

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 29 2020

BY 
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

13 TONY DOYLE and BILLY JEFFERSON,
14 as aggrieved employees pursuant to the
15 Private Attorneys General Act ("PAGA"),
16 on behalf of the State of California and
17 other aggrieved employees,

18 Plaintiffs,

19 vs.

20 CBOCS WEST, INC., a Nevada
21 corporation; CRACKER BARREL OLD
22 COUNTRY STORE, INC., a Tennessee
23 corporation; and DOES 1 through 10,
24 inclusive,

25 Defendants.

Case No.: **CIV DS 2013220**

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

Plaintiffs Tony Doyle and Billy Jefferson, as aggrieved employees and on behalf of the State of California and all other aggrieved employees, allege as follows:

JURISDICTION AND VENUE

1. This is an enforcement action under the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”). The action is brought to recover civil penalties and any other available relief on behalf of Plaintiffs, the State of California, and other current and former employees who worked for Defendants in California as a non-exempt, hourly paid employee and received at least one wage statement and against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth in this complaint, at any time between one year prior to the filing of the pre-filing written notices to the Labor and Workforce Development Agency (“LWDA”) in this case on March 9, 2020, until judgment (“non-party Aggrieved Employees”). Plaintiffs’ share of civil penalties sought in this action does not exceed \$75,000.

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

3. This Court has jurisdiction over all Defendants because, on information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this action given that the State of California, as the real party in interest in this action, is not a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action, and that diversity jurisdiction cannot be established when Plaintiffs’ share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants employ persons in this
3 county, and employed Plaintiff Jefferson in this county, and thus a substantial portion of the
4 transactions and occurrences related to this action occurred in this county.

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

9 **THE PARTIES**

10 6. Plaintiff TONY DOYLE is a resident of Sacramento, in Sacramento County,
11 California. Defendants employed Plaintiff Doyle as an hourly paid, non-exempt Line Cook
12 from approximately April 2019 to September 2019. Plaintiff Doyle worked for Defendants at
13 their Cracker Barrel restaurant located in Sacramento, California. During his employment,
14 Plaintiff Doyle typically worked six (6) to eight (8) hours per day, five (5) to six (6) days per
15 week, and 30 to 48 hours per week, from 3:00 p.m. to 10:00 p.m. At the time Plaintiff
16 Doyle’s employment with Defendants ended, he earned approximately \$15.35 per hour. His
17 job duties included, without limitation, baking, grilling, assembling meals, cleaning the grills,
18 stocking food inventory, and cleaning the kitchen.

19 7. Plaintiff BILLY JEFFERSON is a resident of Fontana, in San Bernardino
20 County, California. Defendants employed Plaintiff Jefferson as an hourly paid, non-exempt
21 Server from approximately April 2019 to June 2019. Plaintiff Jefferson worked for
22 Defendants at their Cracker Barrel restaurant located in Rialto, California. During his
23 employment, Plaintiff Jefferson typically worked approximately six (6) to ten (10) hours per
24 day, five (5) to six (6) days per week, and 20 to 50 hours per week, from 3:00 p.m. or 4:00
25 p.m. to 11:00 p.m. or 12:00 a.m. At the time Plaintiff Jefferson’s employment with
26 Defendants ended, he earned approximately \$12.00 per hour. His job duties included, without
27 limitation, greeting customers and responding to customer inquiries, taking customer orders,
28 serving food and beverages, and cleaning the premises.

1 8. On information and belief, Defendants required some employees, including
2 Plaintiff Jefferson, to execute a dispute resolution policy and/or arbitration agreement at the
3 time of their hire or during their employment. On further information and belief, Defendants'
4 dispute resolution policy and/or arbitration agreement was and is both procedurally and
5 substantively unconscionable. Specifically, Defendants presented new hires with a "Cracker
6 Barrel Alternative Dispute Resolution Agreement" ("Arbitration Agreement") during the
7 onboarding process, which had to be reviewed and signed immediately. In fact, upon
8 information and belief, the Arbitration Agreement was one of several documents presented to
9 new employees for signature during the orientation process. Also, employees did not have a
10 meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was
11 provided to Defendants' employees for them to sign on a take-it or leave-it basis at the time
12 they were hired, along with other on-boarding documents. Further, Defendants did not set
13 forth in the agreement or otherwise provide employees with the rules which will govern the
14 arbitration, instead forcing employees to seek this information out on their own ("The AAA
15 [American Arbitration Association] rules are available for review if you click on this website
16 link: https://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_004362 or can be sent
17 to you by the Dispute Resolution Department if you call this number: (615) 235-4430.")

18 9. CBOCS WEST, INC. was and is, upon information and belief, a Nevada
19 corporation, and at all times hereinafter mentioned, an employer whose employees are
20 engaged throughout this county, the State of California, or the various states of the United
21 States of America.

22 10. CRACKER BARREL OLD COUNTRY STORE, INC. was and is, upon
23 information and belief, a Tennessee corporation, and at all times hereinafter mentioned, an
24 employer whose employees are engaged throughout this county, the State of California, or the
25 various states of the United States of America.

26 11. Plaintiffs are unaware of the true names or capacities of the Defendants sued
27 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
28 amend the complaint and serve such fictitiously named Defendants once their names and

capacities become known.

12. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10 were the partners, agents, owners, or managers of CBOCS WEST, INC. and CRACKER BARREL OLD COUNTRY STORE, INC. at all relevant times.

13. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, CBOCS WEST, INC.; CRACKER BARREL OLD COUNTRY STORE, INC.; and/or DOES 1 through 10 (collectively, “Defendants” or “CBOCS”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

15. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

16. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiffs and other non-party Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiffs and other non-party Aggrieved Employees, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiffs and other non-party Aggrieved Employees to work and/or “engaged” Plaintiffs and other non-party Aggrieved Employees so as to create a common-law employment relationship. As joint employers of Plaintiffs and other non-party

1 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
2 available to Plaintiffs and other non-party Aggrieved Employees under the law.

3 17. Plaintiffs are informed and believe, and thereon allege, that at all relevant times,
4 Defendants, and each of them, have acted as joint employers with respect to Plaintiffs and other
5 non-party Aggrieved Employees because Defendants have:

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

23 18. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
24 there has existed a unity of interest and ownership between Defendants such that any
25 individuality and separateness between the entities has ceased.

26 19. CBOCS WEST, INC.; CRACKER BARREL OLD COUNTRY STORE, INC.;
27 and DOES 1 through 10 are therefore alter egos of each other.

28 20. Adherence to the fiction of the separate existence of Defendants would permit an

1 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
2 liability for the wrongful acts committed by them under the name CBOCS.

3 21. Plaintiffs further allege, upon information and belief, that Defendants CBOCS
4 WEST, INC. and CRACKER BARREL OLD COUNTRY STORE, INC. are alter egos of each
5 other for the following reasons:

6 (a) According to CRACKER BARREL OLD COUNTRY STORE, INC.'s
7 most recent SEC 10-K filing, CBOCS WEST, INC. is a wholly owned
8 subsidiary of CRACKER BARREL OLD COUNTRY STORE, INC.;¹

9 (a) On the California Secretary of State's website
10 (<https://businesssearch.sos.ca.gov/>) and the Tennessee Secretary of
11 State's website ([https://sos.tn.gov/products/business-services/business-](https://sos.tn.gov/products/business-services/business-information-search-0)
12 [information-search-0](https://sos.tn.gov/products/business-services/business-information-search-0)), CBOCS WEST, INC. and CRACKER BARREL
13 OLD COUNTRY STORE, INC. have the same mailing address and/or
14 principal address, which is "305 S. Hartmann Dr., Lebanon, TN 37087-
15 4960";

16 (b) CBOCS WEST, INC. and CRACKER BARREL OLD COUNTRY
17 STORE, INC. share the same agent for service of process, C T
18 CORPORATION SYSTEM; and

19 (c) On information and belief, CBOCS WEST, INC. and CRACKER
20 BARREL OLD COUNTRY STORE, INC. utilize the same standardized
21 employment forms and issue the same employment policies.

22 **PAGA REPRESENTATIVE ALLEGATIONS**

23 22. Defendants are an American chain of combined restaurant and gift stores with a
24 Southern country theme. Defendants operates at least six (6) restaurant locations in
25 California. Upon information and belief, Defendants maintain a single, centralized Human
26 Resources ("HR") department at their corporate headquarters in Lebanon, Tennessee, which is

27
28 ¹ 10-K Annual Report 08/02/19, Cracker Barrel Old Country Store, Inc.,
<https://investor.cbrlgroupp.com/financial-information/sec-filings> (last accessed May 7, 2020).

1 responsible for the recruiting and hiring of new employees, and communicating and
2 implementing Defendants' company-wide policies, including timekeeping policies and meal
3 and rest period policies, to employees throughout California.

4 23. In particular, Plaintiffs and other non-party Aggrieved Employees, on
5 information and belief, received the same standardized documents and/or written policies.
6 Upon information and belief, the usage of standardized documents and/or written policies,
7 including new-hire documents, indicate that Defendants dictated policies at the corporate level
8 and implemented them company-wide, regardless of their employees' assigned locations or
9 positions. Upon information and belief, Defendants set forth uniform policies and procedures
10 in several documents provided at an employee's time of hire.

