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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10
11 ALMA CASTRO, an individual, on behalf
12 of himself, and on behalf of all persons
13 similarly situated,

14 Plaintiff,

15 v.

16 POMONA VALLEY MINING CO., a
17 California Corporation; and DOES 1-50,
18 Inclusive,

19 Defendants.

Case No. 24PSCV00758

**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(a)(8), 226.3, 226.7, 210, 218, 221,
351, 510, 512, 558, 1194, 1197, 1197.1, 1198,
2800, 2802, and the California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B), and the applicable Wage
Order(s).

Judge:

Dept:

Date Action Filed:

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23 Plaintiff ALMA CASTRO ("PLAINTIFF"), on behalf of the people of the State of California
24 and as "AGGRIEVED EMPLOYEE" acting as a private attorney general under the Labor Code
25 Private Attorney General Action of 2004, § 2699, *et seq.* ("PAGA") only, alleges on information
26 and belief, except for her own acts and knowledge which are based on personal knowledge, the
27 following:

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1 paid minimum wages and entitled to the legally required off-duty meal, rest periods and paid
2 training. PLAINTIFF from time to time was unable to take off duty meal and rest periods as a
3 result of DEFENDANT's work obligations. PLAINTIFF was also required to be paid for her rest
4 periods and training. DEFENDANT did not separately and/or properly compensate PLAINTIFF
5 for her meal, rest periods and training. PLAINTIFF was at all times relevant mentioned herein
6 classified by DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis.

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

15 5. PLAINTIFF, and such persons that may be added from time to time who satisfy the
16 requirements and exhaust the administrative procedures under the Private Attorney General Act,
17 bring this Representative Action on behalf of the State of California with respect to herself and all
18 individuals who are or previously were employed by DEFENDANT in California (the
19 "AGGRIEVED EMPLOYEES") during the time period of January 3, 2023 until the present (the
20 "PAGA PERIOD").

21 6. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently or formerly
22 employed by DEFENDANT during the PAGA PERIOD, brings this representative action pursuant
23 to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S violation of California Labor
24 Code §§ 201, 202, 203, 204 *et seq.*, 226(a), 226(a)(8), 226.3, 226.7, 227.3, 246 *et seq.*, 351, 510,
25 512, 558, 1194, 1197, 1197.1, 1198, 2800, 2802, and the applicable Wage Orders. Based upon the
26 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the
27 meaning of Labor Code § 2699, *et seq.*

28 7. The true names and capacities, whether individual, corporate, subsidiary, partnership,
associate or otherwise of Defendants DOES 1 through 50, inclusive, are presently unknown to

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

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

15 **THE CONDUCT**

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

26 10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to
27 pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time
28 during which an employee is subject to the control of an employer, including all the time the

1 employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and AGGRIEVED
2 EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control.
3 Specifically, DEFENDANT required PLAINTIFF to work while clocked out. As a result, the
4 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
5 compensation by regularly working without their time being accurately recorded and without
6 compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy
7 and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is
8 evidenced by DEFENDANT's business records.

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

19 12. During the PAGA PERIOD, DEFENDANT failed to provide all the legally required off-
20 duty meal breaks to PLAINTIFF and the other Aggrieved Employees as required by the applicable
21 Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and Aggrieved
22 Employees did not prevent these employees from being relieved of all of their duties for the legally
23 required off-duty meal periods. DEFENDANT'S meal period policies and practices were unlawful
24 because PLAINTIFF and other Aggrieved Employees were far too over-booked and overworked to
25 take a timely off-duty thirty (30) minute meal period. As a result of their rigorous work schedules,
26 PLAINTIFF and other Aggrieved Employees were often not fully relieved of duty by DEFENDANT
27 for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the
28 Aggrieved Employees with legally required meal breaks prior to their fifth (5th) hour of work is

1 evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the
2 Aggrieved Employees forfeited meal breaks without additional compensation and in accordance
3 with DEFENDANT's strict corporate policy and practice.

