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Attorneys for Plaintiff CHANDA YOUNG

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

CHANDA YOUNG, on behalf of the State of California, as a private attorney general,

Plaintiff,

vs.

BREAKFAST REPUBLIC CARMEL VALLEY, LLC, a California Limited Liability Company; BREAKFAST REPUBLIC ENCINITAS, LLC, a California Limited Liability Company; BREAKFAST REPUBLIC EAST VILLAGE, LLC, a California Limited Liability Company; BREAKFAST REPUBLIC MISSION VALLEY, LLC, a California Limited Liability Company; BREAKFAST REPUBLIC OC, LLC, a California Limited Liability Company; BREAKFAST REPUBLIC OCEAN BEACH, LLC, a California Limited Liability Company; BREAKFAST REPUBLIC WEST HOLLYWOOD, LLC, a California Limited Liability Company; BREAKFAST REPUBLIC-PACIFIC BEACH, LP, a California Limited Partnership; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 21SMCV01447

FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B)

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

5 **INTRODUCTION**

6 1. PLAINTIFF brings this action against Defendants Breakfast Republic Carmel Valley,
7 LLC, Breakfast Republic Encinitas, LLC, Breakfast Republic East Village, LLC, Breakfast Republic
8 Mission Valley, LLC, Breakfast Republic OC, LLC, Breakfast Republic Ocean Beach, LLC, Breakfast
9 Republic West Hollywood, LLC, and Breakfast Republic-Pacific Beach, LP (referred to as
10 “DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and on behalf of all current
11 and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does **not seek to recover**
12 **anything other than penalties as permitted by California Labor Code § 2699**. To the extent that
13 statutory violations are mentioned for wage violations, PLAINTIFF does not seek underlying general
14 and/or special damages for those violations, but simply the civil penalties permitted by California Labor
15 Code § 2699.

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

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

22 **THE PARTIES**

23 4. Defendant Breakfast Republic Carmel Valley, LLC is a California limited liability
24 company that at all relevant times mentioned herein conducted and continues to conduct substantial
25 business in the state of California.

26 5. Defendant Breakfast Republic Encinitas, LLC is a California limited liability company that
27 at all relevant times mentioned herein conducted and continues to conduct substantial business in the state
28 of California.

1 6. Defendant Breakfast Republic East Village, LLC is a California limited liability company
2 that at all relevant times mentioned herein conducted and continues to conduct substantial business in the
3 state of California.

4 7. Defendant Breakfast Republic Mission Valley, LLC is a California limited liability
5 company that at all relevant times mentioned herein conducted and continues to conduct substantial
6 business in the state of California.

7 8. Defendant Breakfast Republic OC, LLC is a California limited liability company that at all
8 relevant times mentioned herein conducted and continues to conduct substantial business in the state of
9 California.

10 9. Defendant Breakfast Republic Ocean Beach, LLC is a California limited liability company
11 that at all relevant times mentioned herein conducted and continues to conduct substantial business in the
12 state of California.

13 10. Defendant Breakfast Republic Hollywood, LLC is a California limited liability company
14 that at all relevant times mentioned herein conducted and continues to conduct substantial business in the
15 state of California.

16 11. Defendant Breakfast Republic-Pacific Beach, LP is a California limited partnership that at
17 all relevant times mentioned herein conducted and continues to conduct substantial business in the state
18 of California.

19 12. PLAINTIFF alleges there has existed a unity of interest and ownership between Defendants
20 such that any individuality and separateness between the entities has ceased and all Defendants are referred
21 to herein as “DEFENDANT.”

22 13. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers of
23 DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest and ownership
24 between Breakfast Republic Carmel Valley, LLC, Breakfast Republic Encinitas, LLC, Breakfast Republic
25 East Village, LLC, Breakfast Republic Mission Valley, LLC, Breakfast Republic OC, LLC, Breakfast
26 Republic Ocean Beach, LLC, Breakfast Republic West Hollywood, LLC, Breakfast Republic-Pacific
27 Beach, LP such that any individuality and separateness between the entities has ceased. Breakfast Republic
28 Carmel Valley, LLC, Breakfast Republic Encinitas, LLC, Breakfast Republic East Village, LLC,

1 Breakfast Republic Mission Valley, LLC, Breakfast Republic OC, LLC, Breakfast Republic Ocean Beach,
2 LLC, Breakfast Republic West Hollywood, LLC, Breakfast Republic-Pacific Beach, LP are therefore alter
3 egos of each other. Adherence to the fiction of the separate existence of DEFENDANT would permit an
4 abuse of the corporate privilege, and would promote injustice by protecting DEFENDANT from liability
5 for the wrongful acts committed by them.

