneys’ fees and costs of suit, as allowable under
the law, including, but not limited to, pursuant to Labor Code § 226, §1194
and §2699(g); and

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c. For such other relief as the Court deems just and proper.

Dated: _____, 2022

BARVIÉ LAW, APC

By: _____
Nicole Barvié
Attorney for Plaintiffs

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EXHIBIT 1