

1 **BARVIÉ LAW, APC**
2 NICOLE BARVIE (State Bar # 282352)
3 550 West B Street, 4th Floor
4 San Diego, CA 92101-3598
5 Telephone: 858.255.0928
6 Facsimile: 858.357.8592
7 nicole@barvielaw.com

8 Attorney for KRISTOPHER RANDALL

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 KRISTOPHER RANDALL, an individual, on
12 behalf of himself, and on behalf of other
13 aggrieved employees pursuant to the California
14 Private Attorneys General Act;

15 Plaintiff,

16 v.

17 U BREAK I FIX SANTA ANA, LLC DBA E
18 & E ELITE, INC., a California Corporation;
19 and DOES 1 through 50, Inclusive;

20 Defendants.

Case No. 25PSCV00074

**COMPLAINT FOR ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT:**

1. Civil Penalties Pursuant to Labor Code §2699, *et seq.*, for violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226(a)(8), 226(b), 226(c), 226.3, 226.7, 227.3, 246 *et seq.*, 432, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2698, 2800, 2802 and the California Code of Regulations

21 Plaintiff KRISTOPHER RANDALL (“PLAINTIFF”), individually, and on behalf of other
22 aggrieved employees pursuant to the California Private Attorneys General Act on behalf of the
23 people of the State of California and as “AGGRIEVED EMPLOYEES” acting as a private
24 attorney general under the Labor Code Private Attorney General Action of 2004, §2699, *et seq.*
25 (“PAGA”) only, alleges on information and belief, except for his own acts and knowledge which
26 are based on personal knowledge, the following:

27 **INTRODUCTION**

- 28 1. PLAINTIFF brings this action against U BREAK I FIX SANTA ANA, LLC

1 DBA E & E ELITE, INC., a California Corporation (“DEFENDANT” or
2 “DEFENDANTS”) seeking only to recover PAGA civil penalties for himself, and on behalf
3 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
4 does **not seek to recover anything other than penalties as permitted by California**
5 **Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
6 violations, PLAINTIFF does not seek underlying general and/or special damages for those
7 violations in this action, but simply the civil penalties permitted by California Labor Code
8 § 2699. Notwithstanding, PLAINTIFF is not abandoning his right to pursue his individual
9 claims for, *inter alia*, Defendant’s wage violations, and/or general or special damages
10 arising from those violations, and he fully intends to, at a future date, pursue claims for
11 those individual claims and damages.

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

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

20 **PRELIMINARY ALLEGATIONS**

21 1. Defendant U BREAK I FIX SANTA ANA, LLC DBA E & E ELITE, INC, a
22 California Corporation (“DEFENDANT” or “DEFENDANTS”) is a CALIFORNIA Corporation,
23 and at all relevant times mentioned herein conducted and continues to conduct substantial and
24 regular business in California.

25 2. DEFENDANT is a California Corporation and at all relevant times mentioned
26 herein operates Cellular Phone Maintenance/Repair Stores in California, including in Los Angeles
27 County.

28 3. PLAINTIFF is an individual residing in the State of California.

1 4. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
2 employee entitled to minimum wages, overtime pay, commissions, and meal and rest periods from
3 June 2024 to July 13, 2024. PLAINTIFF was at all times during his employment with
4 DEFENDANT entitled to be paid minimum wages and entitled to the legally required off-duty
5 meal, rest periods and paid training. PLAINTIFF from time to time was unable to take off duty
6 meal and rest periods as a result of DEFENDANT's work obligations. PLAINTIFF was also
7 required to be paid for his rest periods and training. DEFENDANT did not separately and/or
8 properly compensate PLAINTIFF for his meal, rest periods and training. PLAINTIFF was at all
9 times relevant mentioned herein classified by DEFENDANT as a non-exempt employee paid in
10 whole or in part on an hourly basis.

11 5. PLAINTIFF was at all times during his employment with DEFENDANT entitled
12 to be paid minimum wages, entitled to commission payments, and entitled to the legally required
13 off-duty meal, rest periods and paid training. PLAINTIFF from time to time were unable to take
14 off duty meal and rest periods as a result of DEFENDANT's work obligations. PLAINTIFF was
15 also required to be paid for his meal periods, rest periods and training. DEFENDANT did not
16 separately and/or properly compensate PLAINTIFF for his, meal periods, rest periods and
17 training. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a
18 non-exempt employee paid in whole or in part on an hourly basis. Defendant also did not provide
19 a seat for Plaintiff during working hours.