11 24. Upon information and belief, Defendants maintain a centralized Payroll
12 department at their corporate headquarters in Lebanon, Tennessee, which processes payroll for
13 all non-exempt, hourly paid employees working for Defendants at their various locations and
14 jobsites in California, including Plaintiffs and other non-party Aggrieved Employees. Based
15 upon information and belief, Defendants issue the same formatted wage statements to all non-
16 exempt, hourly paid employees in California, irrespective of their work locations. Upon
17 information and belief, Defendants process payroll for departing employees in the same
18 manner throughout the State of California, regardless of the manner in which each employee's
19 employment ends.

20 25. Defendants continue to employ non-exempt or hourly paid employees in
21 California.

22 26. Plaintiffs are informed and believe, and thereon allege, that at all times herein
23 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
24 and advisors knowledgeable about California labor and wage law, employment and personnel
25 practices, and about the requirements of California law.

26 27. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other
27 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
28 were not recorded.

1 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
3 receive certain wages for overtime compensation and that they were not receiving certain
4 wages for overtime compensation.

5 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
7 receive at least minimum wages for compensation and that they were not receiving at least
8 minimum wages for work that was required to be done off-the-clock. In violation of the
9 California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not paid at
10 least minimum wages for work done off-the-clock.

11 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
13 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
14 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty
15 (30) minute meal periods and that Plaintiffs and other non-party Aggrieved Employees were
16 not provided with all meal periods or payment of one (1) additional hour of pay at their
17 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
18 period.

19 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
20 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
21 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
22 of one (1) additional hour of pay at their regular rates of pay when they were not authorized
23 and permitted to take a compliant rest period. In violation of the California Labor Code,
24 Plaintiffs and other non-party Aggrieved Employees were not authorized and permitted to take
25 compliant rest periods, nor did Defendants provide Plaintiffs and other non-party Aggrieved
26 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
27 they were not authorized and permitted to take a compliant rest period.

28 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or

1 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
2 receive complete and accurate wage statements in accordance with California law. In
3 violation of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees
4 were not provided complete and accurate wage statements.

5 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that they had a duty to maintain accurate and complete payroll records in
7 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
8 and intentionally failed to do so.

9 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
10 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
11 timely payment of all wages earned upon termination of employment. In violation of the
12 California Labor Code, Plaintiffs and other non-party Aggrieved Employees did not receive
13 payment of all wages due, including, but not limited to, overtime wages, minimum wages, and
14 meal and rest period premiums, within permissible time periods.

15 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
17 timely payment of wages during their employment. In violation of the California Labor Code,
18 Plaintiffs and other non-party Aggrieved Employees did not receive payment of all wages,
19 including, but not limited to, overtime wages, minimum wages, and meal and rest period
20 premiums, within permissible time periods.

21 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
22 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
23 receive their full wages due without having to execute a release of claims.

24 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that they were prohibited from issuing instruments for the payment of
26 wages that were not payable in cash on demand, without discount and with authorization, but
27 did so, in violation of the California Labor Code.

28 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or

1 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
2 the portion of wages previously paid and subsequently unlawfully deducted by Defendants.

3 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
5 payment of wages as designated by statute. In violation of the California Labor Code,
6 Defendants secretly paid Plaintiffs and other non-party Aggrieved Employees lower wages
7 that required by statute while purporting to pay them proper wages.

8 40. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
10 suitable seating and/or were entitled to sit when it did not interfere with the performance of their
11 duties and also have seats nearby to use during a lull in tasks that do require moving about or
12 standing.

13 41. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
15 receive reimbursement for all business-related expenses and costs they incurred during the
16 course and scope of their employment and that they did not receive reimbursement of applicable
17 business-related expenses and costs incurred.

18 42. Plaintiffs are informed and believe, and thereon allege, that at all times herein
19 mentioned, Defendants knew or should have known that Defendants had a duty to provide
20 Plaintiff Doyle and other non-party Aggrieved Employees with written notice of the material
21 terms of their employment with Defendants as required by the California Wage Theft
22 Prevention Act, but willfully, knowingly, and intentionally failed to do so.

23 43. Plaintiffs are informed and believe, and thereon allege, that at all times herein
24 mentioned, Defendants knew or should have known that they had a duty to compensate
25 Plaintiffs and other non-party Aggrieved Employees for all hours worked, and that Defendants
26 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
27 failed to do so, and falsely represented to Plaintiffs and other non-party Aggrieved Employees
28 that they were properly denied wages, all in order to increase Defendants' profits.

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

7 45. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
8 person who was employed by the alleged violator and against whom one or more of the
9 alleged violations was committed.”

10 46. Plaintiffs and other current and former employees of Defendants are “aggrieved
11 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
12 or former employees and one or more of the alleged violations were committed against them.

13 47. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
14 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the
15 following requirements have been met:

- 16 (a) The aggrieved employee shall give written notice by online filing
17 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
18 to the employer of the specific provisions of the California Labor Code
19 alleged to have been violated, including the facts and theories to support
20 the alleged violations.
- 21 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
22 2699.3(a) and any employer response to that notice shall be
23 accompanied by a filing fee of seventy-five dollars (\$75).
- 24 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
25 employer and the aggrieved employee by certified mail that it does not
26 intend to investigate the alleged violation within sixty (60) calendar
27 days of the postmark date of the Employee’s Notice. Upon receipt of
28 the LWDA Notice, or if the LWDA Notice is not provided within sixty-

1 five (65) calendar days of the postmark date of the Employee's Notice,
2 the aggrieved employee may commence a civil action pursuant to
3 California Labor Code section 2699 to recover civil penalties in addition
4 to any other penalties to which the employee may be entitled.

5 48. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
6 through Plaintiffs, may pursue a civil action arising under PAGA for violations of any
7 provision other than those listed in Section 2699.5 after the following requirements have been
8 met:

- 9 (a) The aggrieved employee or representative shall give written notice by
10 online filing to the LWDA and by certified mail to the employer of the
11 specific provisions of the California Labor Code alleged to have been
12 violated (other than those listed in Section 2699.5), including the facts
13 and theories to support the alleged violation.
- 14 (b) An aggrieved employee's notice filed with the LWDA pursuant to
15 2699.3(c) and any employer response to that notice shall be
16 accompanied by a filing fee of seventy-five dollars (\$75).
- 17 (c) The employer may cure the alleged violation within thirty-three (33)
18 calendar days of the postmark date of the notice. The employer shall
19 give written notice by certified mail within that period of time to the
20 aggrieved employee or representative and the agency if the alleged
21 violation is cured, including a description of actions taken, and no civil
22 action pursuant to Section 2699 may commence. If the alleged violation
23 is not cured within the 33-day period, the employee may commence a
24 civil action pursuant to Section 2699.

25 49. On March 9, 2020, Plaintiff Doyle provided written notice by online filing to
26 the LWDA and by certified mail to Defendants of the specific provisions of the California
27 Labor Code alleged to have been violated, including facts and theories to support the alleged
28 violations, in accordance with California Labor Code section 2699.3. Plaintiff Doyle's written

1 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
2 LWDA PAGA Administrator has confirmed receipt of Plaintiff Doyle's written notice and
3 assigned Plaintiff Doyle PAGA Case Number LWDA-CM-777366-20. A true and correct
4 copy of Plaintiff Doyle's written notice to the LWDA and Defendants dated March 9, 2020, is
5 attached hereto as "Exhibit 1."

6 50. On March 9, 2020, Plaintiff Jefferson provided written notice by online filing
7 to the LWDA and by certified mail to Defendants of the specific provisions of the California
8 Labor Code alleged to have been violated, including facts and theories to support the alleged
9 violations, in accordance with California Labor Code section 2699.3. Plaintiff Jefferson's
10 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
11 The LWDA PAGA Administrator has confirmed receipt of Plaintiff Jefferson's written notice
12 and assigned Plaintiff Jefferson PAGA Case Number LWDA-CM-777370-20. A true and
13 correct copy of Plaintiff Jefferson's written notice to the LWDA and Defendants dated March
14 9, 2020, is attached hereto as "Exhibit 2."

15 51. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
16 sent the initial LWDA Notices described above, and the LWDA has not responded that it
17 intends to investigate Plaintiffs' claims, and Defendants have not cured the violations.

18 52. Thus, Plaintiffs have satisfied the administrative prerequisites under California
19 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
20 violations of California Labor Code sections 201, 202, 203, 204, 206.5, 212, 213, 221, 223,
21 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

22 53. Labor Code section 558(a) provides "[a]ny employer or other person acting on
23 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
24 provision regulating hours and days of work in any order of the Industrial Welfare
25 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
26 dollars (\$50) for each underpaid employee for each pay period for which the employee was
27 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
28 underpaid employee for each pay period for which the employee was underpaid" Labor

Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” Plaintiffs, acting in the public interest as private attorneys general, seek assessment and collection of civil penalties under Labor Code section 558 for themselves, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC wage order. Plaintiffs, acting in the public interest as private attorneys general, do not seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC wage order.