6 14. PLAINTIFF further alleges that DEFENDANT are the alter egos of each other for the
7 following reasons:

8 A. On the California Secretary of State's website (<https://businesssearch.sos.ca.gov/>)
9 Breakfast Republic Carmel Valley, LLC, Breakfast Republic Encinitas, LLC,
10 Breakfast Republic East Village, LLC, Breakfast Republic Mission Valley, LLC,
11 Breakfast Republic OC, LLC, Breakfast Republic Ocean Beach, LLC, Breakfast
12 Republic West Hollywood, LLC, Breakfast Republic-Pacific Beach, LP have the same
13 entity address and/or mailing address and/or Agent for Service of Process;

14 B. On information and belief Breakfast Republic Carmel Valley, LLC, Breakfast Republic
15 Encinitas, LLC, Breakfast Republic East Village, LLC, Breakfast Republic Mission
16 Valley, LLC, Breakfast Republic OC, LLC, Breakfast Republic Ocean Beach, LLC,
17 Breakfast Republic West Hollywood, LLC, Breakfast Republic-Pacific Beach, LP
18 utilize the same standardized employment forms and issue the same employment
19 policies and same pay stubs;

20 C. On information and belief Breakfast Republic Carmel Valley, LLC, Breakfast Republic
21 Encinitas, LLC, Breakfast Republic East Village, LLC, Breakfast Republic Mission
22 Valley, LLC, Breakfast Republic OC, LLC, Breakfast Republic Ocean Beach, LLC,
23 Breakfast Republic West Hollywood, LLC, Breakfast Republic-Pacific Beach, LP have
24 a single executive team of five employees (the "Operations Team") which supervised
25 and managed the operations of all of DEFENDANT's restaurants, supervised and
26 managed the finances of all of DEFENDANT's restaurants, supervised and managed
27 the marketing of all of DEFENDANT's restaurants, supervised and managed the
28 human resources of all of DEFENDANT's restaurants, and supervised and managed

1 the food and beverage offerings at all of DEFENDANT's restaurants.

2 15. PLAINTIFF alleges that DEFENDANT's various separate corporate entities are used by
3 an individual or individuals, or by another corporation, to accomplish inequitable purposes, including to
4 limit liability for the unlawful acts of DEFENDANT.

5 16. PLAINTIFF alleges that there is such a unity of interest and ownership between
6 DEFENDANT's various corporate entities that own DEFENDANT's restaurants and the individual or
7 individuals, or organization controlling those corporate entities that their separate personalities no longer
8 exist.

9 17. PLAINTIFF further alleges that the failure to disregard the various corporate entities would
10 promote injustice.

11 18. DEFENDANT is a Southern California eatery that specializes in breakfast items.

12 19. PLAINTIFF has been employed by DEFENDANT in California from September of 2020
13 to July 27, 2021 and has been at all times classified by DEFENDANT as a non-exempt employee, paid
14 on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
15 and overtime wages due for all time worked.

16 20. After being hired by DEFENDANT, PLAINTIFF trained at multiple locations, including
17 DEFENDANT's Carmel Valley location, Pacific Beach location, and Liberty Station location.
18 Thereafter, PLAINTIFF worked at DEFENDANT's Encinitas location. PLAINTIFF was then offered
19 by her supervisor to assist in opening one of DEFENDANT's new locations in La Jolla, Hillcrest, or Los
20 Angeles. PLAINTIFF agreed to assist with the opening of the Hillcrest location. PLAINTIFF was then
21 asked by DEFENDANT to attend a managers' seminar, which was attended by all of DEFENDANT's
22 restaurant managers from all of DEFENDANT's locations. DEFENDANT then transferred PLAINTIFF
23 to work at its Carmel Valley location to train with that location's manager in preparation for her opening
24 of DEFENDANT's Hillcrest location.

25 21. Throughout her employment with DEFENDANT, while training and working at
26 DEFENDANT's various locations, PLAINTIFF was supervised by the same single employee of
27 DEFENDANT ("Carmina"), and was supervised by the same Operations Team consisting of the same
28 five employees of DEFENDANT. PLAINTIFF was subject to the same employment conditions,

1 employment policies and employment practices of DEFENDANT throughout her employment for
2 DEFENDANT regardless of the location she worked or trained at, and received the same compensation.
3 PLAINTIFF was not required by DEFENDANT to go through new or different training in order to work
4 at different locations.

