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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

22CV393491

JOHNNY VALDEZ, as an aggrieved
employee pursuant to the Private
Attorneys General Act ("PAGA"), on
behalf of the State of California and
other aggrieved employees,

Plaintiff,

vs.

W.K.S. KRISPY KREME, LLC, a
Delaware corporation; KRISPY KREME
DOUGHNUT CORPORATION, a North
Carolina corporation; W.K.S. HOLDINGS
CORPORATION, a California corporation;
W.K.S. RESTAURANT CORPORATION,
a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

- (1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Johnny Valdez as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations of
9 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order
11 were committed, as set forth in this complaint, at any time between one year prior to the filing
12 of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in
13 this case on November 15, 2021, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional notions
22 of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this
23 action given that the State of California, as the real party in interest in this action, is not a
24 “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726
25 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated
26 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
27 and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil penalties
28 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendants employ or employed persons within the County of Santa Clara and have violated the requirements of the California Labor Code and applicable IWC Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable IWC Wage Order in at least three (3) locations within the County of Santa Clara, including Defendants' stores located in Mountain View (2146 Leghorn Street, Mountain View, California 94043); San Jose (121 Curtner Avenue, Suite 40, San Jose, California 95125); and Santa Clara (3133 Mission College Boulevard, Santa Clara, California 95054). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Santa Clara County, and Plaintiff could bring an action filed under PAGA in any county in which an aggrieved employee worked and Labor Code violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Johnny Valdez is a resident of Santa Maria, in Santa Barbara County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately October 2019 to May 2021. Plaintiff worked for Defendants as a Baker at Defendants' store located at 2224 South Bradley Road in Santa Maria, California. Plaintiff typically worked eight (8) hours or more per day, five (5) days per week. At the time Plaintiff's employment with Defendants ended, he was compensated approximately \$14.00 per hour. Plaintiff's job duties included, without limitation, making doughnuts, repairing the doughnut machine, operating the cash register, fulfilling customer orders, and cleaning the baking area.

7. On information and belief, Defendants required some employees, including

1 Plaintiff, to execute an arbitration agreement at the time of their hire or during their
2 employment. On further information and belief, Defendants' arbitration agreement was and is
3 both procedurally and substantively unconscionable. Specifically, Defendants presented new
4 hires with a "Binding Mutual Agreement to Arbitrate Claims" ("Arbitration Agreement") during
5 the onboarding process, which had to be reviewed and acknowledged immediately.
6 Specifically, the Arbitration Agreement was one of several documents presented to new
7 employees for signature during the orientation process, including the WKS Employee
8 Handbook, California Meal Period Waiver, and Anti-Harassment-Anti Bullying-Abusive
9 Conduct (Policy), among other documents. Also, employees did not have a meaningful
10 opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to
11 Defendants' employees for them to sign on a take-it or leave-it basis, along with all of the other
12 on-boarding documents. Furthermore, Defendants did not set forth in the agreement or
13 otherwise provide employees with the rules which will govern the arbitration, instead forcing
14 employees to seek this information out on their own ("[A] copy of the most current JAMS Rules
15 may be obtained from Company's Human Resources Department or by visiting
16 <http://www.jamsadr.com/rules-employment-arbitration/>.").

17 8. W.K.S. KRISPY KREME, LLC was and is, upon information and belief, a
18 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees
19 are engaged throughout this county and the State of California.

20 9. KRISPY KREME DOUGHNUT CORPORATION was and is, upon information
21 and belief, a North Carolina corporation, and at all times hereinafter mentioned, an employer
22 whose employees are engaged throughout this county and the State of California.

23 10. W.K.S. HOLDINGS CORPORATION was and is, upon information and belief,
24 a California corporation, and at all times hereinafter mentioned, an employer whose employees
25 are engaged throughout this county and the State of California.

26 11. W.K.S. RESTAURANT CORPORATION was and is, upon information and
27 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
28 employees are engaged throughout this county and the State of California.

1 12. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
2 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
3 complaint and serve such fictitiously named Defendants once their names and capacities
4 become known.

5 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
6 were the partners, agents, owners, or managers of W.K.S. KRISPY KREME, LLC; KRISPY
7 KREME DOUGHNUT CORPORATION; W.K.S. HOLDINGS CORPORATION; W.K.S.
8 RESTAURANT CORPORATION, at all relevant times.

9 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the
10 acts and omissions alleged herein was performed by, or is attributable to, W.K.S. KRISPY
11 KREME, LLC; KRISPY KREME DOUGHNUT CORPORATION; W.K.S. HOLDINGS
12 CORPORATION; W.K.S. RESTAURANT CORPORATION; and/or DOES 1 through 10
13 (collectively, “Defendants” or “WKS”), each acting as the agent, employee, alter ego, and/or
14 joint venturer of, or working in concert with, each of the other co-Defendants and was acting
15 within the course and scope of such agency, employment, joint venture, or concerted activity
16 with legal authority to act on the others’ behalf. The acts of any and all Defendants were in
17 accordance with, and represent, the official policy of Defendants.

18 15. At all relevant times, Defendants, and each of them, ratified each and every act
19 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
20 and abetted the acts and omissions of each and all the other Defendants in proximately causing
21 the damages herein alleged.

22 16. Plaintiff is informed and believes, and thereon alleges, that each of said
23 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
24 omissions, occurrences, and transactions alleged herein.

25 17. Under California law, Defendants are jointly and severally liable as employers
26 for the violations alleged herein because they have each exercised sufficient control over the
27 wages, hours, working conditions, and employment status of Plaintiff and other non-party
28 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-

1 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
2 of employment, determined their rate of pay, and maintained their employment records.
3 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
4 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a common-
5 law employment relationship. As joint employers of Plaintiff and other non-party Aggrieved
6 Employees, Defendants are jointly and severally liable for the civil penalties available to
7 Plaintiff and other non-party Aggrieved Employees under the law.

8 18. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
9 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
10 non-party Aggrieved Employees because Defendants have:

- 11 (a) jointly exercised meaningful control over the work performed by Plaintiff
12 and other non-party Aggrieved Employees;
- 13 (b) jointly exercised meaningful control over Plaintiff’s and other non-party
14 Aggrieved Employees’ wages, hours, and working conditions, including
15 the quantity, quality standards, speed, scheduling, and operative details
16 of the tasks performed by Plaintiff and other non-party Aggrieved
17 Employees;
- 18 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
19 perform work which is an integral part of Defendants’ businesses; and
- 20 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
21 Employees as a matter of economic reality in that Plaintiff and other non-
22 party Aggrieved Employees were dependent on Defendants, who shared
23 the power to set the wages of Plaintiff and other non-party Aggrieved
24 Employees and determined their working conditions, and who jointly
25 reaped the benefits from the underpayment of their wages and
26 noncompliance with other statutory provisions governing their
27 employment.

28 19. Plaintiff is informed and believes, and thereon alleges, that at all relevant times

1 there has existed a unity of interest and ownership between Defendants such that any
2 individuality and separateness between the entities has ceased.

3 20. W.K.S. KRISPY KREME, LLC; KRISPY KREME DOUGHNUT
4 CORPORATION; W.K.S. HOLDINGS CORPORATION; W.K.S. RESTAURANT
5 CORPORATION; and/or DOES 1 through 10 are therefore alter egos of each other.

6 21. Adherence to the fiction of the separate existence of Defendants would permit an
7 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
8 liability for the wrongful acts committed by them under the name WKS.

9 22. Plaintiff further allege, upon information and belief that Defendants W.K.S.
10 KRISPY KREME, LLC; KRISPY KREME DOUGHNUT CORPORATION; W.K.S.
11 HOLDINGS CORPORATION; and W.K.S. RESTAURANT CORPORATION are alter egos
12 of each other for the following reasons:

- 13 (a) In November 18, 2019, according to KRISPY KREME DOUGHNUT
14 CORPORATION's franchise disclosure document, KRISPY KREME
15 DOUGHNUT CORPORATION and W.K.S. HOLDINGS
16 CORPORATION entered into a joint venture named W.K.S. KRISPY
17 KREME, LLC, and are parent entities of W.K.S. KRISPY KREME, LLC;
- 18 (b) On the California Secretary of State's website
19 (<https://businesssearch.sos.ca.gov/>) W.K.S. KRISPY KREME, LLC;
20 W.K.S. HOLDINGS CORPORATION; and W.K.S. RESTAURANT
21 CORPORATION share the same entity address and mailing address
22 (5856 Corporate Avenue, Suite 200, Cypress, California 90630);
- 23 (c) On information and belief, W.K.S. KRISPY KREME, LLC and KRISPY
24 KREME DOUGHNUT CORPORATION share the same agent for
25 service of process, "CORPORATION SERVICE COMPANY WHICH
26 WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS
27 INCORPORATING SERVICE (C1592199)"; and
- 28 (d) On information and belief, W.K.S. KRISPY KREME, LLC; KRISPY

1 KREME DOUGHNUT CORPORATION; W.K.S. HOLDINGS
2 CORPORATION; and W.K.S. RESTAURANT CORPORATION utilize
3 the same standardized employment forms and issue the same employment
4 policies.

5 **PAGA REPRESENTATIVE ALLEGATIONS**

6 23. Defendants operate numerous Krispy Kreme doughnut store locations in
7 California. Upon information and belief, Defendants maintain a single, centralized Human
8 Resources (HR) department at their corporate headquarters in Cypress, California, for all non-
9 exempt, hourly paid employees working for Defendants in California, which is responsible for
10 the recruiting and hiring of new employees, and communicating and implementing Defendants'
11 company-wide policies, including timekeeping policies and meal and rest period policies, to
12 employees throughout California.