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

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

56. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as private attorneys general, seek assessment and collection of civil penalties for themselves, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

57. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

58. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover

1 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
2 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 206.5,
3 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802.
4 Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover
5 civil penalties for violations of those Labor Code sections not found in section 2699.5,
6 including sections 516, 1182.12, and 2810.5.

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

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

- (f) Violation of Labor Code sections 1174(d), 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, 202, and 203 for failure to pay all earned wages upon termination as set forth below;
- (i) Violation of Labor Code section 206.5 for requiring Plaintiffs and other non-party Aggrieved Employees to execute a release of claims as a condition to receiving wages due to them, as set forth below;
- (j) Violation of Labor Code sections 212 and 213 for issuing instruments for the payment of wages that were not payable in cash on demand, without discount, and with prior authorization as set forth below;
- (k) Violation of Labor Code sections 221 and 224 for unlawfully deducting a portion of wages previously paid to Plaintiffs and other non-party Aggrieved Employees, as set forth below;
- (l) Violation of Labor Code section 223 for secretly paying Plaintiffs and other non-party Aggrieved Employees lower wages than required by statute, while purporting to pay the proper wages, as set forth below;
- (m) Violation of Labor Code section 1198 for failing to provide suitable seating to Plaintiffs and other non-party Aggrieved Employees, as set forth below;
- (n) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and
- (o) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff Doyle's and other non-party Aggrieved Employees' employment with Defendants, 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
9 provide that it is unlawful to employ persons without compensating them at a rate of pay
10 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
11 number of hours 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 Plaintiffs 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 (1½) 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 Plaintiffs and other non-party Aggrieved Employees working more than
19 twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate
20 of pay. An employee’s regular rate of pay includes all remuneration for employment paid to,
21 or on 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 (1½) 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
25 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
26 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
27 in a day on the seventh (7th) day of work.

28 65. During the relevant time period, Defendants willfully failed to pay all overtime

1 wages owed to Plaintiffs and other non-party Aggrieved Employees. During the relevant time
2 period, Plaintiffs and other non-party Aggrieved Employees were not paid overtime premiums
3 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
4 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
5 not recorded.

6 66. First, during the relevant period, Defendants had, and continue to have, a
7 company-wide policy of discouraging and impeding Plaintiffs and other non-party Aggrieved
8 Employees from recording hours worked that were outside of their scheduled shifts in order to
9 limit the amount of overtime employees could accrue. Plaintiffs and other non-party
10 Aggrieved Employees were forced to work off-the-clock performing tasks after their
11 scheduled shift times, but were not provided a means by Defendants to account for this time.
12 For example, Plaintiff Doyle worked off-the-clock on multiple occasions performing closing
13 shift duties, such as cleaning the kitchen and grill, putting away food and ingredients,
14 disposing perishable items, and restocking frozen foods. As a further example, Plaintiff
15 Jefferson worked up to 1-2 hours after clocking out from closing shifts, continuing to perform
16 “side work,” such as refilling the condiments on the table, organizing the kitchen, and
17 cleaning the premises. At all times, Plaintiffs and other non-party Aggrieved Employees
18 remained under the control of Defendants. This off-the-clock work could have been recorded
19 by Defendants, but it refused to do so to avoid payment of additional wages to Plaintiffs and
20 other non-party Aggrieved Employees.

21 67. Second, Defendants had, and continue to have, a company-wide policy strictly
22 staffing their restaurant locations based on the labor hours allocated by each restaurant’s labor
23 or payroll budget, which has resulted in and continues to result in chronic understaffing and a
24 lack of adequate meal period coverage, because there were too few employees on duty to
25 handle the workload and attend to customers. As a result of this inadequate meal period
26 coverage, Plaintiffs and other non-party Aggrieved Employees were not always afforded
27 uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal
28 period. Plaintiffs and other non-party Aggrieved Employees worked through meal periods or

1 had their meal periods cut short or interrupted because there were not enough employees on
2 duty to meet customer demands. For example, Plaintiff Doyle's unpaid meal periods were
3 interrupted at least twice per week by Defendants' management assigning him tasks during his
4 meal periods, and Plaintiff Jefferson's unpaid meal periods were sometimes interrupted by
5 Defendants' management requesting that he run trays to customer tables. Consequently,
6 Plaintiffs and other non-party Aggrieved Employees performed work during meal periods for
7 which they were not paid.

8 68. Third, Defendants have a company-wide loss prevention policy requiring
9 employees to undergo mandatory security checks by a managerial employee after entering or
10 before leaving the work premises. For example, after clocking out at the end of the shift or for
11 a meal period, Plaintiffs and other non-party Aggrieved Employees were required to wait up
12 to five (5) minutes for a manager to check their belongings. Although Defendants'
13 requirement that Plaintiffs and other non-party Aggrieved Employees undergo security checks
14 was mandatory, Defendants did not compensate them for the time it took them to wait for a
15 manager to become available and undergo these checks. Thus, Plaintiffs and other non-party
16 Aggrieved Employees were not compensated for the time spent waiting and undergoing
17 security screenings while off-the-clock.

18 69. Fourth, Defendants have a company-wide policy of requiring employees to
19 undergo mandatory walkthroughs or performance checks by a managerial employee before
20 leaving the store premises. As a result of Defendants' policy, Plaintiff Doyle and other non-
21 party Aggrieved Employees were required to perform work after clocking out for their shifts,
22 resulting in them working off the clock, but Plaintiff Doyle and other non-party Aggrieved
23 Employees were not paid for those hours worked. For example, after clocking out at the end
24 of their shifts, Plaintiff Doyle and other non-party Aggrieved Employees were required to wait
25 approximately five (5) minutes for management to become available to review and confirm
26 completion of their side work, such as cleaning the kitchen and grill, putting away food and
27 ingredients, disposing of perishable items, and restocking frozen foods.

28 70. Defendants knew or should have known that as a result of these company-wide

1 practices and/or policies, Plaintiffs and other non-party Aggrieved Employees were
2 performing their assigned duties during meal periods, and were suffered or permitted to
3 perform work for which they were not paid. Defendants also knew, or should have known,
4 that it did not compensate Plaintiffs and other non-party Aggrieved Employees for this off-
5 the-clock work.

6 71. Because Plaintiffs and other non-party Aggrieved Employees regularly worked
7 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-
8 the-clock work qualified for overtime premium pay. Therefore, Plaintiffs and other non-party
9 Aggrieved Employees were not paid overtime wages for all of the overtime hours they
10 actually worked.

11 72. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
12 the balance of overtime compensation as required by California law, violates the provisions of
13 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
14 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
15 2699(a), (f), and (g).

16 **FAILURE TO PAY MINIMUM WAGES**

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

18 73. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
19 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
20 to be paid to employees, and the payment of a wage less than the minimum so fixed is
21 unlawful. Compensable work time is defined by the applicable wage order as "the time
22 during which an employee is subject to the control of an employer, and includes all the time
23 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
24 Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

25 74. As set forth above, due to Defendants' restrictions on overtime accrual,
26 Defendants systematically failed to pay Plaintiffs and other non-party Aggrieved Employees
27 for actual hours worked after scheduled shifts, because these hours were not accurately
28 recorded. Additionally, as set forth above, due to Defendant' uniform practice of utilizing

1 labor budgets, resultant understaffing, and a lack of meal period coverage, Plaintiffs and other
2 non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods to
3 which they were entitled and were required to work off-the-clock. In addition, Defendants
4 implemented a loss prevention policy requiring that Plaintiffs and other non-party Aggrieved
5 Employees undergo security checks after entering or before leaving store premises, which
6 forced them to wait off-the-clock at the front of the store for a managerial employee to
7 become available to perform security screening before they could leave. Finally, Defendants
8 had a company-wide policy of requiring Plaintiff Doyle and other non-party Aggrieved
9 Employees to undergo mandatory walkthroughs or performance checks by a managerial
10 employee before leaving the store premises.

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

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

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

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

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

25 78. At all relevant times herein set forth, California Labor Code section 512(a)
26 provides that an employer may not require, cause, or permit an employee to work for a period
27 of more than five (5) hours per day without providing the employee with a meal period of not
28 less than thirty (30) minutes, except that if the total work period per day of the employee is

1 not more than six (6) hours, the meal period may be waived by mutual consent of both the
2 employer and the employee. Under California law, first meal periods must start after no more
3 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
4 2012).

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

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

15 81. As described above, Defendants had, and continue to have, a company-wide
16 policy and/or practice of understaffing their locations due to labor budgeting, which resulted
17 in a lack of adequate meal period coverage and prevented Plaintiffs and other non-party
18 Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were
19 entitled. Additionally, Defendants failed to schedule or failed to adhere to a schedule of meal
20 periods, resulting in Plaintiffs and other non-party Aggrieved Employees waiting extended
21 periods of time before taking meal periods due to the heavy workload.

