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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

SHAWN GAYE and PORFIRIO BARRERAS,
as Individuals and 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

SECOND AMENDED COMPLAINT FOR:

1. CIVIL PENALTIES PURSUANT TO
LABOR CODES § 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 11070(14) (FAILURE TO
PROVIDE SEATING), AND THE
APPLICABLE WAGE ORDER(S);
2. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY; AND
3. INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS.

DEMAND FOR JURY TRIAL

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

7 **INTRODUCTION**

8 1. PLAINTIFFS bring the first cause of action against GMRI, Inc. (referred
9 to as “DEFENDANT”) seeking only to recover PAGA civil penalties for themselves and on
10 behalf of all current and former aggrieved employees that worked for DEFENDANT.
11 PLAINTIFFS do **not seek to recover anything other than penalties as permitted by**
12 **California Labor Code § 2699 for this Cause of Action.** To the extent that statutory
13 violations are mentioned for wage violations, PLAINTIFF does not seek underlying general
14 and/or special damages for those violations, but simply the civil penalties permitted by
15 California Labor Code § 2699.

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

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

24 **THE PARTIES**

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

28 5. DEFENDANT owns and operate restaurants in California.

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

7 7. PLAINTIFFS, and such persons that may be added from time to time who
8 satisfy the requirements and exhaust the administrative procedures under the Private Attorney
9 General Act, brings this Representative Action on behalf of the State of California with respect
10 to himself and all individuals who are or previously were employed by DEFENDANT in
11 California, including any employees staffed with DEFENDANT by a third party, and classified
12 as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of January
13 16, 2022 until a date as determined by the Court (the "PAGA PERIOD").

14 8. PLAINTIFFS, on behalf of themselves and all AGGRIEVED
15 EMPLOYEES presently or formerly employed by DEFENDANT during the PAGA PERIOD,
16 bring this representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil
17 penalties for DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*,
18 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
19 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),
20 California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and
21 the applicable Wage Order(s). Based upon the foregoing, PLAINTIFFS and all AGGRIEVED
22 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 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 presently
25 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names
26 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
27 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
28 ascertained. PLAINTIFFS are informed and believe, and based upon that information and

1 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
2 inclusive, are responsible in some manner for one or more of the events and happenings that
3 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 authority
6 as the agent, servant and/or employee of the Defendants, and personally participated in the
7 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
8 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
9 all Defendants are jointly and severally liable to PLAINTIFFS and all the AGGRIEVED
10 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
11 agents, servants and/or employees.

13 THE CONDUCT

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

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

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

14 13. The second component of PLAINTIFFS' and the AGGRIEVED
15 EMPLOYEES' compensation is DEFENDANT's non-discretionary incentive program that paid
16 PLAINTIFFS and the AGGRIEVED EMPLOYEES incentive wages based on their
17 performance for DEFENDANT. The non-discretionary incentive program provided all
18 employees paid on an hourly basis with incentive compensation when the employees met the
19 various performance goals set by DEFENDANT. However, when calculating the regular rate
20 of pay in order to pay overtime and meal and rest break premiums to PLAINTIFFS and the
21 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as
22 part of the employees' "regular rate of pay" for purposes of calculating overtime pay and meal
23 and rest break premium pay. Management and supervisors described the incentive program to
24 potential and new employees as part of the compensation package. As a matter of law, the
25 incentive compensation received by PLAINTIFFS and the AGGRIEVED EMPLOYEES must
26 be included in the "regular rate of pay." The failure to do so has resulted in a underpayment of
27 overtime compensation and meal and rest break premiums to PLAINTIFFS and the
28 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 duty
3 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and the
4 AGGRIEVED EMPLOYEES were required from time to time to perform work as ordered by
5 DEFENDANT for more than five (5) hours during some shifts without receiving a meal break.
6 Further, DEFENDANT from time to time fails to provide PLAINTIFFS and AGGRIEVED
7 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
8 were required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged
9 in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and
10 the AGGRIEVED EMPLOYEES. PLAINTIFFS and the AGGRIEVED EMPLOYEES
11 therefore forfeit meal breaks without additional compensation and in accordance with
12 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 without
15 being provided ten (10) minute rest periods. Further, these employees were denied their first
16 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
17 hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts
18 worked of between six (6) and eight (8) hours from time to time, and a first, second and third
19 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
20 time to time. PLAINTIFFS and the AGGRIEVED EMPLOYEES were also not provided with
21 one hour wages in lieu thereof. Additionally, the applicable California Wage Order requires
22 employers to provide employees with off-duty rest periods, which the California Supreme Court
23 defined as time during which an employee is relieved from all work related duties and free from
24 employer control. In so doing, the Court held that the requirement under California law that
25 employers authorize and permit all employees to take rest period means that employers must
26 relieve employees of all duties and relinquish control over how employees spend their time
27 which includes control over the locations where employees may take their rest period.
28 Employers cannot impose controls that prohibit an employee from taking a brief walk - five