13 24. In particular, Plaintiff and other non-party Aggrieved Employees, on information
14 and belief, received the same standardized documents and/or written policies. Upon
15 information and belief, the usage of standardized documents and/or written policies, including
16 new-hire documents, indicate that Defendants dictated policies at the corporate level and
17 implemented them company-wide, regardless of their employees' assigned locations or
18 positions. Upon information and belief, Defendants set forth uniform policies and procedures
19 in several documents provided at an employee's time of hire.

20 25. Upon information and belief, Defendants maintain a centralized Payroll
21 department at their corporate headquarters in Cypress, California, which processes payroll for
22 all non-exempt, hourly paid employees working for Defendants at their various locations and
23 jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based
24 upon information and belief, Defendants issue the same formatted wage statements to all non-
25 exempt, hourly paid employees in California, irrespective of their work locations. Upon
26 information and belief, Defendants process payroll for departing employees in the same manner
27 throughout the State of California, regardless of the manner in which each employee's
28 employment ends.

1 26. Defendants continue to employ non-exempt or hourly paid employees in
2 California.

3 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
4 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
5 advisors knowledgeable about California labor and wage law, employment and personnel
6 practices, and about the requirements of California law.

7 28. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
8 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
9 were not recorded.

10 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 receive certain wages for overtime compensation and that they were not receiving certain wages
13 for overtime compensation.

14 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that other non-party Aggrieved Employees were entitled to be paid at a
16 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income
17 all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
18 compensation, but failed to include all forms of remuneration in calculating the regular rate of
19 pay for other non-party Aggrieved Employees.

20 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 receive at least minimum wages for compensation and that they were not receiving at least
23 minimum wages for work that was required to be done off-the-clock. In violation of the
24 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
25 least minimum wages for work done off-the-clock.

26 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 meal periods in accordance with the California Labor Code and applicable IWC Wage Order or

1 payment of one (1) additional hour of pay at their regular rates of pay when they were not
2 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and other
3 non-party Aggrieved Employees were not provided with all meal periods or payment of one (1)
4 additional hour of pay at their regular rates of pay when they did not receive a timely,
5 uninterrupted, thirty (30) minute meal period.

6 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest
8 periods in accordance with the California Labor Code and applicable IWC Wage Order or
9 payment of one (1) additional hour of pay at their regular rates of pay when they were not
10 authorized and permitted to take a compliant rest period. In violation of the California Labor
11 Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to
12 take compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
13 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
14 they were not authorized and permitted to take a compliant rest period.

15 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
17 receive complete and accurate wage statements in accordance with California law. In violation
18 of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not
19 provided complete and accurate wage statements.

20 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that they had a duty to maintain accurate and complete payroll records in
22 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
23 and intentionally failed to do so.

24 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 timely payment of wages during their employment. In violation of the California Labor Code,
27 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
28 including, but not limited to, overtime wages, minimum wages, meal and rest premiums, and/or

1 reporting time pay, within permissible time periods.

2 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
4 timely payment of all wages earned upon termination of employment. In violation of the
5 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
6 payment of all wages due, including, but not limited to, overtime wages, minimum wages, meal
7 and rest premiums, and/or reporting time pay, within permissible time periods.

8 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that other non-party Aggrieved Employees were entitled to receive all
10 reporting time pay when they reported to work for their scheduled shift but were put to work
11 for less than half of the regular schedule. In violation of the California Labor Code and
12 applicable IWC Wage Order, Defendants did not pay other non-party Aggrieved Employees all
13 reporting time pay due.

14 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 suitable resting facilities to cease work and recover during meal or rest periods.

17 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
19 suitable seating and/or were entitled to sit when it did not interfere with the performance of their
20 duties and also have seats nearby to use during a lull in tasks that do require moving about or
21 standing.

22 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
24 receive reimbursement for all business-related expenses and costs they incurred during the
25 course and scope of their employment and that they did not receive reimbursement of applicable
26 business-related expenses and costs incurred.

27 42. Plaintiff is informed and believe, and thereon allege, that at all times herein
28 mentioned, Defendants knew or should have known that Defendants had a duty to provide

1 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms of
2 their employment with Defendants as required by the California Wage Theft Prevention Act,
3 but failed to do so.

4 43. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff and
6 other non party Aggrieved Employees with safety devices and safeguards to protect their life,
7 safety, and health in the workplace, but failed to do so.

8 44. Plaintiff is informed and believes, and thereon alleges, that at all times herein
9 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
10 and other non-party Aggrieved Employees for all hours worked, and that Defendants had the
11 financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to
12 do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees that they
13 were properly denied wages, all in order to increase Defendants' profits.

14 45. At all times herein set forth, PAGA provides that any provision of law under the
15 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
16 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
17 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
18 behalf of themselves and other current or former employees pursuant to procedures outlined in
19 California Labor Code section 2699.3.

20 46. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
21 person who was employed by the alleged violator and against whom one or more of the alleged
22 violations was committed."

23 47. Plaintiff and other current and former employees of Defendants are "aggrieved
24 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
25 or former employees and one or more of the alleged violations were committed against them.

26 48. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
27 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
28 requirements have been met:

- 1 (a) The aggrieved employee shall give written notice by online filing
2 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail to
3 the employer of the specific provisions of the California Labor Code
4 alleged to have been violated, including the facts and theories to support
5 the alleged violations.
- 6 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
7 2699.3(a) and any employer response to that notice shall be accompanied
8 by a filing fee of seventy-five dollars (\$75).
- 9 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
10 employer and the aggrieved employee by certified mail that it does not
11 intend to investigate the alleged violation within sixty (60) calendar days
12 of the postmark date of the Employee’s Notice. Upon receipt of the
13 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
14 (65) calendar days of the postmark date of the Employee’s Notice, the
15 aggrieved employee may commence a civil action pursuant to California
16 Labor Code section 2699 to recover civil penalties in addition to any other
17 penalties to which the employee may be entitled.

18 49. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
19 through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision
20 other than those listed in Section 2699.5 after the following requirements have been met:

- 21 (a) The aggrieved employee or representative shall give written notice by
22 online filing to the LWDA and by certified mail to the employer of the
23 specific provisions of the California Labor Code alleged to have been
24 violated (other than those listed in Section 2699.5), including the facts
25 and theories to support the alleged violation.
- 26 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
27 2699.3(c) and any employer response to that notice shall be accompanied
28 by a filing fee of seventy-five dollars (\$75).

1 (c) The employer may cure the alleged violation within thirty-three (33)
2 calendar days of the postmark date of the notice. The employer shall give
3 written notice by certified mail within that period of time to the aggrieved
4 employee or representative and the agency if the alleged violation is
5 cured, including a description of actions taken, and no civil action
6 pursuant to Section 2699 may commence. If the alleged violation is not
7 cured within the 33-day period, the employee may commence a civil
8 action pursuant to Section 2699.

9 50. On November 15, 2021, Plaintiff provided written notice by online filing to the
10 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
11 Code alleged to have been violated, including facts and theories to support the alleged
12 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
13 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
14 PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff
15 PAGA Case Number LWDA-CM-852324-21. A true and correct copy of Plaintiff's written
16 notice to the LWDA and Defendants dated November 15, 2021, is attached hereto as "Exhibit
17 1."

18 51. As of the filing date of this complaint, over 65 days have passed since Plaintiff
19 sent the written notice described above, and the LWDA has not responded that it intends to
20 investigate Plaintiff's claims, and Defendants have not cured the violations.

21 52. Thus, Plaintiff has satisfied the administrative prerequisites under California
22 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
23 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
24 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403.

25 53. Labor Code section 558(a) provides "[a]ny employer or other person acting on
26 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
27 provision regulating hours and days of work in any order of the Industrial Welfare Commission
28 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for

1 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
2 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
3 each pay period for which the employee was underpaid. . . .” Labor Code section 558(c)
4 provides “[t]he civil penalties provided for in this section are in addition to any other civil or
5 criminal penalty provided by law.” Plaintiff, acting in the public interest as a private attorney
6 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
7 himself, all other non-party Aggrieved Employees, and the State of California against
8 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
9 IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not
10 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
11 of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order.

12 54. Defendants, at all times relevant to this complaint, were employers or persons
13 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
14 Employees’ rights by violating various sections of the California Labor Code as set forth above.

15 55. As set forth below, Defendants have violated numerous provisions of both the
16 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
17 Order.

18 56. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
19 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private
20 attorney general, seeks assessment and collection of civil penalties for himself, all other non-
21 party Aggrieved Employees, and the State of California against Defendants for violations of
22 California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
23 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403.

24 **FIRST CAUSE OF ACTION**

25 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

26 **(Against all Defendants)**

27 57. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 58. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
2 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
3 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510,
4 512(a), 1174(d), 1182.12, 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits
5 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor
6 Code sections not found in section 2699.5, including sections 516, 1182.12, 2810.5, 6401, and
7 6403.

