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Assigned for All Purposes

Judge Randall J. Sherman

Dept. CX105

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ORANGE**

SHAWN GAYE and PORFIRIO  
BARRERAS, on behalf of the State of  
California, as a private attorney generals,

Plaintiff,

vs.

GMRI, INC., a Corporation; and DOES 1  
through 50, inclusive,

Defendants.

Case No. 30-2023-01328415-CU-OE-CXC

**FIRST AMENDED  
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 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 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), and the applicable Wage Order(s).

1 Plaintiffs Shawn Gaye (“PLAINTIFF Gaye”), and Porfirio Barreras (“PLAINTIFF  
2 Barreras”) (collectively “PLAINTIFFS”) on behalf of the people of the State of California and  
3 as “aggrieved employees” acting as a private attorney generals under the Labor Code Private  
4 Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, allege on information and belief,  
5 except for their own acts and knowledge which are based on personal knowledge, the following:

## 6 INTRODUCTION

7 1. PLAINTIFFS bring this action against GMRI, Inc. (referred to as  
8 “DEFENDANT”) seeking only to recover PAGA civil penalties for themselves and on behalf  
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFFS  
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, PLAINTIFFS seek to obtain all applicable relief for DEFENDANT’s  
18 violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and  
19 any other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint  
20 should be construed as attempting to obtain any relief that would not be available in a PAGA-  
21 only action.

## 22 THE PARTIES

23 4. GMRI, Inc. (“DEFENDANT”) is a Corporation that at all relevant times  
24 mentioned herein conducted and continues to conduct substantial business in the state of  
25 California.

26 5. DEFENDANT owns and operate restaurants in California.

27 6. PLAINTIFF Gaye was employed by DEFENDANT in California from October  
28

1 of 2016 to September 28, 2022. PLAINTIFF Barreras was employed in California from  
2 October 2019 to October 19, 2022. PLAINTIFFS were at all times classified by DEFENDANT  
3 as a non-exempt employees, paid on an hourly basis, and entitled to the legally required meal  
4 and rest periods and payment of minimum and overtime wages due for all time worked.

5  
6 7. PLAINTIFFS, and such persons that may be added from time to time who satisfy  
7 the requirements and exhaust the administrative procedures under the Private Attorney General  
8 Act, brings this Representative Action on behalf of the State of California with respect to  
9 himself and all individuals who are or previously were employed by DEFENDANT in  
10 California, including any employees staffed with DEFENDANT by a third party, and classified  
11 as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of January  
12 16, 2022 until a date as determined by the Court (the "PAGA PERIOD").

13 8. PLAINTIFFS, on behalf of himself and all AGGRIEVED EMPLOYEES  
14 presently or formerly employed by DEFENDANT during the PAGA PERIOD, bring this  
15 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for  
16 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,  
17 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,  
18 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),  
19 California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and  
20 the applicable Wage Order(s). Based upon the foregoing, PLAINTIFFS and all  
21 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §  
22 2699, *et seq.*

23 9. The true names and capacities, whether individual, corporate, subsidiary,  
24 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are  
25 presently unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious  
26 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this  
27 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when  
28 they are ascertained. PLAINTIFFS are informed and believe, and based upon that

1 information and belief allege, that the Defendants named in this Complaint, including DOES  
2 1 through 50, inclusive, are responsible in some manner for one or more of the events and  
3 happenings that proximately caused the injuries and damages hereinafter alleged.

