

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

Assigned for all purposes:

Judge Randall J. Sherman

Dept. CX105

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

JEFFREY HALEY, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

BOUDIN PROPERTIES OPERATING,
INC., a California Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2023-01322933-CU-OE-CXC

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s).

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

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Boudin Properties Operating, Inc. (referred
8 to as "DEFENDANT") seeking only to recover PAGA civil penalties for himself, and on behalf
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
10 does **not seek to recover anything other than penalties as permitted by California Labor**
11 **Code § 2699.** To the extent that statutory violations are mentioned for wage violations,
12 PLAINTIFF does not seek underlying general and/or special damages for those violations, but
13 simply the civil penalties permitted by California Labor Code § 2699.

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

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

22 THE PARTIES

24 4. Defendant Boudin Properties Operating, Inc. ("DEFENDANT") is a corporation
25 that conducts regular and substantial business in the State of California. DEFENDANT
26 operates bakeries throughout California and is incorporated in the state. Founded in 1849,
27 DEFENDANT is best known for its sourdough bread and for being the "oldest continually
28 operating business in San Francisco."

1 5. PLAINTIFF was employed by DEFENDANT in California as an Assistant
2 General Manager (“AGM”) from May of 2021 until September of 2022. At all times relevant
3 during his employment with DEFENDANT, PLAINTIFF was classified as a salaried employee
4 exempt from overtime wages and other related benefits.

5 6. The position of a Assistant General Manager was represented by DEFENDANT
6 to PLAINTIFF and the other Assistant General Managers as an exempt and a salaried position.

7 7. The employees employed in the position with DEFENDANT as an Assistant
8 General Manager all performed the same primary job duty which was to provide day-to-day
9 routine kitchen work in the handling and processing of orders on the production side of
10 DEFENDANT’s business. The PLAINTIFF and other Assistant General Managers performed
11 the finite set of tasks of scooping soup into bread bowls, staging bread bowls, cutting bread
12 bowls, making sourdough muffins, making sourdough wraps, making sandwiches, making
13 salads, making waffles, making pulled pork, making pizza, grilled cheese, French dips, chicken
14 and placing these food orders and items on the oven belt. PLAINTIFF was also responsible for
15 preparing all of the above food items for DEFENDANT’S customers before delivering such
16 food and pastries to various customers. In addition to that work, PLAINTIFF also stocked
17 coolers, poured drinks, worked the cash register, cleaned tables and organized the walk-in drink
18 and dry storage areas. Assistant General Managers performed all of their job functions
19 according to established company policies, protocols and procedures. According to
20 DEFENDANT’s company policy, while performing the job functions of Assistant General
21 Managers, the Assistant General Managers were and are required from time to time to work in
22 excess of eight (8) hours each workday and more than forty (40) hours each workweek. The
23 PLAINTIFF and the other Assistant General Managers primarily performed the overwhelmingly
24 remedial day-to-day duties of operating DEFENDANT’S store and as such their work was not
25 directly related to the management policies or general business operations of DEFENDANT.

26 8. To perform their finite set of tasks, the PLAINTIFF and other Assistant General
27 Managers were part of the production team that produces DEFENDANT’s food products.
28 Given the circumstances of the job functions performed by the PLAINTIFF and the other

1 Assistant General Managers, PLAINTIFF and the other Assistant General Managers did not
2 primarily perform office or non-manual work directly related to policymaking and/or the general
3 business operations of DEFENDANT. The work of the PLAINTIFF and the other Assistant
4 General Managers did not require special training, experience and/or knowledge and also did
5 not involve the use of discretion and independent judgment with respect to matters of
6 significance of the enterprise. Instead, the PLAINTIFF and the other Assistant General
7 Managers primary job duty was and is performing day-to-day routine and mundane food
8 production work. Courts and State Labor Boards have held that Assistant General Managers,
9 like the PLAINTIFF and the other Assistant General Managers, are non-exempt employees and
10 are entitled to overtime compensation. Therefore, the PLAINTIFF, and all the other Assistant
11 General Managers should have been properly classified as non-exempt employees.