8 59. Defendants’ conduct, as alleged herein, violates numerous sections of the
9 California Labor Code, including, but not limited to, the following:

- 10 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
11 Wage Order for Defendants’ failure to compensate Plaintiff and other
12 non-party Aggrieved Employees with all required overtime pay and
13 failure to properly calculate the overtime rates paid to other non-party
14 Aggrieved Employees, as set forth below;
- 15 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the
16 applicable IWC Wage Order for Defendants’ failure to compensate
17 Plaintiff and other non-party Aggrieved Employees with at least
18 minimum wages for all hours worked, as set forth below;
- 19 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
20 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
21 and other non-party Aggrieved Employees with meal periods, as set forth
22 below;
- 23 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
24 IWC Wage Order for Defendants’ failure to authorize and permit Plaintiff
25 and other non-party Aggrieved Employees to take rest periods, as set forth
26 below;
- 27 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
28 IWC Wage Order for failure to provide accurate and complete wage

statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;

(f) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as set forth below;

(g) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as set forth below;

(h) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as set forth below;

(i) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to pay reporting time pay when other non-party Aggrieved Employees were put to work for less than half of their regular scheduled shifts, as set forth below;

(j) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide suitable resting facilities to Plaintiff and other non-party Aggrieved Employees, as set forth below;

(k) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide suitable seating to Plaintiff and other non-party Aggrieved Employees, as set forth below;

(l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below;

(m) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and other non-party Aggrieved Employees' employment with Defendants; and

(n) Violation of Labor Code sections 6401 and 6403 for failure to provide Plaintiff and other non-party Aggrieved Employees with safety devices and safeguards for the workplace, as set forth below.

1 **FAILURE TO PAY OVERTIME**

2 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

3 60. Labor Code section 1198 makes it illegal to employ an employee under
4 conditions of labor that are prohibited by the applicable wage order. California Labor Code
5 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
6 be the . . . standard conditions of labor for employees. The employment of any employee . . .
7 under conditions of labor prohibited by the order is unlawful.”

8 61. California Labor Code section 1198 and the applicable IWC Wage Order provide
9 that it is unlawful to employ persons without compensating them at a rate of pay either time-
10 and-one-half or two-times that person’s regular rate of pay, depending on the number of hours
11 worked by the person on a daily or weekly basis.

12 62. Specifically, the applicable IWC Wage Order provides that Defendants are and
13 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
14 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
15 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
16 hours in a workweek.

17 63. The applicable IWC Wage Order further provides that Defendants are and were
18 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
19 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
20 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
21 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

22 64. California Labor Code section 510 codifies the right to overtime compensation
23 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
24 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
25 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
26 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
27 the seventh (7th) day of work.

28 65. First, during the relevant time period, Defendants had a company-wide policy

1 and/or practice of discouraging and impeding Plaintiff and other non-party Aggrieved
2 Employees from recording hours worked that were outside of their scheduled shifts, in order to
3 limit the amount of overtime employees could accrue. On information and belief, this limitation
4 on overtime accrual was based on a company-wide policy of staffing store locations strictly
5 based on the labor hours or labor budget set by corporate. This policy of limiting overtime,
6 coupled with Defendants' understaffing policy and assignment of heavy workloads, led Plaintiff
7 and other non-party Aggrieved Employees to work off-the-clock before and after their
8 scheduled shift times. For example, prior to starting his shift, Defendants would require
9 Plaintiff to wait up to 15 minutes, three times a week, until a managerial employee arrived to
10 unlock the store and to let him in, before he was able to clock in. After clocking out at the end
11 of a shift, Defendants' management would also require Plaintiff to perform additional job duties
12 such as taking out trash, assisting a supervisor, or responding to phone calls from supervisors
13 regarding doughnut machine repairs, approximately three times a week for up to 15 minutes.
14 As a further example, several times a week, on his off-days or outside of his scheduled shifts,
15 Defendants' management would call Plaintiff into the store to have him make repairs to the
16 doughnut machine, a task that could take 30-40 minutes, but did not allow him to clock in to
17 account for this time worked. At all times, Plaintiff remained under the control of Defendants.
18 Thus, Defendants failed to track this time spent working before and after scheduled shifts, and
19 Plaintiff and other non-party Aggrieved Employees received no compensation for this time.

20 66. Second, as stated, Defendants had, and continue to have, a uniform practice
21 and/or policy of understaffing their store locations which resulted in a lack of adequate meal
22 period coverage, because there were too few employees on duty to handle the heavy workload
23 and attend to customers. Because Defendants did not employ or staff a sufficient number of
24 employees to meet customer demand, there was no one available to relieve employees needing
25 meal period coverage, and Plaintiff and other non-party Aggrieved Employees were not always
26 afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive
27 a meal period. Moreover, Defendants had a practice of failing to adhere to a schedule for meal
28 periods, which further caused Plaintiff and other non-party Aggrieved Employees to not be

1 relieved of their duties for compliant meal periods. Consequently, Plaintiff and other non-party
2 Aggrieved Employees were required to work through and/or had their unpaid meal periods
3 interrupted in order to complete their assigned duties and handle customer demand, time for
4 which they were not paid.

5 67. Further, on information and belief, because Defendants frowned upon employees
6 accruing meal period penalties, Defendants pressured Plaintiff and other non-party Aggrieved
7 Employees to clock out for meal periods, on threat of discipline, and/or adjusted their time
8 records to reflect compliant meal periods, even when they did not receive a compliant meal
9 period. For example, Defendants' management would instruct Plaintiff to clock out to record a
10 compliant meal period, or would adjust his time records to reflect a compliant meal period even
11 when he had worked through his meal period. Furthermore, Defendants' company-wide
12 timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from
13 recording all hours worked when their meal periods were shortened or interrupted, because the
14 system locked out Plaintiff and other non-party Aggrieved Employees once they clocked out
15 for a meal period, and would not permit them to clock back in from a meal period before 30
16 minutes had elapsed. Thus, Defendants did not record all hours worked during meal periods
17 and Plaintiff and other non-party Aggrieved Employees performed work during meal periods
18 for which they were not paid.

19 68. Defendants knew or should have known that, as a result of these company-wide
20 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
21 their assigned duties off-the-clock before and after their shifts and during meal periods, and
22 were suffered or permitted to perform work for which they were not paid. Because Plaintiff
23 and other non-party Aggrieved Employees regularly worked shifts of eight (8) hours a day or
24 more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
25 premium pay.

26 69. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
27 correct overtime rate for the recorded overtime hours that they generated. In addition to an
28 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,

1 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
2 California Labor Code, Defendants failed to incorporate all compensation, including incentive
3 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
4 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times
5 when other non-party Aggrieved Employees worked overtime and received these other forms
6 of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
7 required.

8 70. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
9 the balance of overtime compensation as required by California law, violates the provisions of
10 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
11 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558
12 and/or 2699(a), (f), and (g).

13 **FAILURE TO PAY MINIMUM WAGES**

14 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

15 71. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
16 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
17 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
18 Compensable work time is defined by the applicable wage order, IWC Wage Order No. 5-2001,
19 as "the time during which an employee is subject to the control of an employer, and includes all
20 the time the employee is suffered or permitted to work, whether or not required to do so." Cal.
21 Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

22 72. As stated above, due to Defendants' restrictions on overtime accrual, Defendants
23 systematically failed to record all hours worked and Plaintiff and other non-party Aggrieved
24 Employees were forced to work off-the-clock before and after their scheduled shifts to complete
25 their assigned duties. Additionally, as set forth above, due to Defendants' uniform practices of
26 utilizing labor budgets, understaffing, assignment of heavy workloads, failure to adhere to a
27 schedule for meal periods, and subsequent lack of meal period coverage, Plaintiff and other
28 non-party Aggrieved Employees were forced to forego meal periods, have their meal periods

1 interrupted, and/or were otherwise not relieved of all duties during meal periods. Additionally,
2 as stated above, on information and belief, in order to limit meal penalties that Defendants would
3 otherwise owe, Defendants pressured Plaintiff and other non-party Aggrieved Employees to
4 clock out for meal periods, on threat of discipline, and/or adjusted employee time records to
5 reflect compliant meal periods, but required them to continue working, time for which they were
6 not paid. Also, as set forth above, during the relevant time period, Defendants systematically
7 failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during
8 unpaid meal periods, because Defendants' timekeeping system locked out Plaintiff and other
9 non-party Aggrieved Employees for 30 minutes when they clocked out for a meal period. Thus,
10 Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees for
11 actual hours worked during unpaid meal periods because these hours were not always correctly
12 recorded.

13 73. Thus, Defendants did not pay at least minimum wages for all hours worked by
14 Plaintiff and non-party Aggrieved Employees. To the extent that these off-the-clock hours did
15 not qualify for overtime premium payment, Defendants did not pay at least minimum wages for
16 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
17 1197, and 1198.

18 74. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
19 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
20 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
21 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

22 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

23 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

24 75. At all relevant times herein set forth, the applicable IWC Wage Order and
25 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
26 other non-party Aggrieved Employees' employment by Defendants.

27 76. At all relevant times herein set forth, California Labor Code section 512(a)
28 provides that an employer may not require, cause, or permit an employee to work for a period

1 of more than five (5) hours per day without providing the employee with a meal period of not
2 less than thirty (30) minutes, except that if the total work period per day of the employee is not
3 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
4 and the employee. Under California law, first meal periods must start after no more than five
5 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

6 77. At all relevant times herein set forth, California Labor Code sections 226.7,
7 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
8 meal period mandated by an applicable order of the IWC.

9 78. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
10 1198, and the applicable IWC Wage Order also require employers to provide a second meal
11 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
12 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
13 the total hours worked is no more than twelve (12) hours, the second meal period may be waived
14 by mutual consent of the employer and the employee only if the first meal period was not
15 waived.