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

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

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

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

27 17. From time to time, when DEFENDANT did not accurately record PLAINTIFF'S and other
28 Aggrieved Employees' missed meal and rest breaks and/or also failed to pay the proper minimum

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

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

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

25 20. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden,
26 DEFENDANT failed to properly calculate and/or pay all required compensation for work performed
27 by the members of the CALIFORNIA CLASS and violated the California Labor Code and
28 regulations promulgated thereunder as herein alleged.

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

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

25 23. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any employment
26 are due and payable twice during each calendar month, on days designated in advance by the
27 employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly requires employers
28 to pay employees all wages owed within seven (7) days of the close of the payroll period.

1 DEFENDANT from time to time failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
2 all wages owed to them within seven (7) days of the close of the payroll period.

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

21 25. DEFENDANT is generally in the business of owning and operating
22 restaurants. In addition, DEFENDANT also provides banquet services to large groups, such as
23 wedding parties and other banquet events. During the PAGA PERIOD, PLAINTIFFS and other
24 AGGRIEVED EMPLOYEES were in the "chain of service" and earned gratuities based on their
25 service for their customers. However, PLAINTIFFS and AGGRIEVED EMPLOYEES were forced
26 to forfeit portions of their gratuities, which said gratuities were kept by DEFENDANT and their
27 agents who were not in the chain of service from which the gratuity resulted. PLAINTIFFS and
28 other AGGRIEVED EMPLOYEES contend that any gratuities kept by DEFENDANT were illegal

1 and in violation of California law because PLAINTIFFS and other AGGRIEVED EMPLOYEES
2 not DEFENDANT, provided the service for to whom the gratuity should have been paid.

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

11 27. Although tip pooling is not expressly prohibited by the Labor Code, employees who mandate
12 tip pooling must only distribute pooled tips to employees in the “chain of service.” By distributing
13 tips to DEFENDANT directly and to their agents who were not in the “chain of service,”
14 DEFENDANT has violated and continue to violate the legal requirements for handling pooled tips
15 and violated the holding in *O’Grady v. Merchant Exchange Productions, Inc.*, No. A148513 (Court
16 of Appeals of California, First District, Division Two.)

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

27 29. By reason of this uniform conduct applicable to PLAINTIFF and all AGGRIEVED
28 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which fails to

1 accurately calculate and record the correct compensation for all time worked by PLAINTIFF and
2 other AGGRIEVED EMPLOYEES. The proper calculation of these employees' compensation is
3 the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation
4 to meet this burden, DEFENDANT fails to properly calculate and/or pay all required compensation
5 for work performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code
6 and regulations promulgated thereunder as herein alleged.

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

12 **JURISDICTION AND VENUE**

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

15 32. Venue is proper in this Court pursuant to California Code of Civil Procedure,
16 Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times
17 maintained restaurants in this County and/or conducts substantial business in this County, and (ii)
18 committed the wrongful conduct herein alleged in this County against AGGRIEVED
19 EMPLOYEES.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

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

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

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

26 34. PAGA is a mechanism by which the State of California itself can enforce state
27 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
28 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is

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

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

12 36. On January 3, 2024, PLAINTIFF gave written notice by electronic submission to
13 the Labor and Workforce Development Agency (the "Agency") and gave written notice by
14 certified mail to the employer of the specific provisions of this code alleged to have been violated
15 as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this
16 reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the
17 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence
18 a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
19 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

20 37. The policies, acts and practices heretofore described were and are an unlawful
21 business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED
22 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other
23 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate
24 itemized wage statements, (d) failed to pay gratuities, and (e) failed to timely pay wages, all in
25 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not
26 limited to Labor Code §§ 201, 202, 203, 204, 226(a), 226(a)(8), 226.7, 351, 510, 512, 558, 1194,
27 1197, 1197.1, 1198, 2800, 2802 and the applicable Industrial Wage Order(s), and thereby gives
28 rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the

1 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the
2 other AGGRIEVED EMPLOYEES.

3 38. Some or all of the conduct and violations alleged herein occurred during the PAGA
4 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
5 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
6 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
7 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
8 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by **at least one** Labor
9 Code violation committed by an employer—to **pursue penalties for all the Labor Code**
10 **violations committed by that employer.**”], Emphasis added, reh'g denied (June 13, 2018).)