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

### 12 13 **THE CONDUCT**

14 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT  
15 was required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time  
16 worked, meaning the time during which an employee is subject to the control of an  
17 employer, including all the time the employee is suffered or permitted to work.  
18 DEFENDANT requires PLAINTIFFS and the AGGRIEVED EMPLOYEES to work  
19 without paying them for all the time they are under DEFENDANT's control. Among other  
20 things, DEFENDANT requires PLAINTIFFS to work while clocked out during what is  
21 supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS was from time to time  
22 interrupted by work assignments while clocked out for what should have been  
23 PLAINTIFFS' off-duty meal break. DEFENDANT, as a matter of established company  
24 policy and procedure, administers a uniform practice of rounding the actual time worked and  
25 recorded by PLAINTIFFS and the AGGRIEVED EMPLOYEES, always to the benefit of  
26 DEFENDANT, so that during the course of their employment, PLAINTIFFS and the  
27 AGGRIEVED EMPLOYEES are paid less than they would have been paid had they been  
28 paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT

engages in the practice of requiring PLAINTIFFS and the AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a condition of employment, required these employees to submit to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by working without their time being correctly recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business records.

12. State law provides that employees must be paid overtime and meal and rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFFS and the AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to specific elements of an employee's performance.

13. The second component of PLAINTIFFS' and the AGGRIEVED EMPLOYEES' compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFFS and the AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANT. The non-discretionary incentive program provided all employees paid on an hourly basis with incentive compensation when the employees met the various performance goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFFS and the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest break premium pay. Management and supervisors described the incentive program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by PLAINTIFFS and the AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted in a underpayment of overtime compensation and meal and rest break premiums to PLAINTIFFS and the AGGRIEVED EMPLOYEES by DEFENDANT.

1           14. As a result of their rigorous work schedules, PLAINTIFF and the  
2 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off  
3 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS  
4 and the AGGRIEVED EMPLOYEES were required from time to time to perform work as  
5 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving  
6 a meal break. Further, DEFENDANT from time to time fails to provide PLAINTIFFS and  
7 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in  
8 which these employees were required by DEFENDANT to work ten (10) hours of work.  
9 DEFENDANT also engaged in the practice of rounding the meal period times to avoid  
10 paying penalties to PLAINTIFF and the AGGRIEVED EMPLOYEES. PLAINTIFFS and  
11 the AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional  
12 compensation and in accordance with DEFENDANT's corporate policy and practice.

13           15. During the PAGA PERIOD, PLAINTIFFS and the AGGRIEVED  
14 EMPLOYEES were also required from time to time to work in excess of four (4) hours  
15 without being provided ten (10) minute rest periods. Further, these employees were denied  
16 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)  
17 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes  
18 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,  
19 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)  
20 hours or more from time to time. PLAINTIFFS and the AGGRIEVED EMPLOYEES were  
21 also not provided with one hour wages in lieu thereof. Additionally, the applicable  
22 California Wage Order requires employers to provide employees with off-duty rest periods,  
23 which the California Supreme Court defined as time during which an employee is relieved  
24 from all work related duties and free from employer control. In so doing, the Court held that  
25 the requirement under California law that employers authorize and permit all employees to  
26 take rest period means that employers must relieve employees of all duties and relinquish  
27 control over how employees spend their time which includes control over the locations  
28 where employees may take their rest period. Employers cannot impose controls that prohibit

1 an employee from taking a brief walk - five minutes out, five minutes back. Here,  
2 DEFENDANT's policy restricted PLAINTIFFS and the AGGRIEVED EMPLOYEES from  
3 unconstrained walks and is unlawful based on DEFENDANT's rule which states  
4 PLAINTIFFS and the AGGRIEVED EMPLOYEES cannot leave the work premises during  
5 their rest period.