16 79. During the relevant time period, as stated, Defendants had, and continue to have,
17 company-wide policies and/or practices of understaffing pursuant to their labor budget
18 practices, while simultaneously assigning heavy workloads, and failing to adhere to a schedule
19 for meal periods, which resulted in a lack of meal period coverage and prevented Plaintiff and
20 other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to
21 which they were entitled. As a result, Plaintiff and other non-party Aggrieved Employees had
22 to work through all or part of their meal periods, had their meal periods interrupted, and/or had
23 to wait extended periods of time before taking meal periods. For example, Plaintiff was required
24 to work through his meal periods due to the heavy workload and lack of coverage, because he
25 was unable to stop working in the middle of the doughnut-making process without coverage.
26 Moreover, approximately twice per month, Defendants' management would call Plaintiff during
27 his meal periods to discuss work-related issues, such as problems with store staffing.

28 80. Additionally, as stated, on information and belief, because Defendants frowned

1 upon employees accruing meal period penalties, Defendants' management pressured employees
2 to clock out for meal periods, upon threat of discipline, and/or would adjust Plaintiff's and other
3 non-party Aggrieved Employees' time records to reflect compliant meal periods, regardless of
4 whether they had received a compliant meal period or not, in order to strictly limit meal penalties
5 that would need to be paid by Defendant. For example, Defendants' management would instruct
6 Plaintiff to clock out to record a compliant meal period, or would adjust Plaintiff's time records
7 to reflect a compliant meal period when he had worked through his meal period. Also, as stated,
8 Defendants' company-wide timekeeping system prevented Plaintiff and other non-party
9 Aggrieved Employees from recording all hours worked when their meal periods were shortened
10 or interrupted, because the system locked out Plaintiff and other non-party Aggrieved
11 Employees once they clocked out for a meal period, and would not permit them to clock back
12 in from a meal period before 30 minutes had elapsed.

13 81. Also, on information and belief, Defendant did not provide other non-party
14 Aggrieved Employees with second 30-minute meal periods on days that they worked in excess
15 of ten (10) hours in one day. Plaintiff and other non-party Aggrieved Employees did not sign
16 valid meal period waivers on days that they were entitled to meal periods and were not relieved
17 of all duties.

18 82. Moreover, Defendants had a company-wide policy of requiring all newly hired
19 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
20 the position that non-exempt, hourly paid employees had waived their rights to first and/or
21 second meal periods for the entirety of their employment and, on that basis, did not provide
22 them with all meal periods to which they were entitled. Moreover, Defendants' meal period
23 waiver form requires employees provide written notice should they wish to revoke the waiver.
24 Defendants' presumption that meal periods would not be provided for shifts in excess of five
25 (5) hours but less than six (6) hours, and for shifts in excess of ten (10) hours but less than
26 twelve (12) hours due to blanket meal period waivers signed at or near the time of hire, and
27 imposition on employees to revoke the waivers in writing, discouraged and impeded Plaintiff
28 and other non-party Aggrieved Employees from taking all meal periods to which they were

1 entitled.

2 83. Furthermore, an employer's obligation to provide a meal period is only
3 "triggered" when the employer "employs an employee for a work period of more than five hours
4 per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to
5 work for a full five hours, its meal break obligation is triggered").

6 [A]fter the meal break obligation is triggered . . . an employer is put to a
7 choice: it must (1) afford an off-duty meal period; (2) consent to a
8 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
9 obtain written agreement to an on-duty meal period if circumstances
permit. Failure to do one of these will render the employer liable for
premium pay.

10 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
11 require employees to sign meal period waivers in advance, at or near their time of hire (as
12 opposed to on a specific work day) renders them invalid and unenforceable, because
13 Defendants' obligation to provide Plaintiff and other non-party Aggrieved Employees with meal
14 periods did not arise until Defendants had employed them for a full five (5) hours.

15 84. Defendants knew or should have known that as a result of their company-wide
16 policies and/or practices, that Plaintiff and other non-party Aggrieved Employees were not
17 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
18 knew or should have known that they did not pay Plaintiff and other non-party Aggrieved
19 Employees meal period premiums when meal periods were late, interrupted, shortened, and/or
20 missed.

21 85. Furthermore, Defendants have also engaged in a company-wide practice and/or
22 policy of not paying all meal period premiums owed when compliant meal periods are not
23 provided. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
24 Employees have not received premium pay for missed, interrupted, shortened, or late meal
25 periods. Alternatively, to the extent that Defendants did pay other non-party Aggrieved
26 Employees premium pay for missed, late, interrupted and shortened meal periods, Defendants
27 did not pay other non-party Aggrieved Employees at the correct rate of pay for premiums
28 because Defendants systematically failed to include all forms of compensation, such as

1 incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate
2 of pay.

3 86. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
4 Employees compliant meal periods and failed to pay the full meal period premiums due.
5 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
6 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
7 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a),
8 (f), and (g).

9 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

10 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

11 87. At all relevant times herein set forth, the applicable IWC Wage Order and
12 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
13 non-party Aggrieved Employees' employment by Defendants.

14 88. At all relevant times, the applicable IWC Wage Order provides that "[e]very
15 employer shall authorize and permit all employees to take rest periods, which insofar as
16 practicable shall be in the middle of each work period" and that the "rest period time shall be
17 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
18 hours or major fraction thereof" unless the total daily work time is less than three and one-half
19 (3 ½) hours.

20 89. At all relevant times, California Labor Code section 226.7 provides that no
21 employer shall require an employee to work during any rest period mandated by an applicable
22 order of the California IWC. To comply with its obligation to authorize and permit rest periods
23 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
24 must "relinquish any control over how employees spend their break time, and relieve their
25 employees of all duties—including the obligation that an employee remain on call. A rest
26 period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
27 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code
28 section 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover

1 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
2 that a required rest period was not authorized and permitted.

3 90. During the relevant time period, Defendants regularly failed to authorize and
4 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period
5 per each four (4) hour period worked or major fraction thereof. As with meal periods,
6 Defendants' policies and/or practices of understaffing and assigning heavy workloads prevented
7 Plaintiff and other non-party Aggrieved Employees from being relieved of all duty in order to
8 take compliant rest periods. Defendants also failed to schedule rest periods, which, coupled
9 with Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and
10 other non-party Aggrieved Employees not being authorized and permitted to take rest periods.
11 Plaintiff and other non-party Aggrieved Employees were also required to keep their headset
12 radios on them during their rest periods, in order to respond to coworkers' questions.

13 91. Furthermore, Defendants maintained and implemented a company-wide practice
14 and/or policy requiring that Plaintiff and/or other non-party Aggrieved Employees remain on
15 the work premises during their rest periods. Because Plaintiff and/or other non-party Aggrieved
16 Employees were restricted from leaving the work premises during rest periods, they were denied
17 the ability to use their rest periods freely for their own purposes, such as running personal
18 errands. Thus, Defendants effectively maintained control over Plaintiff and/or other non-party
19 Aggrieved Employees during rest periods, and, as a result of this rest period policy, Defendants
20 did not relinquish control over Plaintiff and/or other non-party Aggrieved Employees during
21 rest periods.

22 92. As a result of Defendants' practices and policies, Plaintiff and other non-party
23 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess
24 of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
25 entitled. For example, throughout his employment, Plaintiff missed his rest period three (3)
26 times a week in order to complete all of the work-related duties Defendants assigned to him, or
27 would have his rest periods interrupted by coworkers asking questions in-person or over his
28 headset.

1 93. Defendants also have engaged in a company-wide practice and/or policy of not
2 paying all rest period premiums owed when compliant rest periods are not authorized or
3 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
4 Employees have not received premium pay for all missed rest periods. Alternatively, to the
5 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
6 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
7 Employees at the correct rate of pay for premiums because Defendant failed to include all forms
8 of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
9 remuneration, in the regular rate of pay.

10 94. Accordingly, Defendants failed to authorize and permit all compliant rest periods
11 and failed to pay the full rest period premiums due. Defendants' conduct violates the applicable
12 IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and other
13 non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
14 Labor Code sections 558 and/or 2699(a), (f), and (g).

15 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
16 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

17 95. At all relevant times herein, California Labor Code section 226(a) provides that
18 every employer shall furnish each of his or her employees an accurate and complete itemized
19 wage statement in writing, including, but not limited to, the name and address of the legal entity
20 that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable
21 rates of pay.

22 96. During the relevant time period, Defendants have knowingly and intentionally
23 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
24 inaccurate wage statements. For example, Defendants issued uniform wage statements to
25 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
26 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
27 the pay period, including rates of pay for overtime wages and/or meal and rest period premiums,
28 and the corresponding number of hours worked at each hourly rate. Specifically, Defendants

1 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

2 97. Because Defendants did not record the time Plaintiff and other non-party
3 Aggrieved Employees spent working off-the-clock and deducted time for their meal periods that
4 were missed and/or interrupted (and therefore time for which they should have been paid),
5 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and
6 other non-party Aggrieved Employees, in compliance with section 226(a)(1) and 226(a)(5),
7 respectively. For the same reason, Defendants failed to accurately list the total number of the
8 hours worked by Plaintiff and other non-party Aggrieved Employees, in violation of section
9 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and
10 the corresponding accurate number of hours worked at each hourly rate, in violation of section
11 226(a)(9).