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and
13 severally, as follows:

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

22 Dated: March 8, 2024

23 **BARVIÉ LAW, APC**
24 By: 
25 Nicole Barvié
26 Attorney for Plaintiff
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EXHIBIT 1

Barvié

— LAW —

January 3, 2024

VIA ONLINE FILING TO LWDA and CERTIFIED MAIL TO DEFENDANT

Labor & Workforce Development Agency Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, CA 94612 PAGA@dir.ca.gov https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html <i>Via Online Electronic Submission</i>	Pomona Valley Mining Co. Attn: Legal Dept. 17622 Irvine Blvd. Ste 4 Tustin, Ca 92780 Pomona Valley Mining Co. Attn: Brad Perrin 17622 Irvine Blvd. Ste 4 Tustin, Ca 92780 <i>Via Certified Mail</i>
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Re: Notice of Violation of California Labor Code Sections 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226(a)(8), 226.7, 227.3, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2800, 2802, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff Alma Castro (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Pomona Valley Mining Co., a California Corporation (“Defendant”). Plaintiff has been employed by Defendant in California beginning October 2021 to present as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as certain non-discretionary incentive payments. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Defendant also failed to correctly calculate Plaintiff’s regular rate of pay for purposes of payment of overtime, premium pay, and sick time pay. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages. As a consequence of the aforementioned violations, 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). Said





conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 226(a), 226.3, 226.7, 210, 218, 221, 226(a), 226(a)(8), 226.7, 227.3, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2800, 2802, and the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) 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 incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

Sincerely,

Nicole Barvié
Attorney for Plaintiff

Enclosure: Plaintiff's Complaint.

1 **BARVIÉ LAW, APC**
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3 nicole@barvielaw.com
4 550 West B Street, 4th Floor
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7 Attorney for Plaintiff Alma Castro

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10
11 ALMA CASTRO, on behalf of the State of
12 California, as a private attorney general,

13 Plaintiff,

14 v.

15 POMONA VALLEY MINING CO., a
16 California Corporation; and DOES 1-50,
17 Inclusive,

18 Defendants.

Case No. _____

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§2699, *et seq.*, for violations of Labor Code §§
201, 202, 203, 204 *et seq.*, 210, 218, 221,
226(a), 226(a)(8), 226.3, 226.7, 210, 218, 221,
510, 512, 558, 1194, 1197, 1197.1, 1198,
2800, 2802, and the California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B), and the applicable Wage
Order(s).

Judge:

Dept:

Date Action Filed:

19
20
21
22
23 Plaintiff ALMA CASTRO ("PLAINTIFF"), on behalf of the people of the State of California
24 and as "AGGRIEVED EMPLOYEE" acting as a private attorney general under the Labor Code
25 Private Attorney General Action of 2004, § 2699, *et seq.* ("PAGA") only, alleges on information
26 and belief, except for her own acts and knowledge which are based on personal knowledge, the
27 following:

28 ///

1 **INTRODUCTION**

2 1. PLAINTIFF brings this action against POMONA VALLEY MINING CO.
3 (“DEFENDANT” or “DEFENDANTS”) seeking only to recover PAGA civil penalties for herself,
4 and on behalf of all current and former aggrieved employees that worked for DEFENDANT.
5 PLAINTIFF does **not seek to recover anything other than penalties as permitted by California**
6 **Labor Code § 2699**. To the extent that statutory violations are mentioned for wage violations,
7 PLAINTIFF does not seek underlying general and/or special damages for those violations in this
8 action, but simply the civil penalties permitted by California Labor Code § 2699. Notwithstanding,
9 PLAINTIFF is not abandoning her right to pursue her individual claims for, *inter alia*, Defendant’s
10 alleged sex discrimination, pregnancy discrimination, failure to accommodate, wage violations,
11 and/or general or special damages arising from those violations, and she fully intends to, at a future
12 date, pursue claims for those individual claims and damages.