12 9. For DEFENDANT's business, the PLAINTIFF and other Assistant General
13 Managers functioned as working members for DEFENDANT. As defined by DEFENDANT's
14 comprehensive corporate policies and procedures, the primary job duty of the Assistant General
15 Managers employed by DEFENDANT was and is to perform day-to-day routine and mundane
16 food handling in accordance with DEFENDANT's established specific protocols and
17 procedures which govern and control every aspect of the work performed by the Assistant
18 General Managers. These standardized procedures mirror the realities of the workplace
19 evidencing a uniformity of work among the Assistant General Managers and negated any
20 exercise of independent judgment and discretion as to any matter of significance.

21 10. The work schedule for the Assistant General Managers was set by DEFENDANT.
22 From time to time PLAINTIFF and other Assistant General Managers work in excess of eight
23 (8) hours in a workday and more than forty (40) hours in a workweek.

24 11. PLAINTIFF and the other Assistant General Managers were not
25 provided overtime compensation and other benefits required by law as a result of being
26 classified as "exempt" by DEFENDANT.

27 12. PLAINTIFF, and such persons that may be added from time to time who satisfy
28 the requirements and exhaust the administrative procedures under the Private Attorney General

1 Act, brings this Representative Action on behalf of the State of California with respect to
2 himself and all individuals who are or previously were employed by DEFENDANT in
3 California, including any employees staffed with DEFENDANT by a third party, as Assistant
4 General Managers and classified as exempt from overtime wages (“AGGRIEVED
5 EMPLOYEES”) during the time period of September 27, 2021 until a date as determined by the
6 Court (the "PAGA PERIOD").

7 13. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
8 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
9 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT’s
10 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7,
11 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1198, 2802, California Code of Regulations, Title 8,
12 Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1
13 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s). Based upon the
14 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
15 the meaning of Labor Code § 2699, *et seq.*

16 14. As a matter of company policy, practice, and procedure, DEFENDANT has
17 unlawfully, unfairly and/or deceptively classified every Assistant General Manager as exempt
18 based on job title alone, failed to pay required overtime compensation and otherwise failed to
19 comply with all applicable labor laws with respect to these Assistant General Managers.

20 15. The true names and capacities, whether individual, corporate, subsidiary,
21 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
22 unknown to the PLAINTIFF who therefore sues these Defendants by such fictitious names
23 pursuant to Cal. Civ. Proc. Code § 474. The PLAINTIFF will seek leave to amend this
24 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they
25 are ascertained. PLAINTIFF is informed and believes, and based upon that information and
26 belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50,
27 inclusive, are responsible in some manner for one or more of the events and happenings that
28 proximately caused the injuries and damages hereinafter alleged.

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

9
10 **THE CONDUCT**

11 17. The finite set of tasks required of the PLAINTIFF and the other Assistant General
12 Managers as defined by DEFENDANT was executed by the PLAINTIFF and other Assistant
13 General Managers through the performance of non-exempt food handling labor within a defined
14 skill set.

15 18. Although the PLAINTIFF and the other Assistant General Managers primarily
16 performed non-exempt food handling labor, DEFENDANT instituted a blanket classification
17 policy, practice and procedure by which the PLAINTIFF and other Assistant General Managers
18 were classified as exempt from overtime compensation and other related benefits. By reason
19 of this uniform exemption practice, policy and procedure applicable to the PLAINTIFF and the
20 other Assistant General Managers who performed this non-exempt labor, DEFENDANT
21 engaged in a company-wide policy, practice and procedure which failed to properly classify the
22 PLAINTIFF and the other Assistant General Managers and thereby failed to pay them overtime
23 wages for documented overtime worked. The proper classification of these employees is
24 DEFENDANT's legal burden. As a result of DEFENDANT's intentional disregard of the
25 obligation to meet this burden, DEFENDANT failed to pay all required overtime compensation
26 for work performed by the PLAINTIFF and other Assistant General Managers and violated the
27 California Labor Code and regulations promulgated thereunder as herein alleged. In addition,
28 DEFENDANT failed to provide all the legally required off-duty meal and rest breaks to the
PLAINTIFF and the AGGRIEVED EMPLOYEES as required by the applicable Wage Order