12 98. Additionally, because Defendants did not calculate other non-party Aggrieved
13 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal
14 and rest period premiums, Defendants did not list the correct amount of gross wages in
15 compliance with section 226(a)(1). For the same reason, Defendants also failed to list the
16 correct amount of net wages in violation of section 226(a)(5). Defendants also failed to
17 correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of
18 pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

19 99. The wage statement deficiencies also include, among other things, failing to list
20 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
21 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for
22 which aggrieved employees were paid; failing to list the name of the employee and only the last
23 four digits of his or her social security number or an employee identification number other than
24 a social security number; failing to list the name and address of the legal entity that is the
25 employer; and/or failing to state all hours worked as a result of not recording or stating the hours
26 they worked off-the-clock.

27 100. California Labor Code section 1174(d) provides that "[e]very person employing
28 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees

1 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
2 plants or establishments at which employees are employed, payroll records showing the hours
3 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
4 applicable piece rate paid to, employees employed at the respective plants or
5 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
6 civil penalty if they fail to maintain accurate and complete records as required by section
7 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
8 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party
9 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a
10 result of failing to record the off-the-clock hours that they worked.

11 101. California Labor Code section 1198 provides that the maximum hours of work
12 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
13 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
14 of any employees for longer hours than those fixed by the order or under conditions of labor
15 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
16 are required to keep accurate time records showing when the employee begins and ends each
17 work period and meal period. During the relevant time period, Defendants failed, on a
18 company-wide basis, to keep accurate records of work period and meal period start and stop
19 times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198. As
20 stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiff’s
21 and other non-party Aggrieved Employees’ time records by recording that compliant meal
22 periods were taken regardless of if or when meal periods were actually taken, and thereby failed
23 to keep accurate records of meal start and end times for Plaintiff and other non-party Aggrieved
24 Employees. Furthermore, in light of Defendants’ failure to provide other non-party Aggrieved
25 Employees with second 30-minute meal periods to which they were entitled, Defendants kept
26 no records of meal start and end times for second meal periods.

27 102. Defendants’ conduct violates California Labor Code 226(a), 1174(d), and 1198.
28 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil

penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

103. At all relevant times herein set forth, California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

104. At all relevant times herein, California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all relevant times herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

105. During the relevant time period, Defendants willfully failed to pay Plaintiff and other non-party Aggrieved Employees all wages due to them within any time period specified by California Labor Code section 204 including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay.

106. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES UPON TERMINATION

VIOLATION OF LABOR CODE SECTIONS 201 AND 202

107. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or

1 her employment, his or her wages shall become due and payable not later than seventy-two (72)
2 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
3 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
4 quitting.

5 108. On information and belief, Defendants have a company-wide practice or policy
6 of paying departing employees their final wages on the next regular pay cycle, instead of
7 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
8 Plaintiff was terminated on or about May 13, 2021. However, Defendant did not provide him
9 with his final paycheck until several weeks later. Thus, Defendant failed to pay Plaintiff his
10 final wages immediately, in violation of Labor Code section 201.

11 109. Additionally, Defendants willfully failed to pay Plaintiff and other non-party
12 Aggrieved Employees who are no longer employed by Defendants the earned and unpaid wages
13 set forth above, including but not limited to, overtime wages, minimum wages, meal and rest
14 period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-
15 two (72) hours of their leaving Defendants' employ.

16 110. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
17 who are no longer employed by Defendants their wages earned and unpaid at the time of
18 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor
19 Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore
20 entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and
21 (g).

22 **FAILURE TO PAY REPORTING TIME PAY**

23 **VIOLATION OF LABOR CODE SECTION 1198**

24 111. California Labor Code section 1198 makes it illegal to employ an employee
25 under conditions of labor that are prohibited by the applicable wage order. California Labor
26 Code section 1198 requires that "... the standard conditions of labor fixed by the commission
27 shall be the ... standard conditions of labor for employees. The employment of any employee
28 ... under conditions of labor prohibited by the order is unlawful."

112. California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

113. Upon information and belief, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because Defendants failed to pay other non-party Aggrieved Employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule. For example, on occasions when employees reported to work for their scheduled shifts, Defendants’ management sometimes required employees to leave after only working for thirty minutes when business was slow. When this would occur, Defendants did not pay other non-party Aggrieved Employees for at least half of their scheduled day’s work or the minimum reporting time pay when they were subject work for less than half of the regular schedule. Although other non-party Aggrieved Employees reported to work based on the schedule that Defendants provided to them, Defendants would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, other non-party Aggrieved Employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A).

114. Other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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FAILURE TO PROVIDE SUITABLE RESTING FACILITIES
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11050(13)(B)

115. At all relevant times herein, California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(13)(B) provides that “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

116. Defendants’ California stores are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. Defendants could have provided Plaintiff and other non-party Aggrieved Employees with a resting facility within their stores, with reasonable or no modification, but instead denied, and continues to deny, employees suitable areas to rest (e.g., a breakroom). As a result, Plaintiff and other non-party Aggrieved Employees were forced to adjust to areas not conducive to resting, such as facilities outside of the store which are not designated or reserved for their rest, such as their personal vehicles.

117. Defendants did not provide Plaintiff and other non-party Aggrieved Employees with suitable resting facilities during their work hours, particularly during meal or rest periods. In other words, during the times when Plaintiff and other non-party Aggrieved Employees were legally allowed to forgo assigned tasks, as in during a meal or rest period, Defendants denied them any area within their stores to cease work and recover. Moreover, Defendants did not inform Plaintiff and other non-party Aggrieved Employees of their rights to suitable resting facilities under California law.

118. As a result of Defendants’ company-wide policy and/or practice of denying employees any area to rest within their stores and company-wide failure to provide resting

1 facilities in their stores, Plaintiff and other non-party Aggrieved Employees were forced to
2 adjust to areas not conducive to resting or search for facilities outside their stores to cease work
3 and recover. Defendants' failure to provide suitable resting facilities to Plaintiff and other non-
4 party Aggrieved Employees violates California Labor Code section 1198 and IWC Wage Order
5 No. 5-2001, subdivision 13(B).

6 119. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
7 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

8 **FAILURE TO PROVIDE SUITABLE SEATING**
9 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
10 **REGULATIONS, TITLE 8, SECTION 11050(14)(B)**

11 120. At all relevant times herein, California Labor Code section 1198 makes it illegal
12 to employ an employee under conditions of labor that are prohibited by the applicable wage
13 order. California Labor Code section 1198 requires that "... the standard conditions of labor
14 fixed by the commission shall be the ... standard conditions of labor for employees. The
15 employment of any employee ... under conditions of labor prohibited by the order is unlawful."

16 121. California Code of Regulations, Title 8, section 11050(14)(B) provides that
17 "[w]hen employees are not engaged in the active duties of their employment and the nature of
18 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
19 proximity to the work area and employees shall be permitted to use such seats when it does not
20 interfere with the performance of their duties."

21 122. During the relevant time period, Defendants violated California Labor Code
22 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because
23 Plaintiff and other non-party Aggrieved Employees were not allowed to sit, even during lulls in
24 their work duties, nor were they provided with suitable seats in reasonable proximity to their
25 work areas.

26 123. Defendants' California stores are generally similar in their layout and design and
27 there was, and continues to be, space near their work areas (with reasonable or no modification
28 to these work areas) to allow for the presence and use of a seat or stool by Plaintiff and other

1 non-party Aggrieved Employees during lulls in operation. Defendants could have provided
2 Plaintiff and other non-party Aggrieved Employees with a seat or stool in their work areas, but
3 instead denied Plaintiff and other non-party Aggrieved Employees suitable seating altogether
4 and effectively forced Plaintiff and other non-party Aggrieved Employees to stand throughout
5 the day.

6 124. Defendants did not provide Plaintiff and other non-party Aggrieved Employees
7 with seats or stools in reasonable proximity to their work areas to allow them to use seats when
8 it would not interfere with the performance of their duties for times when they were not engaged
9 in active duties that require standing. In other words, to the extent Plaintiff and other non-party
10 Aggrieved Employees engaged in duties in which the nature of the work required standing,
11 Defendants denied them the use of seats nearby during lulls in their work duties. Moreover,
12 Defendants did not inform Plaintiff and other non-party Aggrieved Employees of their rights to
13 a seat or stool under California law.

14 125. As a result of Defendants company-wide policy and/or practice of prohibiting
15 employees from sitting at any time, even when they were not engaged in active duties requiring
16 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,
17 Plaintiff and other non-party Aggrieved Employees were forced to stand during shifts and
18 denied seats. Defendants' failure to provide suitable seating to Plaintiff and other non-party
19 Aggrieved Employees violated and continues to violate California Labor Code section 1198 and
20 IWC Wage Order No. 5-2001, subdivision 14(B).

21 126. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
22 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

23 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

24 **VIOLATION OF LABOR CODE SECTION 2802**

25 127. At all times herein set forth, California Labor Code section 2802 provides that
26 an employer must reimburse employees for all necessary expenditures and losses incurred by
27 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
28 to prevent employers from passing off their cost of doing business and operating expenses on

1 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
2 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen the
3 employer requires the use of tools or equipment or they are necessary to the performance of a
4 job, such tools and equipment shall be provided and maintained by the employer, except that an
5 employee whose wages are at least two (2) times the minimum wage may provide and maintain
6 hand tools and equipment customarily required by the particular trade or craft.”

7 128. First, during the relevant time period, Defendants, on a company-wide basis,
8 required Plaintiff and other non-party Aggrieved Employees to use their own personal mobile
9 devices, including, but not limited to cellular phones, and/or mobile data to carry out their job
10 duties, but failed to reimburse them for the cost of their work-related mobile device expenses.
11 Specifically, Plaintiff was required to use his personal cellular phone to respond to calls from
12 his supervisors or managers regarding machines needing repair or to send photographs of
13 outstanding tasks or duties from the prior shift. Although Defendants required Plaintiff and
14 other non-party Aggrieved Employees to utilize their personal mobile devices and/or mobile
15 data to carry out their work-related responsibilities, Defendants failed to reimburse them for
16 these costs.