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

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

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

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

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

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

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

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

1 DEFENDANT underpays sick pay to PLAINTIFFS and the AGGRIEVED EMPLOYEES at
2 their base rates of pay.

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

7 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick
8 pay 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. However,
10 when sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and the
11 AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required
12 under Cal. Lab. Code Section 246.

13 23. As a pattern and practice, DEFENDANT regularly failed to pay
14 PLAINTIFFS and the AGGRIEVED EMPLOYEES their correct wages and accordingly owe
15 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are
16 informed and believes and based thereon alleges that such failure to pay sick pay at regular rate
17 was 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
20 employer to collect or receive from an employee any part of wages theretofore paid by said
21 employer to said employee." DEFENDANT fails to pay all compensation due to PLAINTIFFS
22 and the AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable
23 to PLAINTIFFS and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the
24 deductions from compensation payable to PLAINTIFFS and the AGGRIEVED EMPLOYEES,
25 and thereby fails to pay these employees all wages due at each applicable pay period and upon
26 termination.

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

1 incurred 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 shall
5 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
6 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
7 directions of the employer, even though unlawful, unless the employee, at the time of obeying
8 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 personal
11 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 associated
13 with the use of their personal cellular phones and home offices for DEFENDANT's benefit.
14 Specifically, PLAINTIFFS and the AGGRIEVED EMPLOYEES were required by
15 DEFENDANT to use their personal cellular phones and home offices. As a result, in the course
16 of their employment with DEFENDANT, PLAINTIFFS and the AGGRIEVED EMPLOYEES
17 incurred unreimbursed business expenses which included, but were not limited to, costs related
18 to the use of their personal cellular phones and home offices all on behalf of and for the benefit
19 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, knowingly
23 and systematically failed to provide PLAINTIFFS and the other AGGRIEVED EMPLOYEES
24 suitable seating when the nature of these employees' work reasonably permitted sitting.

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

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

10 30. The employment of PLAINTIFFS and some AGGRIEVED EMPLOYEES
11 has 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 DEFENDANT's
15 uniform vacation policies and applicable California law. The amount of vacation pay
16 PLAINTIFFS and the other AGGRIEVED EMPLOYEES earned and accumulated is evidenced
17 by DEFENDANT's business records. Additionally, DEFENDANT also underpaid accrued
18 vested vacation wages to PLAINTIFFS and other AGGRIEVED EMPLOYEES by failing to
19 pay such wages at the regular rate of pay and more specifically the final rate of pay that included
20 all non-discretionary incentive compensation. Rather than pay vacation wages at the regular
21 rate of pay, DEFENDANT underpaid vacation wages to PLAINTIFFS and other AGGRIEVED
22 EMPLOYEES at their base rates of pay, instead of including all of PLAINTIFFS' and other
23 AGGRIEVED EMPLOYEES' non-discretionary incentive compensation into the vacation wage
24 payment calculations. DEFENDANT failed to specify in DEFENDANT's written vacation
25 policy the rate at which PLAINTIFFS and other AGGRIEVED EMPLOYEES would be paid
26 vacation upon leaving employment with DEFENDANT. As a result of DEFENDANT's
27 unlawful practice, policy and procedure to deny paying the PLAINTIFFS and other
28 AGGRIEVED EMPLOYEES all of their vested vacation and holiday time, DEFENDANT