20 6. PLAINTIFF, and such persons that may be added from time to time who satisfy the
21 requirements and exhaust the administrative procedures under the Private Attorney General
22 Act, bring this Representative Action on behalf of the State of California with respect to
23 herself and all individuals who are or previously were employed by DEFENDANT in
24 California (the "AGGRIEVED EMPLOYEES") during the time period of October 22, 2023
25 until the present (the "PAGA PERIOD").

26 7. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or
27 formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
28 action pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S
violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226(a)(8),

1 226(b), 226(c), 226.3, 226.7, 227.3, 246 *et seq.*, 432, 510, 512, 558, 1174, 1174.5, 1182.12,
2 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2698, 2800, 2802 and the applicable Wage
3 Orders. Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are
4 aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

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

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

22 **THE CONDUCT**

23 10. During the PAGA PERIOD, DEFENDANT failed to accurately calculate and pay
24 PLAINTIFF and other AGGRIEVED EMPLOYEES for all their time worked, including
25 minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to
26 accurately calculate wages for time worked and penalties for meal and rest periods owed to
27 PLAINTIFF and other AGGRIEVED EMPLOYEES in order to avoid paying these
28 employees the correct compensation. As a result, PLAINTIFF and other AGGRIEVED

1 EMPLOYEES forfeited wages due to them for working without compensation at the correct
2 minimum wage and overtime rates. DEFENDANT'S uniform policy and practice to not pay
3 the AGGRIEVED EMPLOYEES the correct compensation for all time worked in
4 accordance with applicable law is evidence by DEFENDANT's business records.

5 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
6 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
7 meaning the time during which an employee is subject to the control of an employer,
8 including all the time the employee is suffered or permitted to work. DEFENDANT required
9 PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time
10 they are under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF
11 to work while clocked out. As a result, the PLAINTIFF and other AGGRIEVED
12 EMPLOYEES forfeited minimum wage and overtime compensation by regularly working
13 without their time being accurately recorded and without compensation at the applicable
14 minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay
15 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by
16 DEFENDANT's business records.

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

28 13. During the PAGA PERIOD, DEFENDANT failed to provide all the legally required

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

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

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

26 16. On numerous occasions, PLAINTIFF and other Aggrieved Employees were required
27 to work while not clocked in. DEFENDANT maintained a company-wide policy of refusing
28 to pay Aggrieved Employees, like PLAINTIFF, for all hours worked, even during training.

1 Specifically, DEFENDANT maintained a company-wide pattern and practice of altering
2 employees' timecards to eliminate numerous hours worked. As a result, DEFENDANT
3 failed to compensate PLAINTIFF and the Aggrieved Employees wages for all hours worked.

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

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

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

28 20. In violation of the applicable sections of the California Labor Code and the

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

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

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

1 Code Section 203.

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

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

18 25. Defendant also failed to provide suitable seating to Plaintiff and other
19 Aggrieved Employees. Plaintiff and other Aggrieved Employees’ job reasonably required
20 the use of a seat. Defendant failed to comply.

21 26. Additionally, from time-to-time, when calculating the regular rate of pay, in
22 those pay periods, where PLAINTIFF and other AGGRIEVED EMPLOYEES worked
23 overtime and earned this flat-sum non-discretionary compensation, DEFENDANT failed to
24 accurately include the flat-sum non-discretionary compensation as part of the employees’
25 “regular rate of pay” and/or calculate all hours worked rather than just all non-overtime
26 hours worked. Management and supervisors described the incentive program to potential
27 and new employees as part of the compensation package. AS a matter of law, the incentive
28 compensation received by PLAINTIFF and other Aggrieved Employees must be included

1 in the “regular rate of pay.” The failure to do so has resulted in a systemic underpayment of
2 overtime compensation to Plaintiff and other AGGRIEVED EMPLOYEES by
3 DEFENDANT.

4 27. From time to time, Defendant failed to pay the Aggrieved Employees all
5 wages and entitlements due under the labor code, including but not limited to compensating
6 its employees for use of their sick leave pursuant to the correct rate of pay mandated in Labor
7 Code section 246(l). This resulted from Defendant’s failure to appropriately factor in any
8 additional compensation, including but not limited to, incentives and nondiscretionary
9 bonuses earned by Aggrieved Employees for the purpose of computing the employees’ rate
10 of pay for sick leave. This violation resulted in an underpayment of wages to the Aggrieved
11 Employees which also resulted in derivative violations of other Labor Code sections
12 including, but not limited to, Labor Code sections 201, 202, 203, 204, 246, 246(l) and
13 1197.1.