17 129. Second, during the relevant time period, Defendants, on a company-wide basis,
18 forced Plaintiff and other non-party Aggrieved Employees to purchase tools, supplies, and/or
19 other equipment necessary for the completion of their work-related duties. For example, due to
20 COVID-19, Plaintiff was required to spend \$60.00 on face masks to wear at work because
21 Defendants required face masks to be worn in their stores. Although Defendants required
22 Plaintiff and other non-party Aggrieved Employees to purchase and use their own tools,
23 supplies, and/or equipment in the performance of their duties, Defendants did not reimburse
24 them for these expenses.

25 130. Third, during the relevant time period, Defendants expected Plaintiff and other
26 non-party Aggrieved Employees to “dress for success,” requiring all employees to project a
27 professional image and wear proper attire at all times. Defendants’ written dress code policy
28 further states that “Employees are fully responsible for the cleanliness of their uniform.”

1 Plaintiff and other non-party Aggrieved Employees were thus required to report to work wearing
2 clean uniforms bearing the Krispy Kreme company logo, including uniform shirts, aprons, head
3 covers, and/or hats. However, Defendants did not provide their employees with sufficient
4 uniforms to wear for their shifts throughout the week. For example, Defendants only provided
5 Plaintiff and other non-party Aggrieved Employees with one (1) t-shirt during their first year of
6 employment.

7 131. Because Defendants failed to provide Plaintiff and other non-party Aggrieved
8 Employees with an adequate number of uniform items in relation to their scheduled shifts and
9 for the tasks they were required to perform, Plaintiff and other non-party Aggrieved Employees
10 were forced to wash their uniforms more frequently than they would otherwise do laundry and
11 incur expenses in doing so. For example, due to the nature of their work, Plaintiff and other
12 non-party Aggrieved Employees' uniforms would become stained with grease, sweaty, soiled,
13 and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other
14 laundry. As a result, they had to wash their uniform items separately from their other clothing
15 items and incur additional laundry expenses for the upkeep of their uniforms. Thus, Defendants
16 failed to maintain the uniforms they required Plaintiff and other non-party Aggrieved
17 Employees to wear during their shifts and forced them to incur the cost of maintaining employee
18 uniforms.

19 132. Defendants could have provided Plaintiff and other non-party Aggrieved
20 Employees with the actual tools required for use on the job, such as company mobile devices
21 and tools, supplies, and/or equipment such as face masks, as well as an adequate number of
22 uniforms or access to laundering services. Or, Defendants could have reimbursed employees
23 for the costs of their mobile device usage; tools, supply, and/or other equipment expenses; and
24 laundering expenses. Instead, Defendants passed these operating costs off onto Plaintiff and
25 other non-party Aggrieved Employees. At all relevant times, Plaintiff did not earn at least two
26 (2) times the minimum wage.

27 133. Defendants' company-wide policy and/or practice of not reimbursing employees
28 for expenses necessarily incurred and passing on their operating costs to Plaintiff and other non-

1 party Aggrieved Employees violates California Labor Code section 2802. Plaintiff and other
2 non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
3 Labor Code sections 2699(a), (f), and (g).

4 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
5 **EMPLOYMENT VIOLATION OF LABOR CODE SECTION 2810.5 (a)(1)(A)-(C)**

6 134. California's Wage Theft Prevention Act was enacted to ensure that employers
7 provide employees with basic information material to their employment relationship at the time
8 of hiring, and to ensure that employees are given written and timely notice of any changes to
9 basic information material to their employment. Codified at California Labor Code section
10 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must
11 provide written notice to employees containing basic and material payroll information,
12 including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour,
13 shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the
14 regular payday designated by the employer, and any allowances claims as part of the minimum
15 wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

16 135. During the relevant time period, Defendants failed to provide Plaintiff and other
17 non-party Aggrieved Employees with written notice that lists all the requisite information set
18 forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, Defendants failed to provide
19 Plaintiff and other non-party Aggrieved Employees with the hourly rate(s) of pay, including the
20 overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A). Instead, the wage theft form
21 that Defendants provided to Plaintiff was blank where the aforementioned wage information
22 should be filled in.

23 136. Defendants' failure to provide Plaintiff and other non-party Aggrieved
24 Employees with written notice of basic information regarding their employment with
25 Defendants are in violation of Labor Code section 2810.5. Plaintiff and other non-party
26 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code
27 sections 2699(a), (f), and (g).

28 //

1 **FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS**

2 **VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403**

3 137. At all relevant times herein, California Labor Code section 6401 provides that
4 employers must furnish and use safety devices and safeguards, and adopt and use practices,
5 means, methods, operations, and processes which are reasonably adequate to render the
6 employment and place of employment safe and healthy. California Labor Code Section 6401
7 further provides that an employer must do everything reasonably necessary to protect the life,
8 safety and health of its employees.

9 138. During the relevant period, as stated above, Defendants failed to provide Plaintiff
10 and other non-party Aggrieved Employees with personal protective equipment, such as face
11 masks to keep them safe in the workplace. Despite the fact that Defendants required Plaintiff
12 and other non-party Aggrieved Employees to wear certain personal protective equipment,
13 including face masks, while engaged in their work-related duties, Defendants failed to provide
14 such reasonably necessary equipment to Plaintiff and other non-party Aggrieved Employees to
15 keep them safe. Thus, Defendants' failure to provide Plaintiff and other non-party Aggrieved
16 Employees with safety devices and safeguards violates Labor Code sections 6401 and 6403.

17 139. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
18 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

19 **REQUEST FOR JURY TRIAL**

20 Plaintiff requests a trial by jury.

21 **PRAYER FOR RELIEF**

22 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
23 judgment against Defendants, jointly and severally, as follows:

24 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
25 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

26 **As to the First Cause of Action**

27 1. That the Court declare, adjudge and decree that Defendants violated the
28 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved

1 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
2 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
3 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
4 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
5 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned wages
6 during employment); 201 and 202 (by failing to timely pay all earned wages upon termination);
7 1198 and the applicable IWC Wage Order (by failing to pay reporting time); 1198 and the
8 applicable IWC Wage Order (by failing to provide suitable resting facilities); 1198 and the
9 applicable IWC Wage Order (by failing to provide suitable seating); 2802 (by failing to
10 reimburse business expenses); 2810.5 (by failing to provide written notice of information
11 material to employment); and 6401 and 6403 (by failing to provide safety devices and
12 safeguards);

13 2. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
14 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
15 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401,
16 and 6403;

17 3. For attorneys' fees and costs pursuant to California Labor Code section
18 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
19 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
20 1197, 1198, 2802, 2810.5, 6401, and 6403;

21 4. For pre-judgment and post-judgment interest as provided by law; and

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1 5. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: January 20, 2022

Respectfully submitted,

5 Capstone Law APC

6
7 By: 

8 Orlando Villalba

Helga Hakimi

9 Roxanna Tabatabaeepour

10 Attorneys for Plaintiff Johnny Valdez
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EXHIBIT “1”



1875 Century Park East, Suite 1000
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310.556.4811 Main | 310.943.0396 Fax

JEZZETTE RON
310.712.8142 Direct
Jezzette.Ron@capstonelawyers.com

November 15, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Johnny Valdez v. W.K.S. Krispy Kreme, LLC, et al.*

Dear PAGA Administrator:

This office represents Johnny Valdez in connection with his claims under the California Labor Code. Mr. Valdez was an employee of W.K.S. KRISPY KREME, LLC; KRISPY KREME DOUGHNUT CORPORATION; W.K.S. HOLDINGS CORPORATION; and/or W.K.S. RESTAURANT CORPORATION. For the purpose of this letter, Mr. Valdez collectively refers to these entities as "WKS."

The employers may be contacted directly at the addresses below:

W.K.S. KRISPY KREME, LLC
5856 CORPORATE AVE, STE 200
CYPRESS CA 90630

KRISPY KREME DOUGHNUT CORPORATION
370 KNOLLWOOD STREET
WINSTON-SALEM NC 27103

W.K.S. HOLDINGS CORPORATION
5856 CORPORATE AVE, STE 200
CYPRESS CA 90630

W.K.S. RESTAURANT CORPORATION
5856 CORPORATE AVE, SUITE 200
CYPRESS CA 90630

Mr. Valdez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Valdez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by WKS in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

WKS employed Mr. Valdez as a non-exempt, hourly paid Baker from approximately October 2019 to May 2021. Mr. Valdez worked for WKS at its Krispy Kreme store located at 2224 S. Bradley Road in Santa Maria, California. He typically worked eight (8) hours or more per day, five (5) days per week, and approximately 40-50 hours per week. At the time his employment ended, Mr. Valdez was compensated approximately \$14.00 per hour. His job duties included, without limitation, making doughnuts, repairing the doughnut machine, operating the cash register, fulfilling customer orders, and cleaning the baking

area.

WKS has committed one or more of the following Labor Code violations against Mr. Valdez, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

WKS’s Company-Wide and Uniform Payroll and HR Practices

W.K.S. KRISPY KREME, LLC is a California limited liability company, while KRISPY KREME DOUGHNUT CORPORATION; W.K.S. HOLDINGS CORPORATION; and W.K.S. RESTAURANT CORPORATION are California corporations. Upon information and belief, WKS operates numerous Krispy Kreme doughnut store locations in California. Upon information and belief, WKS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Cypress, California, for all non-exempt, hourly paid employees working for WKS in California, including Mr. Valdez and other aggrieved employees. At all relevant times, WKS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Valdez and other aggrieved employees, regardless of their location or position.