6 16. During the PAGA PERIOD, DEFENDANT failed to accurately record and  
7 pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for the actual amount of time these  
8 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,  
9 DEFENDANT was required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for  
10 all time worked, meaning the time during which an employee was subject to the control of  
11 an employer, including all the time the employee was permitted or suffered to permit this  
12 work. DEFENDANT required these employees to work off the clock without paying them  
13 for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or  
14 should have known that PLAINTIFFS and the AGGRIEVED EMPLOYEES were under  
15 compensated for all time worked. As a result, PLAINTIFFS and the AGGRIEVED  
16 EMPLOYEES forfeited time worked by working without their time being accurately  
17 recorded and without compensation at the applicable minimum wage and overtime wage  
18 rates. To the extent that the time worked off the clock does not qualify for overtime  
19 premium payment, DEFENDANT fails to pay minimum wages for the time worked off-the-  
20 clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

21 17. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the  
22 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to  
23 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226  
24 provides that every employer shall furnish each of his or her employees with an accurate  
25 itemized wage statement in writing showing, among other things, gross wages earned and all  
26 applicable hourly rates in effect during the pay period and the corresponding amount of time  
27 worked at each hourly rate. PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid  
28 on an hourly basis. As such, the wage statements should reflect all applicable hourly rates

1 during the pay period and the total hours worked, and the applicable pay period in which the  
2 wages were earned pursuant to California Labor Code Section 226(a). The wage statements  
3 DEFENDANT provided to PLAINTIFFS and the AGGRIEVED EMPLOYEES failed to  
4 identify such information. More specifically, the wage statements failed to identify the  
5 accurate total hours worked each pay period. When the hours shown on the wage statements  
6 were added up, they did not equal the actual total hours worked during the pay period in  
7 violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this  
8 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that  
9 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT  
10 from time to time provided PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage  
11 statements which violated Cal. Lab. Code § 226.

12 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be  
13 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if  
14 the wages are paid not more than seven (7) calendar days following the close of the payroll  
15 period. Cal. Lab. Code § 210 provides:

16 in [I]n addition to, and entirely independent and apart from, any other penalty provided  
17 this article, every person who fails to pay the wages of each employee as provided in  
18 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial  
19 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.

20 19. DEFENDANT from time to time failed to pay PLAINTIFFS and the  
21 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in  
22 accordance with Cal. Lab. Code § 204(d), including but not limited to for the “Hourly”  
23 regular wage payments.

24 20. DEFENDANT underpaid sick pay wages to PLAINTIFFS and the  
25 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in  
26 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt  
27 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate  
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1 of pay, DEFENDANT underpays sick pay to PLAINTIFFS and the AGGRIEVED  
2 EMPLOYEES at their base rates of pay.

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

7 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay  
8 at the regular rate of pay. PLAINTIFFS and the AGGRIEVED EMPLOYEES routinely  
9 earned non-discretionary incentive wages which increased their regular rate of pay.  
10 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and  
11 the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as  
12 required under Cal. Lab. Code Section 246.

13 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS  
14 and the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time  
15 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and  
16 believes and based thereon alleges that such failure to pay sick pay at regular rate was  
17 willful, such that the AGGRIEVED EMPLOYEES whose employment has separated are  
18 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

19 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer  
20 to collect or receive from an employee any part of wages theretofore paid by said employer  
21 to said employee." DEFENDANT fails to pay all compensation due to PLAINTIFFS and  
22 the AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to  
23 PLAINTIFFS and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the  
24 deductions from compensation payable to PLAINTIFFS and the AGGRIEVED  
25 EMPLOYEES, and thereby fails to pay these employees all wages due at each applicable  
26 pay period and upon termination.

27 25. DEFENDANT intentionally and knowingly failed to reimburse and indemnify  
28 PLAINTIFFS and the AGGRIEVED EMPLOYEES for required business expenses incurred

1 by the PLAINTIFFS and the AGGRIEVED EMPLOYEES in direct consequence of  
2 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section  
3 2802, employers are required to indemnify employees for all expenses incurred in the course  
4 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer  
5 shall indemnify his or her employee for all necessary expenditures or losses incurred by the  
6 employee in direct consequence of the discharge of his or her duties, or of his or her  
7 obedience to the directions of the employer, even though unlawful, unless the employee, at  
8 the time of obeying the directions, believed them to be unlawful."