14 28. Pursuant to California Labor Code section 204, PLAINTIFF and the AGGRIEVED
15 EMPLOYEES were entitled to timely payment of wages during their employment. PLAINTIFF
16 and the AGGRIEVED EMPLOYEES, from time to time, did not receive payment of all wages,
17 including, but not limited to, overtime wages, minimum wages, meal period premium wages, and
18 rest period premium wages within permissible time period.

19 29. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
20 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant
21 to Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall
22 become due and payable not later than 72 hours thereafter, unless the employee has given 72
23 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
24 or her wages at the time of quitting.” PLAINTIFF and the AGGRIEVED EMPLOYEES were,
25 from time to time, not timely provided the wages earned and unpaid at the time of their discharge
26 and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

30. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all AGGRIEVED EMPLOYEES whose employment ended during the PAGA PERIOD.

31. From time to time, Defendant failed to provide the Aggrieved Employees with the appropriate accrual of vacation hours on a per pay period basis which resulted in a violation of Labor Code section 227.3. Upon information and belief, Defendant would provide Aggrieved Employees with accrual at less than what they were legally entitled to.

32. The above violations resulted in derivative violations including, but not limited to, Labor Codes sections 201, 202, 203, 204, 226, 226(a)(1)-(9), 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1197.1, 1198, 2698, and 2699 et seq.

33. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 204 (2018).

JURISDICTION AND VENUE

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

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

///

///

///

///

///

1 **FIRST CAUSE OF ACTION**

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

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

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

5 36. PLAINTIFF realleges and incorporates by this reference, as though fully set
6 forth herein, the prior paragraphs of this Complaint.

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

17 38. PLAINTIFF, and such persons that may be added from time to time who
18 satisfy the requirements and exhaust the administrative procedures under the Private
19 Attorney General Act, bring this Representative Action on behalf of the State of California
20 with respect to herself and all individuals who are or previously were employed by
21 DEFENDANTS in California during the time period of December 13, 2022 until the
22 present (the "AGGRIEVED EMPLOYEES").

23 39. On October 15, 2024, PLAINTIFF gave written notice via online submission
24 to the Labor and Workforce Development Agency (the "Agency") and the employer
25 of the specific provisions of this code alleged to have been violated as required by Labor
26 Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein.
27 The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has
28 expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
representative civil action under PAGA pursuant to Section 2699 as the proxy of the State

1 of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

2 40. The policies, acts and practices heretofore described were and are an
3 unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and
4 other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to
5 provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and
6 rest breaks, (c) failed to provide accurate itemized wage statements, (d) failed to pay
7 commissions, and (e) failed to timely pay wages, all in violation of the applicable Labor
8 Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§
9 201, 202, 203, 204, 210, 226(a), 226(a)(8), 226(b), 226(c), 226.3, 226.7, 227.3, 246 *et seq.*,
10 432, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5,
11 2698, 2800, 2802 and the applicable Industrial Wage Order(s), and thereby gives rise to
12 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
13 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
14 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
15 and the other AGGRIEVED EMPLOYEES.

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

25 **PRAYER FOR RELIEF**

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

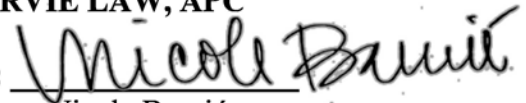
- 28 1. On behalf of the State of California and with respect to all AGGRIEVED
EMPLOYEES:

- 1 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
2 General Act of 2004;
- 3 b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
4 including, but not limited to, pursuant to Labor Code An award of penalties,
5 attorneys' fees and costs of suit, as allowable under the law, including, but not
6 limited to, pursuant to Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512(a)
7 1174(d), §1194, 1197, 1197.1, 2800, 2802 and §2699(g); and
- 8 c. and §2699(g); and
- 9 d. For such other relief as the Court deems just and proper.