Upon information and belief, WKS maintains a centralized Payroll department at its corporate headquarters in Cypress, California, which processes payroll for all non-exempt, hourly paid employees working for WKS in California, including Mr. Valdez and other aggrieved employees. Further, WKS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Valdez and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, WKS utilized the same methods and formulas when calculating wages due to Mr. Valdez and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

WKS willfully failed to pay all overtime wages owed to Mr. Valdez and other aggrieved employees. During the relevant time period, Mr. Valdez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)

¹ These facts, theories, and claims are based on Mr. Valdez’s experience and counsel’s review of those records currently available relating to Mr. Valdez’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Valdez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, WKS had a company-wide policy and/or practice of discouraging and impeding Mr. Valdez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing store locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with WKS's understaffing policy and assignment of heavy workloads, led Mr. Valdez and other aggrieved employees to work off-the-clock before and after their scheduled shift times. For example, prior to starting his shift, WKS would require Mr. Valdez to wait up to 15 minutes, three times a week, until a managerial employee arrived to unlock the store and to let him in, before he was able to clock in. After clocking out at the end of a shift, WKS's management would also require Mr. Valdez to perform additional job duties such as taking out trash, assisting a supervisor, or responding to phone calls from supervisors regarding doughnut machine repairs, approximately three times a week for up to 15 minutes. As a further example, several times a week, on his off-days or outside of his scheduled shifts, WKS's management would call Mr. Valdez into the store to have him make repairs to the doughnut machine, a task that could take 30-40 minutes, but did not allow him to clock in to account for this time worked. At all times, Mr. Valdez remained under the control of WKS. Thus, WKS failed to track this time spent working before and after scheduled shifts, and Mr. Valdez and other aggrieved employees received no compensation for this time.

Second, as stated, WKS had, and continues to have, a uniform practice and/or policy of understaffing its store locations which resulted in a lack of adequate meal period coverage, because there were too few employees on duty to handle the heavy workload and attend to customers. Because WKS did not employ or staff a sufficient number of employees to meet customer demand, there was no one available to relieve employees needing meal period coverage, and Mr. Valdez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, WKS had a practice of failing to adhere to a schedule for meal periods, which further caused Mr. Valdez and other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, Mr. Valdez and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

Further, on information and belief, because WKS frowned upon employees accruing meal period penalties, WKS pressured Mr. Valdez and other aggrieved employees to clock out for meal periods, on threat of discipline, and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period. For example, WKS's management would instruct Mr. Valdez to clock out to record a compliant meal period, or would adjust his time records to reflect a compliant meal period even when he had worked through his meal period. Furthermore, WKS's company-wide timekeeping system prevented Mr. Valdez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Valdez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, WKS did not record all hours worked during meal periods and Mr. Valdez and other aggrieved employees performed work during meal periods for which they were not paid.

WKS knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Valdez and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Valdez and other aggrieved employees regularly worked shifts of eight (8)

hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

On information and belief, WKS did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, WKS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, WKS failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, WKS failed to pay all overtime wages by paying a lower overtime rate than required.

WKS's failure to pay Mr. Valdez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Valdez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. Tit. 8, § 11050(2)(K) (defining "Hours Worked").

As stated above, due to WKS's restrictions on overtime accrual, WKS systematically failed to record all hours worked and Mr. Valdez and other aggrieved employees were forced to work off-the-clock before and after their scheduled shifts to complete their assigned duties. Additionally, as set forth above, due to WKS's uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to adhere to a schedule for meal periods, and subsequent lack of meal period coverage, Mr. Valdez and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Additionally, as stated above, on information and belief, in order to limit meal penalties that WKS would otherwise owe, WKS pressured Mr. Valdez and other aggrieved employees to clock out for meal periods, on threat of discipline, and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Also, as set forth above, during the relevant time period, WKS systematically failed to pay Mr. Valdez and other aggrieved employees for actual hours worked during unpaid meal periods, because WKS's timekeeping system locked out Mr. Valdez and other aggrieved employees for 30 minutes when they clocked out for a meal period. Thus, WKS systematically failed to pay Mr. Valdez and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, WKS did not pay minimum wages for all hours worked by Mr. Valdez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, WKS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, WKS regularly failed to pay at least minimum wages to Mr. Valdez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194,

1197, 1197.1, and 1198. Mr. Valdez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, WKS had, and continues to have, company-wide policies and/or practices of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads, and failing to adhere to a schedule for meal periods, which resulted in a lack of meal period coverage and prevented Mr. Valdez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Valdez and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Valdez was required to work through his meal periods due to the heavy workload and lack of coverage, because he was unable to stop working in the middle of the doughnut-making process without coverage. Moreover, approximately twice per month, WKS's management would call Mr. Valdez during his meal periods to discuss work-related issues, such as problems with store staffing.

Additionally, as stated, on information and belief, because WKS frowned upon employees accruing meal period penalties, WKS's management pressured employees to clock out for meal periods, upon threat of discipline, and/or would adjust Mr. Valdez's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by WKS. For example, WKS's management would instruct Mr. Valdez to clock out to record a compliant meal period, or would adjust Mr. Valdez's time records to reflect a compliant meal period when he had worked through his meal period. Also, as stated, WKS's company-wide timekeeping system prevented Mr. Valdez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Valdez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Also, on information and belief, WKS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Valdez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, WKS had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. WKS took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Moreover, WKS's meal period waiver form requires employees provide written notice should they wish to revoke the waiver. WKS's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours, and for shifts in excess of ten (10) hours but less than twelve (12) hours due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Valdez and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). WKS required Mr. Valdez and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because WKS's obligation to provide Mr. Valdez and aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

At all times mentioned herein, WKS knew or should have known that as a result of its policies, Mr. Valdez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. WKS further knew or should have known that it did not pay Mr. Valdez and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, WKS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Valdez and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that WKS did pay other aggrieved employees for missed, late, and interrupted meal periods, WKS did not pay other aggrieved employees at the correct rate of pay for premiums because WKS systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, WKS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Valdez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, WKS regularly failed to authorize and permit Mr. Valdez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, WKS's policies and/or practices of understaffing and assigning heavy workloads prevented Mr. Valdez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. WKS also failed to schedule rest periods, which, coupled with WKS's failure to provide adequate rest period coverage, further led to Mr. Valdez and other aggrieved employees not being authorized and permitted to take rest periods. Mr. Valdez and other aggrieved employees were also required to keep their headset radios on them during their rest periods, in order to respond to coworkers' questions.

Furthermore, WKS maintained and implemented a company-wide practice and/or policy requiring that Mr. Valdez and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Valdez and/or other aggrieved employees were restricted from leaving the work premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, WKS effectively maintained control over Mr. Valdez and/or other aggrieved employees during rest periods, and, as a result of this rest period policy, WKS did not relinquish control over Mr. Valdez and/or other aggrieved employees during rest periods.

As a result of WKS's practices and policies, Mr. Valdez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Valdez missed his rest period three (3) times a week in order to complete all of the work-related duties WKS assigned to him, or would have his rest periods interrupted by coworkers asking questions in-person or over his headset.

WKS also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Mr. Valdez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that WKS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, WKS did not pay other aggrieved employees at the correct rate of pay for premiums because WKS failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, WKS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Valdez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. WKS has not provided Mr. Valdez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, WKS has knowingly and intentionally provided Mr. Valdez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, WKS issued uniform wage statements to Mr. Valdez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, WKS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because WKS did not record the time Mr. Valdez and other aggrieved employees spent working off-the-clock and deducted time for their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), WKS did not list the correct amount of gross wages and net wages earned by Mr. Valdez and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, WKS failed to accurately list the total number of the hours worked by Mr. Valdez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Furthermore, because WKS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, WKS did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). WKS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), WKS willfully failed to maintain accurate payroll records for Mr. Valdez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, WKS engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Valdez and other aggrieved employees in violation of section 1198. Furthermore, in light of WKS’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, WKS kept no records of meal start and end times for second meal periods.

Because WKS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Valdez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Valdez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Valdez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, WKS failed to pay Mr. Valdez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Valdez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, WKS has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Valdez was terminated on or about May 13, 2021. However, WKS did not provide him with his final paycheck until several weeks later. Thus, WKS failed to pay Mr. Valdez his final wages immediately, in violation of Labor Code section 201.

Additionally, WKS willfully failed to pay Mr. Valdez and other aggrieved employees who are no longer employed by WKS all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving WKS's employ.

Mr. Valdez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

On information and belief, WKS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because WKS failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shifts, but were put to work for less than half of the regular schedule. For example, on occasions when employees reported to work for their scheduled shifts, WKS management sometimes required employees to leave after only working for thirty minutes when business was slow. When this would occur, WKS did not pay other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay when they were subject work for less than half of the regular schedule. Although other aggrieved employees reported to work based on the schedule that WKS provided to them, WKS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 13(B) – Failure to Provide Suitable Resting Facilities

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(13)(B) provides that “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

WKS's California stores are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. WKS could have provided Mr. Valdez and other aggrieved employees with a resting facility within its stores, with reasonable or no modification, but instead denied, and continues to deny, employees suitable areas to rest (e.g., a breakroom). As a result, Mr. Valdez and other aggrieved employees were forced to adjust to areas not conducive to resting, such as facilities outside of the store which are not designated or reserved for their rest, such as their personal vehicles.