22 82. As a result, Plaintiffs and other non-party Aggrieved Employees were forced to
23 forego meal periods and/or have their meal periods interrupted by work or delayed by work,
24 and were not relieved of all duties for unpaid meal periods, in order to attend to their assigned
25 tasks. For example, during his employment, Plaintiff Doyle's meal periods were interrupted
26 at least two (2) times per week due to management assigning tasks during his meal periods.
27 Additionally, for example, during his employment, Plaintiff Jefferson missed at least three (3)
28 meal periods per week due to workload and lack of coverage resulting from having too few

1 employees on duty to handle the workload, and his meal periods were interrupted several
2 times per week when he was asked to serve food to the customers during his meal periods.
3 Plaintiffs and other non-party Aggrieved Employees did not sign valid meal period waivers on
4 days that they were entitled to meal periods and were not relieved of all duties.

5 83. Moreover, Defendants had a company-wide policy of requiring all newly hired
6 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
7 the position that non-exempt, hourly paid employees had waived their rights to meal periods
8 for the entirety of their employment and, on that basis, did not provide them with all meal
9 periods to which they were entitled. Specifically, Defendants' "Voluntary Meal Break
10 Waiver" form provides that the waiver remains in effect until the employee provides his or her
11 manager with advanced notice of his or her decision to revoke: "I understand that even if I
12 sign this waiver, I may temporarily revoke it on any given day by providing notice to my
13 Manager of my desire to take a meal break on that day." Defendants' company-wide use of
14 blanket meal period waivers signed at or near the time of hire and imposition on employees to
15 revoke the waivers in writing, discouraged and impeded Plaintiffs and other non-party
16 Aggrieved Employees from taking all meal periods to which they were entitled.

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

21 [A]fter the meal break obligation is triggered . . . an employer is put to a
22 choice: it must (1) afford an off-duty meal period; (2) consent to a
23 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
24 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)).

25 85. Further, under Labor Code section 512(a) and the applicable IWC Wage Order,
26 employees may waive their second meal periods only if they took their first meal period. To
27 the extent that Defendants require employees to sign meal period waivers simultaneously at or
28 near their time of hire (as opposed to on a specific work day) renders them invalid and

unenforceable, because Defendants' obligation to provide Plaintiffs and other non-party Aggrieved Employees with meal periods did not arise until they had employed them for a full five (5) hours.

86. At all times herein mentioned, Defendants knew or should have known that, as a result of these policies, Plaintiffs and other non-party Aggrieved Employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. Defendants further knew or should have known that Defendants did not pay Plaintiffs and other non-party Aggrieved Employees meal period premium wages when meal periods were late, interrupted, shortened, or missed.

87. Defendants knew or should have known that as a result of their policies, that Plaintiffs and other non-party Aggrieved Employees were not actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or should have known that they did not pay Plaintiffs and other non-party Aggrieved Employees meal period premium wages when they were missed, late, short, and/or interrupted.

88. Defendants also have engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved Employees have not received premium pay for missed, late, short, and/or interrupted meal periods.

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

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

90. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and other

1 non-party Aggrieved Employees' employment by Defendants.

2 91. At all relevant times, the applicable IWC Wage Order provides that "[e]very
3 employer shall authorize and permit all employees to take rest periods, which insofar as
4 practicable shall be in the middle of each work period" and that the "rest period time shall be
5 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
6 hours or major fraction thereof" unless the total daily work time is less than three and one-half
7 (3½) hours.

8 92. At all relevant times, California Labor Code section 226.7 provides that no
9 employer shall require an employee to work during any rest period mandated by an applicable
10 order of the California IWC. To comply with its obligation to authorize and permit rest
11 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
12 employer must "relinquish any control over how employees spend their break time, and
13 relieve their employees of all duties—including the obligation that an employee remain on
14 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
15 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

16 93. Pursuant to the applicable IWC Wage Order and California Labor Code section
17 226.7(b), Plaintiffs and other non-party Aggrieved Employees are entitled to recover from
18 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
19 required rest period was not authorized and permitted.

20 94. During the relevant time period, Defendants regularly failed to authorize and
21 permit Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest
22 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
23 Defendants' company-wide labor budget policies and resultant understaffing, prevented
24 Plaintiffs and other non-party Aggrieved Employees from being relieved of all duty to take
25 compliant rest periods. Defendants also failed to adhere to a schedule of rest periods, which,
26 coupled with Defendants' failure to provide adequate rest period coverage, further led to
27 Plaintiffs and other non-party Aggrieved Employees not being authorized and permitted to
28 take rest periods.

1 95. In addition, during the relevant time period, on information and belief,
2 Defendants maintained and implemented a company-wide on-premises rest period policy,
3 which mandated that Plaintiffs and other non-party Aggrieved Employees remain on premises
4 during their rest periods. Defendants' company-wide on-premises rest period policy
5 prevented Plaintiffs and other non-party Aggrieved Employees from being relieved of all
6 duties for rest periods and caused them to perform work during rest periods.

7 96. As a result, Plaintiffs and other non-party Aggrieved Employees worked shifts
8 in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all
9 uninterrupted 10-minute rest periods to which they were entitled. For example, Plaintiffs
10 frequently worked through their shifts without taking their 10-minute rest periods.

11 97. Defendants also have engaged in a company-wide practice and/or policy of not
12 paying all rest period premiums owed when compliant rest periods are not authorized or
13 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved
14 Employees have not received premium pay for all missed rest periods.

15 98. Defendants' conduct violates the applicable IWC Wage Order and California
16 Labor Code sections 226.7, 516, and 1198. Plaintiffs and other non-party Aggrieved Employees
17 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
18 2699(a), (f), and (g).

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

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

26 100. During the relevant time period, Defendants have knowingly and intentionally
27 provided Plaintiffs and other non-party Aggrieved Employees with uniform, incomplete, and
28 inaccurate wage statements. For example, Defendants issued uniform wage statements to

1 Plaintiffs and other non-party Aggrieved Employees that fail to correctly list: gross wages
2 earned; total hours worked; net wages earned; the name of the legal entity that is the employer;
3 and all applicable hourly rates in effect during the pay period, including overtime rates of pay,
4 and the corresponding number of hours worked at each hourly rate. Specifically, Defendants
5 violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

6 101. Because Defendants did not record the time Plaintiffs and other non-party
7 Aggrieved Employees spent working off-the-clock, Defendants did not list the correct amount
8 of gross wages and net wages earned by Plaintiffs and other non-party Aggrieved Employees in
9 compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to
10 accurately list the total number of hours worked by Plaintiffs and other non-party Aggrieved
11 Employees in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay
12 in effect during the pay period and corresponding accurate number of work hours worked at
13 each hourly rate in violation of section 226(a)(9).

14 102. Additionally, separate from these violations, Defendants issued uniform wage
15 statements to Plaintiffs and other non-party Aggrieved Employees that fail to list the correct
16 name of the legal entity of the actual employer in violation of Labor Code section 226(a)(8).
17 The purpose of section 226(a)(8) is to provide California employees with transparency as to
18 the true identity of their employer, to allow the employee to contact their employer during
19 employment in the future for various reasons, including filing an administrative claim, judicial
20 claim, or other action to seek relief against their employer, obtain unemployment benefits, etc.
21 Plaintiff Doyle's and other non-party Aggrieved Employees' wage statements incorrectly list
22 the employer as "CRACKER BARREL OLD COUNTRY STORE, INC.," but, according to
23 the California Secretary of State's website, there is no such entity by that name.

24 103. The wage statement deficiencies also include, without limitation, failing to list
25 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
26 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
27 only the last four digits of his or her social security number or an employee identification
28 number other than a social security number; failing to list the address of the legal entity that is

1 the employer; failing to list the inclusive dates of the period for which aggrieved employees
2 were paid; and/or failing to state all hours worked as a result of not recording or stating hours
3 worked off-the-clock.

4 104. California Labor Code section 1198 provides that the maximum hours of work
5 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
6 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
7 employment of any employees for longer hours than those fixed by the order or under
8 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
9 Wage Order, employers are required to keep accurate time records showing when the
10 employee begins and ends each work period and meal period. During the relevant time
11 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
12 and meal period start and stop times for Plaintiffs and other non-party Aggrieved Employees,
13 in violation of section 1198.

14 105. California Labor Code section 1174(d) provides that “[e]very person employing
15 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
16 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
17 plants or establishments at which employees are employed, payroll records showing the hours
18 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
19 applicable piece rate paid to, employees employed at the respective plants or
20 establishments...” At all relevant times, and in violation of Labor Code section 1174(d),
21 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other non-
22 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
23 as a result of failing to record the off-the-clock hours that they worked.

24 106. Because Defendants’ violations of 226(a) and 1174(d) were committed against
25 Plaintiffs and other non-party Aggrieved Employees, Plaintiffs and other non-party Aggrieved
26 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3, 1174.5,
27 and/or 2699(a), (f), and (g).

28 //

1 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

2 **VIOLATION OF LABOR CODE SECTION 204**

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

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

17 109. During the relevant time period, Defendants willfully failed to pay Plaintiffs and
18 other non-party Aggrieved Employees all wages due to them within any time period specified
19 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
20 wages, and meal and rest period premium wages.