8 Dated: January 7, 2025

9 **BARVIÉ LAW, APC**

10 **By:**



11 Nicole Barvié

12 Attorney for Plaintiff

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

“EXHIBIT 1”

OCTOBER 15, 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>	U Break I Fix Santa Ana, LLC Attn: Legal Dept. 3611 Bristol St Ste A Santa Ana, CA 92704 <i>Via Certified Mail</i> E & E Elite, Inc. 1187 Huntington Dr. Duarte, CA 91010 <i>Via Certified Mail</i>
---	--

Re: Notice of Violation of California Labor Code Sections 201, 202, 203, 204 et seq., 210, 218.5, 218.6, 218, 221, 226(a), 226(a)(8), 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1198.5, 1194, 1197, 1197.1, 1198, 1198.5, 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 Kristopher Randall (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against U Break I Fix Santa Ana, LLC, a California Corporation dba E & E Elite, Inc., a California Corporation (“Defendant”). Plaintiff has been employed by Defendant in California since June 2024 to July 13, 2024, 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. 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., 210, 218.5, 218.6, 218, 221, 226(a), 226(a)(8), 226.2, 226.3,





226.7, 227.3, 232, 246, 510, 512, 558, 1102.5, 1174(d), 1174.5, 1198.5, 1194, 1197, 1197.1, 1198, 1198.5, 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 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 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 Statute 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**

2 NICOLE BARVIE (State Bar # 282352)

3 550 West B Street, 4th Floor

4 San Diego, CA 92101-3598

5 Telephone: 858.255.0928

6 Facsimile: 858.357.8592

7 nicole@barvielaw.com

8 Attorney for KRISTOPHER RANDALL

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

11 KRISTOPHER RANDALL, an individual, on
12 behalf of himself, and on behalf of other
13 aggrieved employees pursuant to the California
14 Private Attorneys General Act;

15 Plaintiff,

16 v.

17 U BREAK I FIX SANTA ANA, LLC DBA E
18 & E ELITE, INC, a California Corporation; and
19 DOES 1 through 50, Inclusive;

20 Defendants.

Case No.

21 **COMPLAINT FOR ENFORCEMENT
22 UNDER THE PRIVATE ATTORNEYS
23 GEENRAL ACT:**

- 24 1. Civil Penalties Pursuant to Labor Code
25 §2699, *et seq.*, for violations of Labor
26 Code §§ 201, 202, 203, 204, 210,
27 226(a), 226(a)(8), 226(b), 226(c),
28 226.3, 226.7, 227.3, 246 *et seq.*, 432,
510, 512, 558, 1174, 1174.5,
1182.12, 1194, 1194.2, 1197,
1197.1, 1198, 1198.5, 2698, 2800,
2802 and the California Code of
Regulations

21 Plaintiff KRISTOPHER RANDALL ("PLAINTIFF"), individually, and on behalf of other
22 aggrieved employees pursuant to the California Private Attorneys General Act on behalf of the
23 people of the State of California and as "AGGRIEVED EMPLOYEES" acting as a private
24 attorney general under the Labor Code Private Attorney General Action of 2004, §2699, *et seq.*
25 ("PAGA") only, alleges on information and belief, except for his own acts and knowledge which
26 are based on personal knowledge, the following:

27 **INTRODUCTION**

- 28 1. PLAINTIFF brings this action against U BREAK I FIX SANTA ANA, LLC

1 DBA E & E ELITE, INC, a California Corporation (“DEFENDANT” or “DEFENDANTS”)
2 seeking only to recover PAGA civil penalties for himself, and on behalf of all current and
3 former aggrieved employees that worked for DEFENDANT. PLAINTIFF does not seek to
4 recover anything other than penalties as permitted by California Labor Code § 2699.

5 To the extent that statutory violations are mentioned for wage violations, PLAINTIFF does
6 not seek underlying general and/or special damages for those violations in this action, but
7 simply the civil penalties permitted by California Labor Code § 2699. Notwithstanding,
8 PLAINTIFF is not abandoning his right to pursue his individual claims for, *inter alia*,
9 Defendant’s wage violations, and/or general or special damages arising from those
10 violations, and he fully intends to, at a future date, pursue claims for those individual claims
11 and damages.

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

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

20 PRELIMINARY ALLEGATIONS

21 1. Defendant U BREAK I FIX SANTA ANA, LLC DBA E & E ELITE, INC, a
22 California Corporation (“DEFENDANT” or “DEFENDANTS”) is a CALIFORNIA Corporation,
23 and at all relevant times mentioned herein conducted and continues to conduct substantial and
24 regular business in California.

25 2. DEFENDANT is a California Corporation and at all relevant times mentioned
26 herein operates Cellular Phone Maintenance/Repair Stores in California, including in Los Angeles
27 County.

28 3. PLAINTIFF is an individual residing in the State of California.