1 failed to pay the PLAINTIFFS and other AGGRIEVED EMPLOYEES all vested vacation time
2 as wages due upon employment termination, in violation of the California Labor Code, Sections
3 201, 202, 203 and 227.3. Similarly, DEFENDANT underpaid waiting time penalties to
4 PLAINTIFFS and other AGGRIEVED EMPLOYEES at their base rates of pay, instead of
5 including all of PLAINTIFFS' and other AGGRIEVED EMPLOYEES' non-discretionary
6 compensation into the waiting time penalty calculations. This failure by DEFENDANT is
7 believed to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to provide
8 compensation for earned, accrued and vested vacation and holiday time, as well as the
9 corresponding waiting time penalties that were paid. DEFENDANT perpetrated this unlawful,
10 unfair and deceptive practice to the detriment of PLAINTIFFS and other AGGRIEVED
11 EMPLOYEES. DEFENDANT's uniform practice and policy of failing to pay the
12 AGGRIEVED EMPLOYEES for all vested vacation and holiday time accumulated at
13 employment termination violated and continues to violate Section 227.3 of the California Labor
14 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 that
18 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
19 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
23 of Civil Procedure, Section 410.10.

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

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

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

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

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1 44. Harassing PLAINTIFF Gaye and/or creating a hostile work environment,
2 in whole or in part on the basis of his race;

3 45. Failing to take all reasonable steps to prevent discrimination and
4 harassment based on race in violation of Government Code section 12940 et Seq.;

5 46. Retaliating against PLAINTIFF Gaye for seeking to exercise rights
6 guaranteed under FEHA, participating in protected activities, and/or opposing DEFENDANT's
7 failure to provide such rights, in violation of Government Code Section 12940(h).

8 47. As a proximate result of DEFENDANT's willful, knowing, and intentional
9 discrimination against PLAINTIFF Gaye, he has sustained and continues to sustain substantial
10 losses of earnings and other employment benefits.

11 48. As a proximate result of DEFENDANT's willful, knowing, and intentional
12 discrimination against PLAINTIFF Gaye, he has suffered and continues to suffer humiliation,
13 emotional distress, and physical and mental pain and anguish, all to his damage in a sum
14 according to proof.

15 49. PLAINTIFF Gaye has incurred and continues to incur legal expenses and
16 attorneys' fees. Pursuant to Government Code Section 12965(b), he is entitled to recover
17 reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

18 50. DEFENDANT's misconduct was committed intentionally, in a malicious,
19 oppressive manner, and fraudulent manner entitling PLAINTIFF Gaye to punitive damages
20 against DEFENDANT.

21 51. Prior to filing this action, PLAINTIFF Gaye exhausted his administrative
22 remedies by filing a timely administrative complaint with the Department of Fair Employment
23 and Housing ("DFEH") and received a DFEH right-to-sue letter on January 17, 2022.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and severally, as follows:

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

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

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

2. On behalf of Plaintiff Shawn Gaye for the Second and Third causes of action:

A) Compensatory damages, according to proof at trial, but in excess of \$25,000.

B) Special and General damages according to proof;

C) Statutory damages, penalties and attorney's fees;

D) For punitive damages in an amount necessary to make an example of and to punish DEFENDANT and deter DEFENDANT from engaging in future similar conduct;

E) For loss of earnings (both past and future); and,

F) For interest at the legal rate in an amount according to proof.

3. On all claims:

A) An award of interest, including prejudgment interest at the legal rate;

B) Such other and further relief as the Court deems just and equitable; and,

C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

Dated: October 23, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/Nicholas J. De Blouw

Norman B. Blumenthal

Nicholas J. De Blouw

Attorneys for Plaintiffs

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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: October 23, 2024 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

By: /s/ Nicholas J. De Blouw
Nicholas J. De Blouw
Attorneys for Plaintiff

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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

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. 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 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 11070(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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Fax: (858) 551-1232

**WRITERS E-MAIL:
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
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. 5th 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 of 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.