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

23 **FAILURE TO PAY WAGES UPON TERMINATION**

24 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

25 111. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
26 that if an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
28 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.

112. Defendants willfully failed to pay Plaintiffs and other non-party Aggrieved Employees who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

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

**UNLAWFUL REQUIREMENT FOR RELEASE OF CLAIMS AS A CONDITION TO
RECEIVING WAGES**

VIOLATION OF LABOR CODE SECTION 206.5

114. California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

115. During the relevant time period, Defendants required Plaintiffs and other non-party Aggrieved Employees to release their claims for unpaid wages as a condition to receiving their paychecks. For example, on information and belief, Defendants required Plaintiffs and other non-party Aggrieved Employees to sign verifications on their daily timesheets that stated that they were "provided all meal periods and authorized/permitted to take all rest breaks to which [they] were entitled," regardless if they were provided with a

1 compliant meal period or permitted or authorized to take a compliant rest period. Defendants
2 compelled Plaintiffs and other non-party Aggrieved Employees to sign this false verification
3 when they, in fact, had not received all earned and unpaid wages, including meal and rest
4 period premium wages.

5 116. Defendants' policy and practice of requiring Plaintiffs and other non-party
6 Aggrieved Employees to release their claims for unpaid wages as a condition to receiving
7 their wages is in violation of California Labor Code section 206.5. Plaintiffs and other non-
8 party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
9 Code sections 2699(a), (f), and (g).

10 **UNLAWFUL DISCOUNT OF WAGES**

11 **VIOLATION OF LABOR CODE SECTIONS 212 AND 213**

12 117. California Labor Code section 212 prohibits employers from issuing any
13 instruments for the payment of wages unless such instruments are negotiable and payable in
14 cash on demand and without discount, at some established place of business in the state, the
15 name and address of which must appear on the instrument. California Labor Code section 212
16 further prohibits employers from issuing payment of wages due in the form of any scrip,
17 coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or
18 redeemable otherwise than in money.

19 118. California Labor Code section 213 permits employers to pay employees via
20 direct deposit so long as the employee authorizes payment via direct deposit.

21 119. Under California law, employers are permitted to fulfill their wage payment
22 obligations to employees by using payroll debit cards, but only so long as the employee is
23 given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson*
24 *v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL
25 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor
26 Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible
27 relied heavily on:

28 //

1 . . . [T]he fact that the pay programs were optional, thereby
2 allowing an employee to either participate in the program or
3 receive his or her pay in some other way, such as direct deposit.
4 Specifically, the DLSE opined that “[t]he success of the described
5 procedure, in practice, will of course require that . . . it is
6 presented as an *alternative* method for wage payment for which
7 [the employees’] participation is optional.” The DLSE also stated,
8 “[i]t is significant that the program does not mandate employee
9 participation in the Money Network Service and that it is designed
10 to provide an alternative for employees receiving their wage
11 payment. Employees are also given the option of having their pay
12 direct deposited into an account of their choosing” (internal
13 citations omitted).

14 120. In addition, California law only permits employers to utilize payroll debit card
15 programs if they provide employees with effective access to their wages without discount.
16 The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of
17 payroll debit cards where the following requirements are satisfied:

18 . . . (1) [T]he “wages [are] payable at some established place of
19 business in the state and there be at least 30 days of sufficient
20 funds for payment,”; (2) the employees are “fully informed of the
21 service and procedures and that it is represented as an alternative
22 method for wage payment for which their participation is
23 optional,”; (3) the employees receive “an itemized wage
24 statement,” ; and (4) “at least one transaction per pay period [is]
25 without fee.”

26 *Ortiz v. Randstad North America, L.P.*, No. C-13-5050 MMC, 2015 WL 6202298 at 3.

27 121. Further, the DLSE notes that the Labor Code manifests:

28 . . . [A] strong public policy that prohibits an employer (or its
agent) from imposing conditions or obstacles which interfere with
or prevent an employee’s (*sic*) from promptly receiving their due
wages *in full*. The imposition of a fee in order to readily *access*
one’s earned and paid wage under a payroll card program which
is designed to discharge the employer’s wage payment obligations
could impermissibly interfere with an employee’s receipt of page
wages by creating a financial condition which would have the
effect of reducing or discounting wages because such fee would
be charged against the same account in which wages are
deposited.” (Emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service
providers “effectively act as *agents* of the client employers in discharging the employer’s wage
payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor
Code does not purport to regulate the specific arrangements between employers and payroll

1 service providers, both an employer and, under the express language in Labor Code § 212- their
2 *agent*, must comply with its requirements.” *DLSE opinion letter* 2008.07.07.2.

3 122. During the relevant time period, Defendants had an agreement with a payroll
4 service provider for the issuance of payroll cards to employees, including Plaintiffs and other
5 non-party Aggrieved Employees, to discharge their wage payment obligations to their
6 employees. On information and belief, Defendants had a practice and/or policy of
7 automatically issuing payroll debit cards to employees without giving them the option to elect
8 their form of payment for their final wages. Defendants’ payroll debit card program was not
9 voluntary or optional to employees. For example, Plaintiffs received their wages on a payroll
10 debit card without a choice of an alternative method, including a written check. Instead,
11 Defendants automatically enrolled Plaintiffs in their payroll debit card payment for the
12 purpose of issuing their final wages to them.

13 123. Moreover, under Defendants’ payroll debit program, on information and belief,
14 Defendants did not permit Plaintiffs and other non-party Aggrieved Employees to withdraw
15 their entire wages in at least one transaction without incurring a fee. For example, Plaintiffs
16 utilized ATMs to try to withdraw their wages but could not obtain the entire amounts because
17 ATMs only disburse cash in limited denominations. Additionally, Plaintiffs also encountered
18 approximately \$3.00 in ATM fees each time they utilized an ATM to withdraw funds from her
19 payroll debit card, which resulted in a discount in their pay.

20 124. California courts recognize a policy favoring the full and prompt payment of
21 wages to employees. Defendants’ payroll card program is inconsistent with this policy and for
22 the reasons alleged herein violates California Labor Code sections 212 and 213. Plaintiffs and
23 other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant
24 to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

25 **COLLECTING OR RECEIVING WAGES ALREADY PAID**

26 **VIOLATION OF LABOR CODE SECTION 221 AND 224**

27 125. At all times relevant herein, California Labor Code section 221 provides that it
28 shall be unlawful for any employer to collect or receive from an employee any part of wages

1 theretofore paid by said employer to said employee. California Labor Code section 224 also
2 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
3 deduction is expressly authorized in writing by the employee."

4 126. Defendants systematically, and on a company-wide basis, provided Plaintiffs
5 and other non-party Aggrieved Employees with payroll debit cards as payment of their wages
6 and/or final wages. Under Defendants' payroll debit card program, Plaintiffs and other non-
7 party Aggrieved Employees were assessed various fees in connection with their use of the
8 payroll debit cards. Plaintiffs and other non-party Aggrieved Employees were required to pay
9 per-transaction fees, ATM fees, in-person teller fees, and/or other fees to obtain and/or spend
10 their earned and due wages. The fees charged to Plaintiffs and other non-party Aggrieved
11 Employees resulted in a discount of their wages.

12 127. Defendants' payroll debit card program, which resulted in a discount of wages
13 to employees, is tantamount to taking deductions from Plaintiffs' and other non-party
14 Aggrieved Employees' paychecks without their written authorization and therefore constitutes
15 an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Plaintiffs
16 and other non-party Aggrieved Employees are therefore entitled to recover civil penalties
17 pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

18 **SECRET PAYMENT OF A LOWER WAGE**

19 **VIOLATION OF LABOR CODE SECTION 223**

20 128. At all times, California Labor Code section 223 makes it unlawful for an
21 employer to secretly pay wages lower than required by statute while purporting to pay legal
22 wages.

23 129. During the relevant time period, Defendants willfully and systematically issued
24 payroll debit cards to Plaintiffs and other non-party Aggrieved Employees. The payroll debit
25 cards discounted the wages of Plaintiffs and other non-party Aggrieved Employees by charging
26 various fees in connection with the use of the payroll debit cards. Defendants' payroll debit
27 card program resulted in the payment of less than statutorily required wages to Plaintiffs and
28 other non-party Aggrieved Employees. In doing so, Defendants acted with the intent to deprive

1 Plaintiffs and other non-party Aggrieved Employees of statutory wages, including, but not
2 limited to, overtime wages and minimum wages to which they were entitled to under California
3 law. Thus, Defendants paid Plaintiffs and other non-party Aggrieved Employees lower wages
4 than those they were entitled to while purporting that Plaintiffs and other non-party Aggrieved
5 Employees were properly paid.

6 130. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
7 the correct designated wage, while purporting to pay legal wages, is a violation of California
8 Labor Code section 223. Plaintiffs and other non-party Aggrieved Employees are therefore
9 entitled to recover civil penalties pursuant to sections 225.5 and/or 2699(a), (f), and (g).