1 and Labor Code. DEFENDANT did not have a policy or practice which provided meal and rest
2 breaks to the PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANT's
3 failure to provide the PLAINTIFF and the AGGRIEVED EMPLOYEES with legally required
4 meal and rest breaks is evidenced by DEFENDANT's business records which contain no record
5 of these breaks.

6 19. DEFENDANT, as a matter of law, has the burden of proving that (a) employees
7 were properly classified as exempt and that (b) DEFENDANT otherwise complied with
8 applicable laws. Other than the initial classification of the PLAINTIFF and the AGGRIEVED
9 EMPLOYEES as exempt from being paid overtime based on job title alone, DEFENDANT had
10 no business policy, practice, or procedure to ensure that the PLAINTIFF and the AGGRIEVED
11 EMPLOYEES were properly classified as exempt, and in fact, as a matter of corporate policy
12 erroneously and unilaterally classified the PLAINTIFF and the AGGRIEVED EMPLOYEES
13 as exempt based on job title alone.

14 20. The PLAINTIFF and the AGGRIEVED EMPLOYEES, primarily performed non-
15 exempt job duties during their employment with DEFENDANT, but were nevertheless
16 classified by DEFENDANT as exempt from overtime pay and from time to time worked more
17 than eight (8) hours a day and in excess of forty (40) hours a week.

18 21. PLAINTIFF and the AGGRIEVED EMPLOYEES employed by DEFENDANT
19 were not primarily engaged in work of a type that was or now is directly related to the
20 management or general business operation of the employer's customers, when giving these
21 words a fair but narrow construction. PLAINTIFF and the AGGRIEVED EMPLOYEES
22 employed by DEFENDANT were also not primarily engaged in work of a type that was or now
23 is performed at the level of the policy or management of DEFENDANT. PLAINTIFF and the
24 AGGRIEVED EMPLOYEES employed by DEFENDANT were also not primarily engaged in
25 work requiring knowledge of an advanced type in a field or science or learning customarily
26 acquired by a prolonged course of specialized intellectual instruction and study, but rather their
27 work primarily involved the performance of routine mental, manual, and/or physical processes.
28 PLAINTIFF and the AGGRIEVED EMPLOYEES employed by DEFENDANT were also not

1 primarily engaged in work that is predominantly intellectual and varied in character, but rather
2 was routine mental, manual, mechanical, and/or physical work that was of such character that
3 the output produced or the result accomplished could be standardized in relation to a given
4 period of time. The work of a Assistant General Manager of DEFENDANT was work wherein
5 the PLAINTIFF and the AGGRIEVED EMPLOYEES were engaged in the finite set of tasks
6 of scooping soup into bread bowls, staging bread bowls, cutting bread bowls, making sourdough
7 muffins, making sourdough wraps, making sandwiches, making salads, making waffles, making
8 pulled pork, making pizza, grilled cheese, French dips, chicken and placing such food items and
9 orders on the oven belt. PLAINTIFF was also responsible for preparing all of the above food
10 items for DEFENDANT'S customers before delivering such food and pastries to various
11 customers. In addition to that work, PLAINTIFF also stocked coolers, poured drinks, worked
12 the cash register, cleaned tables and organized the walk-in drink and dry storage areas. Assistant
13 General Managers performed all of their job functions according to established company
14 policies, protocols and procedures.