WKS did not provide Mr. Valdez and other aggrieved employees with suitable resting facilities during their work hours, particularly during rest or meal periods. In other words, during the times when Mr. Valdez and other aggrieved employees were legally allowed to forgo assigned tasks, as in during a meal or rest period, WKS denied them any area within their stores to cease work and recover. Moreover, WKS did not inform Mr. Valdez and other aggrieved employees of their rights to suitable resting facilities under California law.

As a result of WKS's company-wide policy and/or practice of denying employees any area to rest within their stores and company-wide failure to provide resting facilities in its stores, Mr. Valdez and other aggrieved employees were forced to adjust to areas not conducive to resting or search for facilities outside their stores to cease work and recover. WKS's failure to provide suitable resting facilities to Mr. Valdez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 13(B).

Mr. Valdez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring WKS into compliance with California's resting facilities requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050 subdivision (14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” California Code of Regulations, Title 8, section 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

WKS's California stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Valdez other aggrieved employees during lulls in operation. WKS could have provided Mr. Valdez and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

WKS did not provide Mr. Valdez and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Valdez and other aggrieved employees engaged in duties in which the nature of the work required standing, WKS denied them the use of seats nearby during lulls in their work duties. Moreover, WKS did not inform Mr. Valdez and other aggrieved employees of their rights to a seat or stool under California law.

As a result of WKS's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Valdez and other aggrieved employees were forced to stand during shifts and denied seats. WKS failure to provide suitable seating to Mr. Valdez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Mr. Valdez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring WKS into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, WKS expected Mr. Valdez and other aggrieved employees to "dress for success," requiring all employees to project a professional image and wear proper attire at all times. WKS's written dress code policy further states that "Employees are fully responsible for the cleanliness of their uniform." Mr. Valdez and other aggrieved employees were thus required to report to work wear in clean uniforms bearing the Krispy Kreme company logo, including uniform shirts, aprons, head covers, and/or hats. However, WKS did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, WKS only provided Mr. Valdez and other aggrieved employees with one (1) t-shirt during their first year of employment. Because WKS failed to provide Mr. Valdez and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Mr. Valdez and other aggrieved employees were forced to wash their uniforms more frequently than they would otherwise do laundry and incur expenses in doing so. For example, due to the nature of their work, Mr. Valdez's and other aggrieved employees' uniforms would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from their other clothing items and incur additional laundry expenses for the upkeep of their uniforms. Thus, WKS failed to maintain the uniforms they required Mr. Valdez and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Second, during the relevant time period, WKS, on a company-wide basis, required Mr. Valdez and other aggrieved employees to use their own personal mobile devices, including, but not limited to cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the cost of their work-related mobile device expenses. Specifically, Mr. Valdez was required to use his personal cellular phone to respond to calls from his supervisors or managers regarding machines needing repair or to send photographs of outstanding tasks or duties from the prior shift. Although WKS required Mr. Valdez and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, WKS failed to reimburse them for these costs.

Third, during the relevant time period, WKS, on a company-wide basis, forced Mr. Valdez and other aggrieved employees to purchase tools, supplies and/or other equipment necessary for the completion of their work-related duties. For example, due to COVID-19, Mr. Valdez was required to spend \$60.00 on face masks to wear at work because WKS required face masks to be worn in its stores. Although WKS required Mr. Valdez and other aggrieved employees to purchase and use their own tools, supplies, and/or equipment in the performance of their duties, it did not reimburse them for these expenses.

WKS could have provided Mr. Valdez and other aggrieved employees with the actual tools required for use on the job, such as an adequate number of uniforms or access to laundering services, as well as company mobile devices and tools, supplies and/or equipment such as face masks. Or, WKS could have reimbursed employees for the costs of their laundering expenses, mobile device usage, and tools, supply, and/or other equipment expenses. Instead, WKS passed these operating costs off onto Mr. Valdez and other aggrieved employees. At all relevant times, Mr. Valdez did not earn at least two (2) times the minimum wage.

Thus, WKS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Valdez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

At all relevant times, on information and belief, WKS failed, on a company-wide basis, to provide written notice to Mr. Valdez and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, WKS failed to provide Mr. Valdez and other aggrieved employees with the hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A). Instead, the wage theft form that WKS provided to Mr. Valdez is blank where the aforementioned wage information should be filled in. WKS's failure to provide Mr. Valdez and other aggrieved employees with written notice of basic information regarding their employment with WKS is in violation of Labor Code section 2810.5.

Mr. Valdez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

During the relevant period, as stated above, WKS failed to provide Mr. Valdez and other aggrieved employees with personal protective equipment, such as face masks to keep them safe in the workplace. Despite the fact that WKS required Mr. Valdez and other aggrieved employees to wear certain personal protective equipment, including face masks, while engaged in their work-related duties, WKS failed to provide such reasonably necessary equipment to Mr. Valdez and other aggrieved employees to keep them safe.

WKS's failure to provide Mr. Valdez and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Valdez and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." WKS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Valdez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Valdez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Valdez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against WKS for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Valdez seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Valdez's reasonable attempt to settle his dispute with WKS prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform WKS of Mr. Valdez's aforementioned grievances and the proposed remedies as detailed below, while affording WKS a reasonable opportunity to satisfy Mr. Valdez's demands.

Demand is hereby made that WKS shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. WKS shall pay Mr. Valdez and all other aggrieved employees employed by WKS at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.

2. WKS shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid all reporting time pay.
3. WKS shall conduct a survey or interview all current and former aggrieved employees in California who worked for WKS in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for uniform laundering expenses; mobile device expenses; tools, supply, and/or equipment; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. WKS shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. WKS also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. WKS shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for WKS's benefit, including, but not limited to, uniform maintenance and laundering expenses incurred; costs of mobile device usage and data; tools, supply, and/or equipment expenses; or other expenditures, as required by Labor Code section 2802.
6. WKS shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. WKS shall provide Mr. Valdez and all aggrieved employees employed by WKS at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. WKS shall implement and provide suitable seating and suitable resting facilities to all aggrieved employees.
9. WKS shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
10. WKS shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
11. WKS shall provide all aggrieved employees with safety devices and safeguards reasonably adequate to render the employment and place of employment safe, pursuant to Labor Code sections 6401 and 6403.
12. WKS shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
13. WKS shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including,

but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1194.5, 1197.1, and 2699, and Wage Order No. 5-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Jezzette Ron
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in dark ink, appearing to read "J. Ron". The signature is stylized with a large, looped "J" and a cursive "Ron".

Jezzette Ron

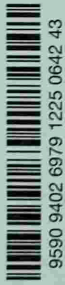
Copy: W.K.S. KRISPY KREME, LLC (via U.S. Certified Mail); KRISPY KREME DOUGHNUT CORPORATION (via U.S. Certified Mail); W.K.S. HOLDINGS CORPORATION (via U.S. Certified Mail); W.K.S. RESTAURANT CORPORATION (via U.S. Certified Mail)

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W.K.S. KRISPY KREME, LLC
5850 CORPORATE AVE., STE 200
CYPRESS, CA 90630



9590 9402 6979 1225 0642 43

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Capstone
LAW APC

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City, State, ZIP+4®

CYPRESS, CA 90630

PS Form 3800, April 2015 PSN 7530-02-000-9047

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Los Angeles, California 90067

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370 KNOLLWOOD STREET
WINSTON-SALEM NC 27103

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W.K.S. HOLDINGS CORPORATION
5850 CORPORATE AVE, STE 200
CYPRESS, CA 90630



9590 9402 6979 1225 0642 29

2. Article Number (Transfer from service label)

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1. Article Addressed to:

W.K.S. RESTAURANT CORPORATION
5850 CORPORATE AVE, STE 200
CYPRESS, CA 90630



9590 9402 6979 1225 0642 12

2. Article Number (Transfer from service label)

7021 0950 0001 0025 2352

PS Form 3811, July 2020 PSN 7530-02-000-9053

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W.K.S. RESTAURANT CORPORATION
5856 CORPORATE AVE, SUITE 200
CYPRESS, CA 90630

1875 Century Park East, Suite 1000
Los Angeles, California 90067

Capstone
LAW APC

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Total Postage and Fees

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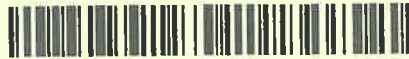
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☒ Complete items 1, 2, and 3. ☒ Print your name and address on the reverse so that we can return the card to you. ☒ Attach this card to the back of the mailpiece, or on the front if space permits. 1. Article Addressed to: W.K.S. HOLDINGS CORPORATION 5850 CORPORATE AVE, STE 200 CYPRESS, CA 90630  9590 9402 6979 1225 0642 29 2. Article Number (Transfer from service label) 7021 0950 0001 0025 2345	A. Signature ☒ Agent ☐ Addressee B. Received by (Printed Name) C. Date of Delivery C. fur 11-12-21 D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No 3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500) ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery

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1. Article Addressed to:

KRISPY KREME DOUGHNUT
CORPORATION
370 KNOLLWOOD STREET
WINSTON-SALEM, NC 27103



9590 9402 6979 1225 0642 36

2. Article Number (Transfer from service label)

7021 0950 0001 0025 2338

PS Form 3811, July 2020 PSN 7530-02-000-9053

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X *Rene 304*

- ☐ Agent
☐ Addressee

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Rene 304

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Domestic Return Receipt