10 **FAILURE TO PROVIDE SUITABLE SEATING**

11 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
12 **REGULATIONS, TITLE 8, SECTION 11050(14)(A)**

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

19 132. California Code of Regulations, Title 8, section 11050(14)(A) provides that "[a]ll
20 working employees shall be provided with suitable seats when the nature of the work reasonably
21 permits the use of seats."

22 133. Plaintiffs allege that Defendants' restaurants are generally similar in their layout
23 and design and there was, and continues to be, space behind cash registers and/or host stands to
24 allow for the presence and use of a seat or stool by other non-party Aggrieved Employees during
25 the performance of their work duties. Defendants could have provided other non-party
26 Aggrieved Employees with a seat or stool at their cash registers with reasonable or no
27 modification to these work areas, but instead denied them seating and forced other non-party
28 Aggrieved Employees to stand throughout the day.

1 134. Other non-party Aggrieved Employees spent a substantial portion of their day
2 behind these cash registers and/or host stands. The nature of the work of an employee
3 performing cashier and host duties can reasonably be accomplished from a seated position.
4 However, Defendants systematically, and on a company-wide basis, did not provide seats or
5 stools at or near each cash register and/or host stand, forcing employees, including other non-
6 party Aggrieved Employees, to stand throughout their work shifts.

7 135. During the relevant time period, Defendants violated California Labor Code
8 section 1198 and California Code of Regulations, Title 8, section 11050(14)(A), because other
9 non-party Aggrieved Employees were not allowed to sit, even when it would not have interfered
10 with the performance of their duties, nor were they provided with suitable seats. Other non-
11 party Aggrieved Employees were assigned cashier or host duties, which were performed from
12 and connected to a cash register or host stand, and could have been performed from a seated
13 position. Other non-party Aggrieved Employees could have handled transactions at the cash
14 register and/or host stand and provided customer service, while seated without interference to
15 their ability to complete these duties.

16 136. Defendants could have placed seats or stools at each cash register and/or host
17 stand for use by other non-party Aggrieved Employees with reasonable or no modification to
18 these work areas. However, on a company-wide basis, Defendants did not provide seats or
19 stools at cash registers and/or host stands. Defendants' management did not inform other non-
20 party Aggrieved Employees that they were allowed to sit down, provide any means for them to
21 sit down, or mention any policy regarding sitting.

22 137. As a result of Defendants' company-wide policy and/or practice of prohibiting
23 employees from sitting during their shifts and company-wide failure to provide suitable seating,
24 other non-party Aggrieved Employees were forced to stand during shifts and denied seats.
25 Defendants' failure to provide suitable seating to other non-party Aggrieved Employees
26 violated and continues to violate California Labor Code section 1198 and IWC Wage Order 5-
27 2001, Section 14(A).

28 138. Other non-party Aggrieved Employees are therefore entitled to recover civil

1 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

5 139. At all relevant times herein, California Labor Code section 1198 makes it illegal
6 to employ an employee under conditions of labor that are prohibited by the applicable wage
7 order. California Labor Code section 1198 requires that “. . . the standard conditions of labor
8 fixed by the commission shall be the . . . standard conditions of labor for employees. The
9 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

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

15 141. During the relevant time period, Defendants violated California Labor Code
16 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because
17 Plaintiffs and other non-party Aggrieved Employees were not allowed to sit, even during lulls
18 in their work duties, nor were they provided with suitable seats in reasonable proximity to their
19 work areas.

20 142. Defendants did not provide Plaintiffs and other non-party Aggrieved Employees
21 with seats or stools in reasonable proximity to their work areas to allow them to use seats when
22 it would not interfere with the performance of their duties for times when they were not engaged
23 in active duties that require standing. In other words, to the extent Plaintiffs and other non-
24 party Aggrieved Employees engaged in duties in which the nature of the work required standing,
25 Defendants denied them the use of seats nearby when they were not engaged in those duties.
26 Even though the layout of Defendants’ workplaces could accommodate seats or stools with
27 reasonable or no modification to these work areas, Defendants have, on a company-wide basis,
28 denied Plaintiffs and other non-party Aggrieved Employees suitable seating altogether.

1 143. As a result of Defendants' company-wide policy and/or practice prohibiting
2 employees from sitting at any time, even when they were not engaged in active duties requiring
3 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,
4 Plaintiffs and other non-party Aggrieved Employees were forced to stand during shifts and
5 denied seats. Defendants' failure to provide suitable seating to Plaintiffs and other non-party
6 Aggrieved Employees violated and continues to violate California Labor Code section 1198 and
7 IWC Wage Order 5-2001, Section 14(B).

8 144. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
9 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

10 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

11 **VIOLATION OF LABOR CODE SECTION 2802**

12 145. At all times herein set forth, California Labor Code section 2802 provides that
13 an employer must reimburse employees for all necessary expenditures and losses incurred by
14 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
15 to prevent employers from passing off their cost of doing business and operating expenses on
16 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
17 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: "[w]hen the
18 employer requires the use of tools or equipment or they are necessary to the performance of a
19 job, such tools and equipment shall be provided and maintained by the employer, except that
20 an employee whose wages are at least two (2) times the minimum wage may provide and
21 maintain hand tools and equipment customarily required by the particular trade or craft."

22 146. During the relevant time period, Defendants, on a company-wide basis,
23 required Plaintiff Jefferson and other non-party Aggrieved Employees to purchase basic office
24 supplies that were necessary for completion of assigned tasks. For example, Plaintiff
25 Jefferson was required to buy pens and notepads in order to take down customers' orders.
26 Defendants failed to provide these basic supplies to Plaintiff Jefferson and other non-party
27 Aggrieved Employees, forcing them to procure their own, and failed to reimburse Plaintiff
28 Jefferson and other non-party Aggrieved Employees for the costs of these supplies.

147. Additionally, Defendants, on a company-wide basis, expected Plaintiff Doyle and other non-party Aggrieved Employees to report to work in clean and presentable uniforms, including a chef's jacket, which forced Plaintiff Doyle and other non-party Aggrieved Employees to wash their uniforms more frequently than they would otherwise do laundry, and incur expenses for doing so. For example, Plaintiff Doyle and other non-party Aggrieved Employees were only provided one (1) chef's jacket each, but were scheduled to work five (5) days in a week, and thus incurred laundry expenses for the upkeep of their uniforms, as the nature of their work resulted in their uniforms becoming sweaty and/or dirty.

148. Defendants could have provided Plaintiffs and other non-party Aggrieved Employees with the actual tools for use on the job, including office supplies, and an adequate number of uniforms or access to a cleaning service. Or, Defendants could have reimbursed Plaintiffs and other non-party Aggrieved Employees for their cost of their office supplies and laundry or dry-cleaning expenses. Instead, Defendants passed these operating costs off onto Plaintiffs and other non-party Aggrieved Employees. At all relevant times, Plaintiffs did not earn at least two (2) times the minimum wage. Thus, Defendants had, and continue 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.

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

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

150. 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 containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour,

1 shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the
2 regular payday designated by the employer, and any allowances claims as part of the minimum
3 wage, including meal or lodging allowances. Labor Code section 2810.5(a)(1)(A)-(C).

4 151. During the relevant time period, Defendants failed to provide Plaintiff Doyle
5 and other non-party Aggrieved Employees with written notice that lists all the requisite
6 information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

7 152. Defendants' failure to provide Plaintiff Doyle and other non-party Aggrieved
8 Employees with written notice of basic information regarding their employment with
9 Defendants are in violation of Labor Code section 2810.5. Plaintiff Doyle and other non-party
10 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code
11 sections 2699(a), (f), and (g).

12 **REQUEST FOR JURY TRIAL**

13 Plaintiffs request a trial by jury.

14 **PRAYER FOR RELIEF**

15 Plaintiffs, on behalf of all other non-party Aggrieved Employees, pray for relief and
16 judgment against Defendants, jointly and severally, as follows:

17 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
18 (\$25,000). Plaintiffs reserve the right to amend their prayer for relief to seek a different
19 amount.

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

21 1. That the Court declare, adjudge and decree that Defendants violated the
22 following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved
23 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
24 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516,
25 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
26 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
27 statements and maintain accurate payroll records); 201, 202, 203 (by failing timely to pay all
28 earned wages upon termination); 204 (by failing timely to pay all earned wages during

1 employment); 206.5 (by requiring employees to execute a release of claims for wages due);
2 212 and 213 (by failing to make earned wages accessible without discount); 221 and 224 (by
3 collecting and/or receiving wages already paid); 223 (by secretly paying wages lower than
4 required by statute); 1198 (by failing to provide suitable seating); 2802 (by failing to
5 reimburse business expenses); and 2810.5 (by failing to provide written notice of information
6 material to employment).

7 2. For civil penalties, pursuant to California Labor Code sections 210, 225.5,
8 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
9 201, 202, 203, 204, 206.5, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d),
10 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

11 3. For attorneys' fees and costs pursuant to California Labor Code section
12 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
13 Labor Code sections 201, 202, 203, 204, 206.5, 212, 213, 221, 223, 224, 226(a), 226.7, 510,
14 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

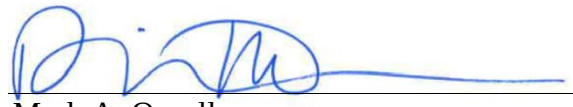
15 4. For pre-judgment and post-judgment interest as provided by law; and

16 5. For such other and further relief as the Court may deem equitable and
17 appropriate.