15 22. The fact that the work of PLAINTIFF and the AGGRIEVED EMPLOYEES may
16 have involved work using a specialized skill set or technical abilities in a defined technical area
17 does not mean that the PLAINTIFF and the AGGRIEVED EMPLOYEES employed by
18 DEFENDANT were exempt from overtime wages. Indeed, the exercise of discretion and
19 independent judgment must be more than the use of a highly technical skill set described in a
20 manual or other source. The work that the PLAINTIFF and the AGGRIEVED EMPLOYEES
21 employed by DEFENDANT were primarily engaged in performing day-to-day mundane and
22 routine food handling which was work that was required to be performed as part of the day-to-
23 day-business of DEFENDANT. As a result, the PLAINTIFF and the other AGGRIEVED
24 EMPLOYEES employed by DEFENDANT were primarily engaged in work that was not
25 directly related to the management policies or general business operations of DEFENDANT and
26 therefore should have been properly classified as non-exempt employees.

27 23. PLAINTIFF and the other AGGRIEVED EMPLOYEES were classified as
28 exempt from California overtime and related laws by DEFENDANT, however, these employees

1 did not have managerial duties or authority. PLAINTIFF and the AGGRIEVED EMPLOYEES
2 performed ongoing day-to-day non-exempt activities. Furthermore, the PLAINTIFF and other
3 AGGRIEVED EMPLOYEES were tightly controlled by company policy and by their managers,
4 did not exercise discretion or independent judgment as to matters of significance, and their job
5 duties were not directly related to DEFENDANT's management policies or general business
6 operation.

7 24. PLAINTIFF and all other AGGRIEVED EMPLOYEES are and were uniformly
8 classified and treated by DEFENDANT as exempt at the time of hire and thereafter,
9 DEFENDANT failed to take the proper steps to determine whether the PLAINTIFF, and other
10 AGGRIEVED EMPLOYEES, were properly classified under the applicable Industrial Welfare
11 Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as exempt
12 from applicable California labor laws. Since DEFENDANT affirmatively and wilfully
13 misclassified the PLAINTIFF and other Assistant General Managers in compliance with
14 California labor laws, DEFENDANT'S practices violated and continue to violate California
15 law. In addition, DEFENDANT acted deceptively by falsely and fraudulently telling the
16 PLAINTIFF and other Assistant General Managers that they were exempt from overtime pay
17 when DEFENDANT knew or should have known that this statement was false and not based
18 on known facts.

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

1 26. By reason of this uniform conduct applicable to the PLAINTIFF and all the
2 AGGRIEVED EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure
3 which failed to correctly classify the PLAINTIFF and the AGGRIEVED EMPLOYEES as non-
4 exempt. The proper classification of these employees is DEFENDANT's burden. As a result
5 of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
6 failed to properly calculate and/or pay all required overtime compensation for work performed
7 by the AGGRIEVED EMPLOYEES and violated the applicable Wage Order, the California
8 Labor Code and the regulations promulgated thereunder as herein alleged.

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

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

17 28. DEFENDANT from time to time fails to pay PLAINTIFF and the AGGRIEVED
18 EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal.
19 Lab. Code § 204(d).

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

26 30. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
27 employees be calculated by dividing the employee's total wages, not including overtime
28 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days

1 of employment.

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

8 32. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
9 the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
10 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
11 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
12 PLAINTIFF and the AGGRIEVED EMPLOYEES whose employment has separated are
13 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

14 33. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
15 to collect or receive from an employee any part of wages theretofore paid by said employer to
16 said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and the
17 AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable to
18 PLAINTIFF and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the deductions
19 from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES, and thereby
20 fails to pay these employees all wages due at each applicable pay period and upon termination.

21 34. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
22 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
23 incurred by the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of
24 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
25 2802, employers are required to indemnify employees for all expenses incurred in the course
26 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
27 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
28 in direct consequence of the discharge of his or her duties, or of his or her obedience to the

1 directions of the employer, even though unlawful, unless the employee, at the time of obeying
2 the directions, believed them to be unlawful."