5 22. PLAINTIFF is informed and believes, and thereon alleges, that other employees of
6 DEFENDANT were transferred by DEFENDANT's Operations Team between various locations to train
7 and work at DEFENDANT's various locations.

8 23. PLAINTIFF, and such persons that may be added from time to time who satisfy the
9 requirements and exhaust the administrative procedures under the Private Attorney General Act, brings
10 this Representative Action on behalf of the State of California with respect to herself and all individuals
11 who are or previously were employed by Breakfast Republic Carmel Valley, LLC, and/or Breakfast
12 Republic Encinitas, LLC, and/or Breakfast Republic East Village, LLC, and/or Breakfast Republic
13 Mission Valley, LLC, and/or Breakfast Republic OC, LLC, and/or Breakfast Republic Ocean Beach, LLC,
14 and/or Breakfast Republic West Hollywood, LLC, and/or Breakfast Republic-Pacific Beach, LP in
15 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time
16 period of April 13, 2020 until a date as determined by the Court (the "PAGA PERIOD").

17 24. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently or
18 formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action
19 pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's violation of
20 California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510, 512,
21 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
22 Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all
23 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

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

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

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

11 **THE CONDUCT**

12 27. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required
13 to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time
14 during which an employee is subject to the control of an employer, including all the time the employee is
15 suffered or permitted to work. DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES
16 to work without paying them for all the time they are under DEFENDANT's control. DEFENDANT
17 requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work off the clock without paying them for
18 all the time they perform work duties, specifically by failing to provide enough labor hours to accomplish
19 all the job tasks that DEFENDANT expects PLAINTIFF and the AGGRIEVED EMPLOYEES to
20 complete on a daily and/or weekly basis. PLAINTIFF and the AGGRIEVED EMPLOYEES also worked
21 off the clock with respect to time spent undergoing mandatory drug testing or any other testing and/or
22 examination required as a condition of employment. From time to time, DEFENDANT requires
23 PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
24 PLAINTIFF is from time to time interrupted by work assignments. DEFENDANT also engages in the
25 practice of requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to perform work off the clock in
26 that DEFENDANT, as a condition of employment, requires these employees to submit to mandatory
27 questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for
28 the workday. PLAINTIFF and the AGGRIEVED EMPLOYEES are required by DEFENDANT to answer

1 a COVID-19 questionnaire regarding any symptoms and possible exposure to COVID-19. DEFENDANT
2 fails to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for their time spent performing the
3 mandatory waiting off the clock during the shift change and completing the COVID-19 questionnaire.
4 Even if PLAINTIFF and the AGGRIEVED EMPLOYEES show up to DEFENDANT's work place and
5 then fail the questionnaire, DEFENDANT still fails to pay PLAINTIFF the proper reporting time pay
6 wages. Additionally, DEFENDANT, as a matter of established company policy and procedure,
7 administered a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and the
8 AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their
9 employment, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid less than they would have
10 been paid had they been paid for actual recorded time rather than "rounded" time. As a result, PLAINTIFF
11 and the AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by from time
12 to time working without their time being accurately recorded and without compensation at the applicable
13 minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF
14 and the AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT's business
15 records.

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

20 29. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
21 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and the
22 AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANT. The non-
23 discretionary incentive program provided all employees paid on an hourly basis with incentive
24 compensation when the employees met the various performance goals set by DEFENDANT. However,
25 when calculating the regular rate of pay in order to pay overtime and meal and rest break premiums to
26 PLAINTIFF and the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive
27 compensation as part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
28 the correct meal and rest break premium pay. Management and supervisors described the incentive

1 program to potential and new employees as part of the compensation package. As a matter of law, the
2 incentive compensation received by PLAINTIFF and the AGGRIEVED EMPLOYEES must be included
3 in the “regular rate of pay.” The failure to do so has resulted in a underpayment of overtime compensation
4 and meal and rest break premium pay to PLAINTIFF and the other AGGRIEVED EMPLOYEES by
5 DEFENDANT.