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

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

20 **PRELIMINARY ALLEGATIONS**

21 1. Defendant POMONA VALLEY MINING CO. (“DEFENDANT” or
22 “DEFENDANTS”) is a California Corporation and at all relevant times mentioned herein
23 conducted and continues to conduct substantial and regular business in California.

24 2. DEFENDANT is a California Corporation and at all relevant times mentioned
25 herein operates restaurants in Los Angeles County.

26 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
27 employee entitled to minimum wages, overtime pay and meal and rest periods from October 2021
28 to present. PLAINTIFF was at all times during her employment with DEFENDANT entitled to be

1 paid minimum wages and entitled to the legally required off-duty meal, rest periods and paid
2 training. PLAINTIFF from time to time was unable to take off duty meal and rest periods as a
3 result of DEFENDANT's work obligations. PLAINTIFF was also required to be paid for her rest
4 periods and training. DEFENDANT did not separately and/or properly compensate PLAINTIFF
5 for her meal, rest periods and training. PLAINTIFF was at all times relevant mentioned herein
6 classified by DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis.

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

15 5. PLAINTIFF, and such persons that may be added from time to time who satisfy the
16 requirements and exhaust the administrative procedures under the Private Attorney General Act,
17 bring this Representative Action on behalf of the State of California with respect to herself and all
18 individuals who are or previously were employed by DEFENDANT in California (the
19 "AGGRIEVED EMPLOYEES") during the time period of January 3, 2023 until the present (the
20 "PAGA PERIOD").

21 6. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently or formerly
22 employed by DEFENDANT during the PAGA PERIOD, brings this representative action pursuant
23 to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S violation of California Labor
24 Code §§ 201, 202, 203, 204 *et seq.*, 226(a), 226(a)(8), 226.3, 226.7, 227.3, 246 *et seq.*, 510, 512,
25 558, 1194, 1197, 1197.1, 1198, 2800, 2802, and the applicable Wage Orders. Based upon the
26 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the
27 meaning of Labor Code § 2699, *et seq.*

28 7. The true names and capacities, whether individual, corporate, subsidiary, partnership,
associate or otherwise of Defendants DOES 1 through 50, inclusive, are presently unknown to

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

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

15 THE CONDUCT

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

26 10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to
27 pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time
28 during which an employee is subject to the control of an employer, including all the time the

1 employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and AGGRIEVED
2 EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control.
3 Specifically, DEFENDANT required PLAINTIFF to work while clocked out. As a result, the
4 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
5 compensation by regularly working without their time being accurately recorded and without
6 compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy
7 and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is
8 evidenced by DEFENDANT's business records.

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

19 12. During the PAGA PERIOD, DEFENDANT failed to provide all the legally required off-
20 duty meal breaks to PLAINTIFF and the other Aggrieved Employees as required by the applicable
21 Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and Aggrieved
22 Employees did not prevent these employees from being relieved of all of their duties for the legally
23 required off-duty meal periods. DEFENDANT'S meal period policies and practices were unlawful
24 because PLAINTIFF and other Aggrieved Employees were far too over-booked and overworked to
25 take a timely off-duty thirty (30) minute meal period. As a result of their rigorous work schedules,
26 PLAINTIFF and other Aggrieved Employees were often not fully relieved of duty by DEFENDANT
27 for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the
28 Aggrieved Employees with legally required meal breaks prior to their fifth (5th) hour of work is

1 evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the
2 Aggrieved Employees forfeited meal breaks without additional compensation and in accordance
3 with DEFENDANT's strict corporate policy and practice.

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

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

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

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

27 17. From time to time, when DEFENDANT did not accurately record PLAINTIFF'S and other
28 Aggrieved Employees' missed meal and rest breaks and/or also failed to pay the proper minimum

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

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

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

25 20. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden,
26 DEFENDANT failed to properly calculate and/or pay all required compensation for work performed
27 by the members of the CALIFORNIA CLASS and violated the California Labor Code and
28 regulations promulgated thereunder as herein alleged.