9 26. In the course of their employment PLAINTIFFS and the AGGRIEVED  
10 EMPLOYEES as a business expense, were required by DEFENDANT to use their own  
11 personal cellular phones as a result of and in furtherance of their job duties as employees for  
12 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost  
13 associated with the use of their personal cellular phones and home offices for  
14 DEFENDANT's benefit. Specifically, PLAINTIFFS and the AGGRIEVED EMPLOYEES  
15 were required by DEFENDANT to use their personal cellular phones and home offices. As  
16 a result, in the course of their employment with DEFENDANT, PLAINTIFFS and the  
17 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but  
18 were not limited to, costs related to the use of their personal cellular phones and home  
19 offices all on behalf of and for the benefit of DEFENDANT.

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

26 28. DEFENDANT knew or should have known that PLAINTIFFS and other  
27 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit  
28 when it did not interfere with the performance of their duties, and that DEFENDANT did

1 not provide suitable seating and/or did not allow them to sit when it did not interfere with  
2 the performance of their duties.

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

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

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

15 31. All of the conduct and violations alleged herein occurred during the PAGA  
16 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect  
17 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations  
18 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*  
19 2018 AJDAR 12157 (Certified for Publication 12/19/18).

## 20 21 **JURISDICTION AND VENUE**

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

24 33. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
25 Sections 395.5 and 393, because DEFENDANT operates in locations across California,  
26 employs AGGRIEVED EMPLOYEES across California, including in this County, and  
27 committed the wrongful conduct herein alleged in this County against AGGRIEVED  
28 EMPLOYEES.

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1 herein (*PAGA Notice only without draft complaint*). On November 20, 2023 PLAINTIFFS  
2 Gaye and Barreras gave written amended notice by electronic mail to the Agency and by  
3 electronic mail to Counsel for Defendant. See **Exhibit #2**, attached hereto and incorporated  
4 by this reference herein (*Amended PAGA Notice only without draft complaint*). The statutory  
5 waiting period for PLAINTIFFS to add these allegations to the Complaint has expired. As a  
6 result, pursuant to Section 2699.3, PLAINTIFFS may now commence a representative civil  
7 action under PAGA pursuant to Section 2699 as the proxy of the State of California with  
8 respect to all AGGRIEVED EMPLOYEES as herein defined.

9 38. The policies, acts and practices heretofore described were and are an unlawful  
10 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the  
11 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly  
12 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,  
13 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for  
14 required expenses, (f) failed to provide wages when due, and (g) failed to provide suitable  
15 seating, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,  
16 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512,  
17 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,  
18 Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1  
19 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s), and thereby gives  
20 rise to civil penalties as a result of such conduct.<sup>1</sup> PLAINTIFFS hereby seek recovery of  
21 only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004  
22 as the representative of the State of California for the illegal conduct perpetrated on  
23 PLAINTIFFS and the AGGRIEVED EMPLOYEES.

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

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

B) An award of attorneys' fees and cost of suit, as allowable under the law, but not limited to, pursuant to Labor Code §2699.

By: /s/ Nicholas J. De Blouw  
 Norman B. Blumenthal  
 Kyle R. Nordrehaug  
 Nicholas J. De Blouw  
 Sergio J. Puchr  
  
*Attorneys for Plaintiff*

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# **EXHIBIT 1**

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

**2255 CALLE CLARA**

**LA JOLLA, CALIFORNIA 92037**

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WRITERS E-MAIL:

[Nick@bamlawca.com](mailto:Nick@bamlawca.com)

WRITERS EXT:

1004

January 16, 2023

CA2839

**VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT**

Labor and Workforce Development Agency  
Online Filing

GMRI, Inc.  
Certified Mail #70222410000060826365  
CORPORATE CREATIONS NETWORK  
INC.  
5901 W. CENTURY BLVD., #750  
LOS ANGELES, CA 90045

GMRI, Inc.  
Certified Mail #70222410000060826358  
SARAH CLEMENS  
5901 W CENTURY BLVD. #750  
LOS ANGELES, CA 90045