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

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

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

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

18 33. From time to time, DEFENDANT also fails to provide PLAINTIFF and the other
19 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show, among
20 other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer
21 shall furnish each of his or her employees with an accurate itemized wage statement in writing showing,
22 among other things, gross wages earned and all applicable hourly rates in effect during the pay period and
23 the corresponding amount of time worked at each hourly rate. PLAINTIFF and the AGGRIEVED
24 EMPLOYEES are paid on an hourly basis. As such, the wage statements should reflect all applicable
25 hourly rates during the pay period and the total hours worked, and the applicable pay period in which the
26 wages are earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT
27 provides to PLAINTIFF and the AGGRIEVED EMPLOYEES fail to identify such information. More
28 specifically, the wage statements fail to identify the accurate total hours worked each pay period. When

1 the hours shown on the wage statements are added up, they do not equal the actual total hours worked
2 during the pay period. Aside, from the violations listed above in this paragraph, DEFENDANT fails to
3 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
4 Code 226 *et seq.* As a result, DEFENDANT from time to time provides PLAINTIFF and the other
5 AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

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

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

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

19 36. DEFENDANT underpays sick pay wages to PLAINTIFF and the other AGGRIEVED
20 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF and other
21 non-exempt employees earn non-discretionary remuneration, including but not limited to, incentives, shift
22 differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays
23 sick pay to PLAINTIFF and the other AGGRIEVED EMPLOYEES at their base rates of pay.

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

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

3 38. In the course of their employment PLAINTIFF and other AGGRIEVED EMPLOYEES as
4 a business expense, are required by DEFENDANT to use their own personal cellular phones as a result of
5 and in furtherance of their job duties as employees for DEFENDANT but are not reimbursed or
6 indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones for
7 DEFENDANT's benefit. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES are required
8 by DEFENDANT to use their personal cellular phones to for work related issues including but not limited
9 to, downloading scheduling applications and other applications in order to perform work for
10 DEFENDANT in addition to placing and taking calls from DEFENDANT regarding workplace issues.
11 As a result, in the course of their employment with DEFENDANT, PLAINTIFF and the other
12 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but were not
13 limited to, costs related to the use of their personal cellular phones all on behalf of and for the benefit of
14 DEFENDANT.

15 39. All of the conduct and violations alleged herein occurred during the PAGA PERIOD.
16 Some, if not all, of the conduct alleged herein, affected PLAINTIFF directly, and was effectuated by each
17 and every one of the named DEFENDANTS. To the extent that any of the conduct and violations alleged
18 herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those
19 violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
20 2018 AJDAR 12157 (Certified for Publication 12/19/18).

21 **JURISDICTION AND VENUE**

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

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

28 ///

1 **FIRST CAUSE OF ACTION**

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

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

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

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

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

16 44. PLAINTIFF, and such persons that may be added from time to time who satisfy the
17 requirements and exhaust the administrative procedures under the Private Attorney General Act, brings
18 this Representative Action on behalf of the State of California with respect to herself and all individuals
19 who are or previously were employed by Breakfast Republic Carmel Valley, LLC, and/or Breakfast
20 Republic Encinitas, LLC, and/or Breakfast Republic East Village, LLC, and/or Breakfast Republic
21 Mission Valley, LLC, and/or Breakfast Republic OC, LLC, and/or Breakfast Republic Ocean Beach, LLC,
22 and/or Breakfast Republic West Hollywood, LLC, and/or Breakfast Republic-Pacific Beach, LP in
23 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time
24 period of April 13, 2020 until a date as determined by the Court (the "PAGA PERIOD").

25 45. On April 13, 2021, PLAINTIFF gave written notice by electronic mail to the Labor and
26 Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific
27 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. The statutory
28 waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant

1 to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA pursuant
2 to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as
3 herein defined.

4 46. The policies, acts and practices heretofore described were and are an unlawful business act
5 or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other AGGRIEVED
6 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally
7 required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime and sick pay
8 wages, and (e) failed to reimburse employees for required expenses, all in violation of the applicable Labor
9 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351,
10 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section
11 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil penalties
12 as a result of such conduct.1 PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by
13 the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for
14 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

15 **PRAYER FOR RELIEF**

16 47. WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
17 severally, as follows:

18 A. On behalf of the State of California and with respect to all AGGRIEVED
19 EMPLOYEES:

- 20 A. Recovery of civil penalties as prescribed by the Labor Code Private
21 Attorneys General Act of 2004; and,
22 B. An award of attorneys' fees and cost of suit, as allowable under the law,
23 including, but not limited to, pursuant to Labor Code §2699.
24

25 Dated: December 6, 2021

ZAKAY LAW GROUP, APC

26 By: 

27 Shani O. Zakay
28 Attorneys for Plaintiff