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

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

25 23. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any employment
26 are due and payable twice during each calendar month, on days designated in advance by the
27 employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly requires employers
28 to pay employees all wages owed within seven (7) days of the close of the payroll period.

1 DEFENDANT from time to time failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
2 all wages owed to them within seven (7) days of the close of the payroll period.

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

21 25. DEFENDANT is generally in the business of owning and operating
22 restaurants. In addition, DEFENDANT also provides banquet services to large groups, such as
23 wedding parties and other banquet events. During the PAGA PERIOD, PLAINTIFFS and other
24 AGGRIEVED EMPLOYEES were in the "chain of service" and earned gratuities based on their
25 service for their customers. However, PLAINTIFFS and AGGRIEVED EMPLOYEES were forced
26 to forfeit portions of their gratuities, which said gratuities were kept by DEFENDANT and their
27 agents who were not in the chain of service from which the gratuity resulted. PLAINTIFFS and
28 other AGGRIEVED EMPLOYEES contend that any gratuities kept by DEFENDANT were illegal

1 and in violation of California law because PLAINTIFFS and other AGGRIEVED EMPLOYEES
2 not DEFENDANT, provided the service for to whom the gratuity should have been paid.

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

11 27. Although tip pooling is not expressly prohibited by the Labor Code, employees who mandate
12 tip pooling must only distribute pooled tips to employees in the “chain of service.” By distributing
13 tips to DEFENDANT directly and to their agents who were not in the “chain of service,”
14 DEFENDANT has violated and continue to violate the legal requirements for handling pooled tips
15 and violated the holding in *O’Grady v. Merchant Exchange Productions, Inc.*, No. A148513 (Court
16 of Appeals of California, First District, Division Two.)

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

27 29. By reason of this uniform conduct applicable to PLAINTIFF and all AGGRIEVED
28 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which fails to

1 accurately calculate and record the correct compensation for all time worked by PLAINTIFF and
2 other AGGRIEVED EMPLOYEES. The proper calculation of these employees' compensation is
3 the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation
4 to meet this burden, DEFENDANT fails to properly calculate and/or pay all required compensation
5 for work performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code
6 and regulations promulgated thereunder as herein alleged.

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

12 JURISDICTION AND VENUE

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

15 32. Venue is proper in this Court pursuant to California Code of Civil Procedure,
16 Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times
17 maintained restaurants in this County and/or conducts substantial business in this County, and (ii)
18 committed the wrongful conduct herein alleged in this County against AGGRIEVED
19 EMPLOYEES.

20 FIRST CAUSE OF ACTION

21 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

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

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

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

26 34. PAGA is a mechanism by which the State of California itself can enforce state
27 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
28 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is

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

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

12 36. On January 3, 2024, PLAINTIFF gave written notice by electronic submission to
13 the Labor and Workforce Development Agency (the "Agency") and gave written notice by
14 certified mail to the employer of the specific provisions of this code alleged to have been violated
15 as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this
16 reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the
17 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence
18 a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
19 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

20 37. The policies, acts and practices heretofore described were and are an unlawful
21 business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED
22 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other
23 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate
24 itemized wage statements, (d) failed to pay gratuities, and (e) failed to timely pay wages, all in
25 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not
26 limited to Labor Code §§ 201, 202, 203, 204, 226(a), 226(a)(8), 226.7, 351, 510, 512, 558, 1194,
27 1197, 1197.1, 1198, 2800, 2802 and the applicable Industrial Wage Order(s), and thereby gives
28 rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the

1 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the
2 other AGGRIEVED EMPLOYEES.

3 38. Some or all of the conduct and violations alleged herein occurred during the PAGA
4 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
5 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
6 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
7 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
8 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by **at least one** Labor
9 Code violation committed by an employer—to **pursue penalties for all the Labor Code**
10 **violations committed by that employer.**”], Emphasis added, reh'g denied (June 13, 2018).)

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and
13 severally, as follows:

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

22 Dated: January 3, 2024

23 **BARVIÉ LAW, APC**

24 **By:** _____
25 Nicole Barvié
26 Attorney for Plaintiff
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DRAFT

EXHIBIT 1