3 35. In the course of their employment PLAINTIFF and the AGGRIEVED
4 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
5 cellular phones as a result of and in furtherance of their job duties as employees for
6 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
7 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
8 PLAINTIFF and the AGGRIEVED EMPLOYEES were required by DEFENDANT to use their
9 personal cellular phones. As a result, in the course of their employment with DEFENDANT,
10 PLAINTIFF and the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses
11 which included, but were not limited to, costs related to the use of their personal cellular phones
12 all on behalf of and for the benefit of DEFENDANT.

13 36. The employment of PLAINTIFF and some AGGRIEVED EMPLOYEES has
14 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.
15 Additionally, at all times during the term of PLAINTIFF's employment with DEFENDANT,
16 PLAINTIFF and other AGGRIEVED EMPLOYEES earned and accrued vested vacation and
17 holiday time on the date of their termination pursuant to DEFENDANT's uniform vacation
18 policies and applicable California law. The amount of vacation pay PLAINTIFF and the other
19 AGGRIEVED EMPLOYEES earned and accumulated is evidenced by DEFENDANT's
20 business records. Additionally, DEFENDANT also underpaid accrued vested vacation wages
21 to PLAINTIFF and other AGGRIEVED EMPLOYEES by failing to pay such wages at the
22 regular rate of pay and more specifically the final rate of pay that included all non-discretionary
23 incentive compensation. Rather than pay vacation wages at the regular rate of pay,
24 DEFENDANT underpaid vacation wages to PLAINTIFF and other AGGRIEVED
25 EMPLOYEES at their base rates of pay, instead of including all of PLAINTIFF's and other
26 AGGRIEVED EMPLOYEES' non-discretionary incentive compensation into the vacation wage
27 payment calculations. DEFENDANT failed to specify in DEFENDANT's written vacation
28 policy the rate at which PLAINTIFF and other AGGRIEVED EMPLOYEES would be paid

1 vacation upon leaving employment with DEFENDANT. As a result of DEFENDANT's
2 unlawful practice, policy and procedure to deny paying the PLAINTIFF and other
3 AGGRIEVED EMPLOYEES all of their vested vacation and holiday time, DEFENDANT
4 failed to pay the PLAINTIFF and other AGGRIEVED EMPLOYEES all vested vacation time
5 as wages due upon employment termination, in violation of the California Labor Code, Sections
6 201, 202, 203 and 227.3. Similarly, DEFENDANT underpaid waiting time penalties to
7 PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay, instead of
8 including all of PLAINTIFF's and other AGGRIEVED EMPLOYEES' non-discretionary
9 compensation into the waiting time penalty calculations. This failure by DEFENDANT is
10 believed to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to provide
11 compensation for earned, accrued and vested vacation and holiday time, as well as the
12 corresponding waiting time penalties that were paid. DEFENDANT perpetrated this unlawful,
13 unfair and deceptive practice to the detriment of PLAINTIFF and other AGGRIEVED
14 EMPLOYEES. DEFENDANT's uniform practice and policy of failing to pay the
15 AGGRIEVED EMPLOYEES for all vested vacation and holiday time accumulated at
16 employment termination violated and continues to violate Section 227.3 of the California Labor
17 Code.

18 37. In violation of the applicable sections of the California Labor Code and the
19 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
20 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly
21 and systematically failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES suitable
22 seating when the nature of these employees' work reasonably permitted sitting.

23 38. DEFENDANT knew or should have known that PLAINTIFF and the other
24 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit when
25 it did not interfere with the performance of their duties, and that DEFENDANT did not provide
26 suitable seating and/or did not allow them to sit when it did not interfere with the performance
27 of their duties.

28 39. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED

1 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage Order
2 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on behalf
3 of PLAINTIFF and the other AGGRIEVED EMPLOYEES as provided herein. Providing
4 suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional
5 disregard of the obligation to meet this burden, DEFENDANT violated the California Labor
6 Code and regulations promulgated thereunder as herein alleged.