1 4. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
2 employee entitled to minimum wages, overtime pay, commissions, and meal and rest periods from
3 June 2024 to July 13, 2024. PLAINTIFF was at all times during his employment with
4 DEFENDANT entitled to be paid minimum wages and entitled to the legally required off-duty
5 meal, rest periods and paid training. PLAINTIFF from time to time was unable to take off duty
6 meal and rest periods as a result of DEFENDANT's work obligations. PLAINTIFF was also
7 required to be paid for his rest periods and training. DEFENDANT did not separately and/or
8 properly compensate PLAINTIFF for his meal, rest periods and training. PLAINTIFF was at all
9 times relevant mentioned herein classified by DEFENDANT as a non-exempt employee paid in
10 whole or in part on an hourly basis.

11 5. PLAINTIFF was at all times during his employment with DEFENDANT entitled
12 to be paid minimum wages, entitled to commission payments, and entitled to the legally required
13 off-duty meal, rest periods and paid training. PLAINTIFF from time to time were unable to take
14 off duty meal and rest periods as a result of DEFENDANT's work obligations. PLAINTIFF was
15 also required to be paid for his meal periods, rest periods and training. DEFENDANT did not
16 separately and/or properly compensate PLAINTIFF for his, meal periods, rest periods and
17 training. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a
18 non-exempt employee paid in whole or in part on an hourly basis. Defendant also did not provide
a seat for Plaintiff during working hours.

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

25 7. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or
26 formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
27 action pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S
28 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226(a)(8),

1 226(b), 226(c), 226.3, 226.7, 227.3, 246 *et seq.*, 432, 510, 512, 558, 1174, 1174.5, 1182.12,
2 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2698, 2800, 2802 and the applicable Wage
3 Orders. Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are
4 aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

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

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

22 **THE CONDUCT**

23 10. During the PAGA PERIOD, DEFENDANT failed to accurately calculate and pay
24 PLAINTIFF and other AGGRIEVED EMPLOYEES for all their time worked, including
25 minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to
26 accurately calculate wages for time worked and penalties for meal and rest periods owed to
27 PLAINTIFF and other AGGRIEVED EMPLOYEES in order to avoid paying these
28 employees the correct compensation. As a result, PLAINTIFF and other AGGRIEVED

1 EMPLOYEES forfeited wages due to them for working without compensation at the correct
2 minimum wage and overtime rates. DEFENDANT'S uniform policy and practice to not pay
3 the AGGRIEVED EMPLOYEES the correct compensation for all time worked in
4 accordance with applicable law is evidence by DEFENDANT's business records.

5 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
6 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
7 meaning the time during which an employee is subject to the control of an employer,
8 including all the time the employee is suffered or permitted to work. DEFENDANT required
9 PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time
10 they are under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF
11 to work while clocked out. As a result, the PLAINTIFF and other AGGRIEVED
12 EMPLOYEES forfeited minimum wage and overtime compensation by regularly working
13 without their time being accurately recorded and without compensation at the applicable
14 minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay
15 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by
16 DEFENDANT's business records.

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

28 13. During the PAGA PERIOD, DEFENDANT failed to provide all the legally required

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

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

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

26 16. On numerous occasions, PLAINTIFF and other Aggrieved Employees were required
27 to work while not clocked in. DEFENDANT maintained a company-wide policy of refusing
28 to pay Aggrieved Employees, like PLAINTIFF, for all hours worked, even during training.

1 Specifically, DEFENDANT maintained a company-wide pattern and practice of altering
2 employees' timecards to eliminate numerous hours worked. As a result, DEFENDANT
3 failed to compensate PLAINTIFF and the Aggrieved Employees wages for all hours worked.

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

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

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

28 20. In violation of the applicable sections of the California Labor Code and the

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

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

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

1 Code Section 203.

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

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

18 25. Defendant also failed to provide suitable seating to Plaintiff and other
19 Aggrieved Employees. Plaintiff and other Aggrieved Employees’ job reasonably required
20 the use of a seat. Defendant failed to comply.

21 26. Additionally, from time-to-time, when calculating the regular rate of pay, in
22 those pay periods, where PLAINTIFF and other AGGRIEVED EMPLOYEES worked
23 overtime and earned this flat-sum non-discretionary compensation, DEFENDANT failed to
24 accurately include the flat-sum non-discretionary compensation as part of the employees’
25 “regular rate of pay” and/or calculate all hours worked rather than just all non-overtime
26 hours worked. Management and supervisors described the incentive program to potential
27 and new employees as part of the compensation package. AS a matter of law, the incentive
28 compensation received by PLAINTIFF and other Aggrieved Employees must be included

1 in the “regular rate of pay.” The failure to do so has resulted in a systemic underpayment of
2 overtime compensation to Plaintiff and other AGGRIEVED EMPLOYEES by
3 DEFENDANT.