18
19 Dated: May 18, 2020

Respectfully submitted,

20 Capstone Law APC

21
22 By: 

23 Mark A. Ozzello
24 Brandon Brouillette
25 Brooke Waldrop

26 Attorneys for Plaintiffs Tony Doyle
27 and Billy Jefferson
28

EXHIBIT 1



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March 9, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Tony Doyle v. CBOCS West, Inc., et al.*

Dear PAGA Administrator:

This office represents Tony Doyle in connection with his claims under the California Labor Code. Mr. Doyle was an employee of CBOCS WEST, INC. and/or CRACKER BARREL OLD COUNTRY STORE, INC. For the purpose of this letter, Mr. Doyle collectively refers to these entities as "CBOCS."

The employers may be contacted directly at the addresses below:

CBOCS WEST, INC.
307 HARTMANN DRIVE
LEBANON, TN 37087

CRACKER BARREL OLD COUNTRY STORE, INC.
305 S HARTMANN DR
LEBANON, TN 37087-4960

CRACKER BARREL OLD COUNTRY STORE, INC.
PO BOX 787
LEBANON, TN 37088-0787

Mr. Doyle 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. Doyle seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CBOCS as a non-exempt, hourly paid employee in California 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.

CBOCS employed Mr. Doyle as an hourly paid, non-exempt employee from approximately April 2019 to September 2019. Mr. Doyle worked for CBOCS as a Server at its Cracker Barrel restaurant located in Sacramento, California. During his employment, Mr. Doyle typically worked six (6) to eight (8) hours per day, five (5) to six (6) days per week, and 30 to 48 hours per week, from 3:00 p.m. to 10:00 p.m. At the time Mr. Doyle's employment with CBOCS ended, he earned approximately \$15.35 per hour. His job duties included, without limitation, baking, grilling, assembling meals, cleaning the grills, stocking food inventory, and cleaning the kitchen.

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

CBOCS's Company-Wide and Uniform Payroll and HR Practices

CBOCS WEST, INC. and CRACKER BARREL OLD COUNTRY STORE, INC. are Tennessee corporations. CBOCS owns and operates approximately six (6) Cracker Barrel restaurant locations in California. Upon information and belief, CBOCS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Lebanon, Tennessee, for all non-exempt, hourly paid employees working for CBOCS in California, including Mr. Doyle and other aggrieved employees. At all relevant times, CBOCS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Doyle and other aggrieved employees, regardless of its location or position.

Upon information and belief, CBOCS maintains a centralized Payroll department at its corporate headquarters in Lebanon, Tennessee, which processes payroll for all non-exempt, hourly paid employees working for CBOCS in California, including Mr. Doyle and other aggrieved employees. Further, CBOCS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Doyle and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, CBOCS utilized the same methods and formulas when calculating wages due to Mr. Doyle 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 (1½) 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

¹ These facts, theories, and claims are based on Mr. Doyle's experience and counsel's review of those records currently available relating to Mr. Doyle'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. Doyle 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.

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

CBOCS willfully failed to pay all overtime wages owed to Mr. Doyle and other aggrieved employees. During the relevant time period, Mr. Doyle 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) 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 period, CBOCS had, and continues to have, a company-wide policy of discouraging and impeding Mr. Doyle 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. Mr. Doyle and other aggrieved employees were forced to work off-the-clock performing tasks after their scheduled shift times, but were not provided a means by CBOCS to account for this time. For example, Mr. Doyle worked overtime on multiple occasions performing closing shift duties, such as cleaning the kitchen and grill, putting away food and ingredients, disposing perishable items, and restocking frozen foods. At all times, Mr. Doyle and other aggrieved employees remained under the control of CBOCS. This off-the-clock work could have been recorded by CBOCS, but it refused to do so to avoid payment of additional wages to Mr. Doyle and other aggrieved employees.

Second, CBOCS had, and continues to have, a company-wide policy strictly staffing its restaurant locations based on the labor hours allocated by each restaurant's labor or payroll budget, which has resulted in and continues to result in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. As a result of this inadequate meal period coverage, Mr. Doyle and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Mr. Doyle and other aggrieved employees worked through meal periods or had their meal periods cut short or interrupted because there were not enough employees on duty to meet customer demands. For example, Mr. Doyle's unpaid meal periods were interrupted at least twice per week by CBOCS's management assigning him tasks during his meal periods. Consequently, Mr. Doyle and/or other aggrieved employees performed work during meal periods for which they were not paid.

Third, CBOCS has a company-wide loss prevention policy requiring employees to undergo mandatory security checks by a managerial employee after entering or before leaving the store premises. For example, after clocking out at the end of the shift or for a meal period, Mr. Doyle and other aggrieved employees were required to wait up to five (5) minutes for a manager to check their belongings. Although CBOCS's requirement that Mr. Doyle and other aggrieved employees undergo security checks was mandatory, CBOCS did not compensate them for the time it took them to wait for a manager to become available and undergo these checks. Thus, Mr. Doyle and other aggrieved employees were not compensated for the time spent waiting and undergoing security screenings while off-the-clock.

Fourth, CBOCS has a company-wide policy of requiring employees to undergo mandatory walkthroughs or performance checks by a managerial employee before leaving the store premises. As a result of CBOCS's policy, Mr. Doyle and other aggrieved employees were required to perform work after clocking out for their shifts, resulting in employees working off the clock, but Mr. Doyle and other aggrieved employees were not paid for those hours worked. For example, after clocking out at the end of their shifts, Mr. Doyle and other aggrieved employees were required to wait

approximately five (5) minutes for management to become available to review and confirm completion of their side work, such as cleaning the kitchen and grill, putting away food and ingredients, disposing of perishable items, and restocking frozen foods.

CBOCS knew or should have known that as a result of these company-wide practices and/or policies, Mr. Doyle and other aggrieved employees were working after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Doyle and other aggrieved employees 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. Therefore, Mr. Doyle and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

Mr. Doyle 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 Wage Order No. 5 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 CBOCS's restrictions on overtime accrual, CBOCS systematically failed to pay Mr. Doyle and other aggrieved employees for actual hours worked after scheduled shifts, because these hours were not accurately recorded. Additionally, as set forth above, due to CBOCS's uniform practice of utilizing labor budgets, resultant understaffing, and a lack of meal period coverage, Mr. Doyle and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. In addition, CBOCS implemented a loss prevention policy requiring that Mr. Doyle and other aggrieved employees undergo security checks after entering or before leaving store premises, which forced them to wait off-the-clock at the front of the store for a managerial employee to become available to perform security screening before they could leave. Finally, CBOCS had a company-wide policy of requiring Mr. Doyle and other aggrieved employees to undergo mandatory walkthroughs or performance checks by a managerial employee before leaving the store premises.

Thus, CBOCS did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime

premium payment, CBOCS 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, and 1197.1. Accordingly, CBOCS regularly failed to pay at least minimum wages to Mr. Doyle 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. Doyle and other aggrieved employees are therefore 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, 1198 and the applicable IWC Wage Order require employers to provide meal and rest period 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 (Cal. 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 set forth above, during the relevant time period, CBOCS had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting, which resulted in a lack of adequate meal period coverage and prevented Mr. Doyle and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, CBOCS failed to schedule or failed to adhere to a schedule of meal periods, resulting in Mr. Doyle and other aggrieved employees waiting extended periods of time before taking meal periods due to the heavy workload.

As a result, Mr. Doyle and other aggrieved employees had to work through part or all of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, during his employment, Mr. Doyle's meal periods were interrupted at least two (2) times per week due to management assigning tasks during his meal periods.

In addition, during the relevant time period, other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Doyle 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, CBOCS had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. CBOCS took the position that non-exempt,

hourly paid employees had waived their rights to 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. Specifically, CBOCS's "Voluntary Meal Break Waiver" form provides that the waiver remains in effect until the employee provides his or her manager with advanced notice of his or her decision to revoke: "I understand that even if I sign this waiver, I may temporarily revoke it on any given day by providing notice to my Manager of my desire to take a meal break on that day." CBOCS's company-wide use of 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. Doyle and other aggrieved employees from taking all meal periods to which they were entitled. And, CBOCS's presumption that second meal periods would not be provided for shifts in excess of ten (10) hours but less than twelve (12) hours due to blanket meal period waivers discouraged other aggrieved employees from taking second meal periods.

What's more, an employer's obligation to provide a meal break 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)).