7
8 40. All of the conduct and violations alleged herein occurred during the PAGA
9 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
10 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
11 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
12 AJDAR 12157 (Certified for Publication 12/19/18).

13 **JURISDICTION AND VENUE**

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

16 42. Venue is proper in this Court pursuant to California Code of Civil Procedure,
17 Sections 395.5 and 393, because DEFENDANT operates in locations across California,
18 employs AGGRIEVED EMPLOYEES across California, including in this County, and
19 committed the wrongful conduct herein alleged in this County against AGGRIEVED
20 EMPLOYEES.

21 **FIRST CAUSE OF ACTION**

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

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

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

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

27 44. PAGA is a mechanism by which the State of California itself can enforce state
28 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the

1 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
2 fundamentally a law enforcement action designed to protect the public and not to benefit private
3 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
4 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
5 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
6 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
7 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
8 subject to arbitration.

9 45. PLAINTIFF, and such persons that may be added from time to time who satisfy
10 the requirements and exhaust the administrative procedures under the Private Attorney General
11 Act, brings this Representative Action on behalf of the State of California with respect to
12 himself and all individuals who are or previously were employed by DEFENDANT in
13 California, including any employees staffed with DEFENDANT by a third party, as Assistant
14 General Managers and classified as exempt from overtime wages ("AGGRIEVED
15 EMPLOYEES") during the time period of September 27, 2021 until a date as determined by the
16 Court (the "PAGA PERIOD").

17 46. On September 27, 2022, PLAINTIFF gave written notice by electronic mail to the
18 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
19 employer of the specific provisions of this code alleged to have been violated as required by
20 Labor Code § 2699.3. *See Exhibit #1*, attached hereto and incorporated by this reference herein
21 (*PAGA Notice only without draft complaint*). The statutory waiting period for PLAINTIFF to
22 add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
23 PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section
24 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as
25 herein defined.

26 47. The policies, acts and practices heretofore described were and are an unlawful
27 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
28 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record

1 and provide legally required meal and rest periods, (c) failed to pay overtime wages and sick
2 pay wages, (d) failed to reimburse employees for required expenses, (e) failed to provide wages
3 when due, and (f) failed to provide suitable seating, all in violation of the applicable Labor Code
4 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3,
5 246, 510, 512, 558(a)(1)(2), 1194, 1198, 2802, California Code of Regulations, Title 8, Section
6 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14)
7 (Failure to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil
8 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties
9 as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of
10 the State of California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED
11 EMPLOYEES.

12
13 **PRAYER FOR RELIEF**

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

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

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

20 B) An award of attorneys' fees and cost of suit, as allowable under the

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

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

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

2 Dated: May 1, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
3 LLP

4
5 By: /s/ Nicholas De Blouw
6 Norman B. Blumenthal
7 Kyle R. Nordrehaug
8 Nicholas J. De Blouw
9 *Attorneys for Plaintiff*

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:
Nick@bamlawca.com

WRITERS EXT:
1004

September 27, 2022
CA2734

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Boudin Properties Operating, Inc.
Certified Mail #70221670000126674674
William R. Dozier
50 Francisco Street, Suite 235
San Francisco, CA 94133

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Boudin Properties Operating, Inc. in California, including any employees staffed with Boudin Properties Operating, Inc. by a third party, as Assistant General Managers and classified as exempt employees during the time period of September 27, 2021 until a date as determined by the Court. Our offices represent Plaintiff Jeffrey Haley (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Boudin Properties Operating, Inc. (“Defendant”). Plaintiff has been employed by Defendant in California as an Assistant General Manager since May of 2021 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. At all times during his employment with Defendant, Plaintiff was classified as a salary exempt employee exempt overtime wages and other related benefits. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right

to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a) *et seq.*. Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, 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. Plaintiff therefore incorporates 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.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *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 Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.