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, 1197, 1197.1, 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 GMRI, Inc. in California, including any employees staffed with GMRI, Inc. by a third party, and classified as non-exempt employees during the time period of January 16, 2022 until a date as determined by the Court. Our offices represent Plaintiff Shawn Gaye (“Plaintiff”) and other Aggrieved Employees in a lawsuit against GMRI, Inc. (“Defendant”). Plaintiff was employed by Defendant in California as a non-exempt employee from October of 2016 to September 28, 2022 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. 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 paying for meal and rest break premiums at the correct regular rate), 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. 5<sup>th</sup> 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 Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a) *et seq.* Plaintiff and Aggrieved Employees are paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provides to Plaintiff and other Aggrieved Employees fails to identify such information. More specifically, the wage statements fails to identify the accurate total hours worked each pay period. When the hours shown on the wage statements are added up, they do not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). 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, 1197, 1197.1, 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.

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## **EXHIBIT 2**

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

**2255 CALLE CLARA  
LA JOLLA, CALIFORNIA 92037**

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WRITERS E-MAIL:  
[nick@bamlawca.com](mailto:nick@bamlawca.com)

WRITERS EXT:  
1004

November 20, 2023  
CA2839

**VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT**

Labor and Workforce Development Agency  
Online Filing

GMRI, Inc.  
DLA PIPER LLP (US)  
Julie A. Dunne  
Matthew Riley  
4365 Executive Drive, Suite 1100  
San Diego, CA 92121-2133  
[Julie.Dunne@us.dlapiper.com](mailto:Julie.Dunne@us.dlapiper.com)  
[Matthew.Riley@us.dlapiper.com](mailto:Matthew.Riley@us.dlapiper.com)

Amended Notice For LWDA Case No. CM-929625-23

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, 1197, 1197.1, 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:

Our offices represent Plaintiffs Shawn Gaye and Porfirio Barreras (collectively referred to as “Plaintiffs”) and other Aggrieved Employees in a lawsuit against GMRI, Inc. (“Defendants”).

Plaintiff Shawn Gaye originally sent a PAGA Notice on January 16, 2023, which gave notice to the LWDA and Defendant to enable Plaintiff Gaye to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.*

This Amended Notice is intended to add Plaintiff Porfirio Barreras.

“Aggrieved Employees” refers to all individuals who are or previously were employed by GMRI, Inc. in California, including any employees staffed with GMRI, Inc. by a third party, and classified as non-exempt employees during the time period of January 16, 2022 until a date as determined by the Court. Plaintiff Gaye was employed by Defendant in California as a non-

exempt employee from October of 2016 to September 28, 2022 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant's control. Plaintiff Barreras was employed by Defendant in California as a non-exempt employee from October of 2019 to October 19, 2022 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant's control. Defendant, however, unlawfully failed to record and pay Plaintiffs 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 paying for meal and rest break premiums at the correct regular rate), and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiffs 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 Plaintiffs and Aggrieved Employees for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant required Plaintiffs 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 Plaintiffs 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. 5<sup>th</sup> 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contends that Defendant failed to provide accurate wage statements to Plaintiffs, and other Aggrieved Employees, in violation of California Labor Code section 226(a) *et seq.* Plaintiffs and Aggrieved Employees are paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provides to Plaintiffs and other Aggrieved Employees fails to identify such information. More specifically, the wage statements fails to identify the accurate total hours worked each pay period. When the hours shown on the wage statements are added up, they do not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Additionally, Plaintiffs contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs 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 Plaintiffs 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, 1197, 1197.1, 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 Amended Complaint by Plaintiffs 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 Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, 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. Plaintiffs

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 Plaintiffs 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 Plaintiffs and all Aggrieved 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.

Respectfully,

*/s/ Nicholas J. De Blouw*

Nicholas James De Blouw, Esq.