4 27. From time to time, Defendant failed to pay the Aggrieved Employees all
5 wages and entitlements due under the labor code, including but not limited to compensating
6 its employees for use of their sick leave pursuant to the correct rate of pay mandated in Labor
7 Code section 246(l). This resulted from Defendant’s failure to appropriately factor in any
8 additional compensation, including but not limited to, incentives and nondiscretionary
9 bonuses earned by Aggrieved Employees for the purpose of computing the employees’ rate
10 of pay for sick leave. This violation resulted in an underpayment of wages to the Aggrieved
11 Employees which also resulted in derivative violations of other Labor Code sections
12 including, but not limited to, Labor Code sections 201, 202, 203, 204, 246, 246(l) and
13 1197.1.

14 28. Pursuant to California Labor Code section 204, PLAINTIFF and the AGGRIEVED
15 EMPLOYEES were entitled to timely payment of wages during their employment. PLAINTIFF
16 and the AGGRIEVED EMPLOYEES, from time to time, did not receive payment of all wages,
17 including, but not limited to, overtime wages, minimum wages, meal period premium wages, and
18 rest period premium wages within permissible time period.

19 29. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
20 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant
21 to Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall
22 become due and payable not later than 72 hours thereafter, unless the employee has given 72
23 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
24 or her wages at the time of quitting.” PLAINTIFF and the AGGRIEVED EMPLOYEES were,
25 from time to time, not timely provided the wages earned and unpaid at the time of their discharge
26 and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

30. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all AGGRIEVED EMPLOYEES whose employment ended during the PAGA PERIOD.

31. From time to time, Defendant failed to provide the Aggrieved Employees with the appropriate accrual of vacation hours on a per pay period basis which resulted in a violation of Labor Code section 227.3. Upon information and belief, Defendant would provide Aggrieved Employees with accrual at less than what they were legally entitled to.

32. The above violations resulted in derivative violations including, but not limited to, Labor Codes sections 201, 202, 203, 204, 226, 226(a)(1)-(9), 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1197.1, 1198, 2698, and 2699 et seq.

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

JURISDICTION AND VENUE

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

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

FIRST CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

[Cal. Lab. Code §§ 2698 *et seq.*]

(Alleged by PLAINTIFF against all DEFENDANTS)

1 36. PLAINTIFF realleges and incorporates by this reference, as though fully set
2 forth herein, the prior paragraphs of this Complaint.

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

13 38. PLAINTIFF, and such persons that may be added from time to time who
14 satisfy the requirements and exhaust the administrative procedures under the Private
15 Attorney General Act, bring this Representative Action on behalf of the State of California
16 with respect to herself and all individuals who are or previously were employed by
17 DEFENDANTS in California during the time period of December 13, 2022 until the
18 present (the "AGGRIEVED EMPLOYEES").

19 39. On October 15, 2024, PLAINTIFF gave written notice via online submission
20 to the Labor and Workforce Development Agency (the "Agency") and the employer
21 of the specific provisions of this code alleged to have been violated as required by Labor
22 Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein.
23 The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has
24 expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
25 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State
26 of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

27 40. The policies, acts and practices heretofore described were and are an
28 unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and
other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to

1 provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and
2 rest breaks, (c) failed to provide accurate itemized wage statements, (d) failed to pay
3 commissions, and (e) failed to timely pay wages, all in violation of the applicable Labor
4 Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§
5 201, 202, 203, 204, 210, 226(a), 226(a)(8), 226(b), 226(c), 226.3, 226.7, 227.3, 246 *et seq.*,
6 432, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5,
7 2698, 2800, 2802 and the applicable Industrial Wage Order(s), and thereby gives rise to
8 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
9 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
10 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
11 and the other AGGRIEVED EMPLOYEES.

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

21 PRAYER FOR RELIEF

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

- 24 1. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES:
 - 26 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
27 General Act of 2004;
 - 28 b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
including, but not limited to, pursuant to Labor Code An award of penalties,
attorneys' fees and costs of suit, as allowable under the law, including, but not
limited to, pursuant to Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512(a)

1 1174(d), §1194, 1197, 1197.1, 2800, 2802 and §2699(g); and
2 c. and §2699(g); and

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

4 Dated: October 22, 2024

BARVIÉ LAW, APC

5
6 **By:** _____
7 Nicole Barvié
8 Attorney for Plaintiff
9
10
11

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

“EXHIBIT 1”