Further, under Labor Code section 512(a) and the applicable IWC Wage Order, employees may waive their second meal periods only if they took their first meal period. That CBOCS requires 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 CBOCS's obligation to provide Mr. Doyle and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

CBOCS knew or should have known that as a result of its non-compliant policies and practice of understaffing locations, that Mr. Doyle and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. CBOCS further knew or should have known that it did not pay Mr. Doyle and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, CBOCS 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. Doyle and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that CBOCS did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because CBOCS did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, CBOCS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Doyle 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 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 (3½) 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, CBOCS regularly failed to authorize and permit Mr. Doyle 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, CBOCS's company-wide labor budget policies and resultant understaffing, prevented Mr. Doyle and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. CBOCS also failed to adhere to a schedule of rest periods, which, coupled with CBOCS's failure to provide adequate rest period coverage, further led to Mr. Doyle and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, CBOCS maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Doyle and other aggrieved employees remain on CBOCS's premises during their rest periods. Upon information and belief, CBOCS's company-wide on-premises rest period policy prevented Mr. Doyle and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result, Mr. Doyle and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Mr. Doyle frequently worked through his shifts without taking his 10-minute rest periods.

CBOCS 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 and permitted. Alternatively, to the extent that CBOCS did pay rest period premiums to other aggrieved employees, it did so at the incorrect rates. Because CBOCS did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, CBOCS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Doyle 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. CBOCS has not provided Mr. Doyle 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 wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 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, CBOCS has knowingly and intentionally provided Mr. Doyle and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CBOCS issued uniform wage statements to Mr. Doyle and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, CBOCS violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because CBOCS did not record the time Mr. Doyle and other aggrieved employees spent working off-the-clock, CBOCS did not list the correct amount of gross wages and net wages earned by Mr. Doyle and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, CBOCS failed to accurately list the total number of hours worked by Mr. Doyle 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).

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

Third, and separate from these violations, CBOCS issued uniform wage statements to Mr. Doyle and other aggrieved employees that failed to correctly list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an

administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Doyle's and other aggrieved employees' wage statements incorrectly list the employer as "CRACKER BARREL OLD COUNTRY STORE, INC.," but, according to the California Secretary of State's website, there is no such entity by that name. Additionally, the employer address listed is an incomplete address, "Hartmann Drive, Lebanon, TN 37088." See example paystub below.

CRACKER BARREL OLD COUNTRY STORE,
INC.
Hartmann Drive
Lebanon, TN 37088



WAGE STATEMENT		
Employee: [REDACTED]	PayDate: 6/6/2019	
	Advice Number: [REDACTED]	
Pay Period Begin: 5/25/2019	Pay Period End: 5/31/2019	
Location: 00754		

TAX DATA	Federal	State
Tax Status	[REDACTED]	[REDACTED]
Allowances	[REDACTED]	[REDACTED]
Additional Amount	[REDACTED]	[REDACTED]

WAGE STATEMENT SUMMARY	Current	YTD
Total Gross	546.30	1,828.63
Total Taxes and Deductions	203.74	601.54
Total Wages	342.56	1,227.09
Net Pay	342.56	1,227.09

The wage statement deficiencies also include, among other things, 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 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 inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they 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), CBOCS willfully failed to maintain accurate payroll records for Mr. Doyle 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 Orders. 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, CBOCS failed, on a company-wide basis, to keep accurate records of meal period start and stop times for Mr. Doyle and other aggrieved employees, in violation of section 1198. As stated, CBOCS engaged in a company-wide practice and/or policy of 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 meal start and end times for Mr. Doyle and other aggrieved employees. Furthermore, in light of CBOCS's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, CBOCS kept no records of meal start and end times for second meal periods.

Because CBOCS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Doyle 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. Doyle 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. Doyle 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, CBOCS failed to pay Mr. Doyle and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Doyle 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, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 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.

CBOCS willfully failed to pay Mr. Doyle and other aggrieved employees who are no longer employed by CBOCS all their earned wages, including, but not limited to, overtime wages, minimum

wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving CBOCS's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Doyle 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 § 206.5 – Release of Claims for Wages Due

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

During the relevant time period, CBOCS required Mr. Doyle and/or other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks. For example, on information and belief, CBOCS required Mr. Doyle and/or other aggrieved employees to sign verifications on their daily timesheets that stated that they were "provided all meal periods and authorized/permitted to take all rest breaks to which [they] were entitled," regardless if they were provided with a compliant meal period or permitted or authorized to take a compliant rest period. CBOCS compelled Mr. Doyle and/or other aggrieved employees to sign this false verification when they, in fact, had not received all earned and unpaid wages, including meal and rest period premium wages. CBOCS's policy and practice of requiring Mr. Doyle and/or other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks is in violation of California Labor Code section 206.5.

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

Violation of California Labor Code §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible relied heavily on:

. . . [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that "[t]he success of the described procedure, in practice, will of course require that . . .

it is presented as an *alternative* method for wage payment for which [the employees'] participation is optional." The DLSE also stated, "[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing" (internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he "wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,"
- (2) the employees are "fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,"
- (3) the employees receive "an itemized wage statement," and
- (4) "at least one transaction per pay period [is] without fee."

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

. . . [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee's (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one's earned and paid wages under a payroll card program which is designed to discharge the employer's wage payment obligations could impermissibly interfere with an employee's receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers "effectively act as *agents* of the client employers in discharging the employer's wage payment obligations." *Id.* In a second opinion letter, the DLSE stated that "[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements." *DLSE opinion letter 2008.07.07.2*.

During the relevant time period, CBOCS had an agreement with a payroll service provider for the issuance of payroll cards to employees, including Mr. Doyle and other aggrieved employees, to discharge its wage payment obligations to its employees. On information and belief, CBOCS had a practice and/or policy of automatically issuing payroll debit cards to departing employees without giving them the option to elect their form of payment for their final wages. CBOCS's payroll debit card program was not voluntary or optional to employees. CBOCS had a practice and/or policy of automatically issuing payroll debit cards to employees without giving them the option to elect their

form of payment for their final wages. For example, Mr. Doyle received his final wages on a payroll debit card without a choice of an alternative method, including a written check. Instead, CBOCS automatically enrolled Mr. Doyle in its payroll debit card payment for the purpose of issuing his final wages to him.

Moreover, under CBOCS's payroll debit program, on information and belief, CBOCS did not permit Mr. Doyle and other aggrieved employees to withdraw their entire wages in at least one transaction without incurring a fee. For example, Mr. Doyle utilized an ATM to try to withdraw his final wages but could not obtain the entire amount because ATMs only disburse cash in limited denominations. Additionally, Mr. Doyle also encountered an ATM fee of approximately \$3.00 when he utilized an ATM to withdraw his final payment from the payroll debit card, which resulted in a discount in his pay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. CBOCS's payroll card program is inconsistent with this policy. Because CBOCS's company-wide payroll debit card program is involuntary and denies aggrieved employees of easy access to the entirety of their wages, the program violates California Labor Code sections 212 and 213. Mr. Doyle and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee." During the relevant time period, CBOCS unlawfully deducted a portion of wages previously paid to Ms. Lopez and other aggrieved employees in violation of California Labor Code section 221.

CBOCS systematically, and on a company-wide basis, provided Mr. Doyle and other aggrieved employees with payroll debit cards as payment of their wages and/or final wages. Under CBOCS's payroll debit card program, Mr. Doyle and other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. Mr. Doyle and other aggrieved employees were required to pay per-transaction fees, ATM fees, in-person teller fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to Mr. Doyle and other aggrieved employees resulted in a discount of their wages.

CBOCS's payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from Mr. Doyle's and other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Mr. Doyle and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, CBOCS willfully and systematically issued payroll debit cards to Mr. Doyle and other aggrieved employees. The payroll debit cards discounted the wages of Mr. Doyle and other aggrieved employees by charging various fees in connection with the use of the payroll debit cards. CBOCS's payroll debit card program resulted in the payment of less than statutorily-required wages to Mr. Doyle and other aggrieved employees. In doing so, CBOCS acted with the intent to deprive Mr. Doyle and other aggrieved employees of statutory wages, including, but not limited to, overtime wages and minimum wages to which they were entitled to under California law. Thus, CBOCS paid Mr. Doyle and other aggrieved employees lower wages than those they were entitled to while purporting that Mr. Doyle and other aggrieved employees were properly paid.

Mr. Doyle and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – 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(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.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

CBOCS's California restaurants are generally similar in their layout and design and there was, and continues to be, space behind cash registers and/or host stands to allow for the presence and use of a seat or stool by other aggrieved employees during the performance of their work duties. CBOCS could provide other aggrieved employees with a seat or stool at its cash registers and/or host stands, with reasonable or no modification to these work areas, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these cash registers and/or host stands. The nature of the work of an employee performing cashier and host duties at cash registers and/or host stands can reasonably be accomplished from a seated position. However, as set forth herein, CBOCS systematically, and on a company-wide basis, does not provide seats or stools

at or near the cash registers and/or host stands, forcing other aggrieved employees to stand throughout their work shifts.

CBOCS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. CBOCS's management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of CBOCS's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. CBOCS's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(A).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring CBOCS 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 § 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(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 section 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 section 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 section 14(B) during “lulls in operation.” *Id.*

As stated, CBOCS's California restaurants are generally similar in their layout and design and there was, and continues to be, space near their work areas to allow for the presence and use of a seat or stool by Mr. Doyle and other aggrieved employees during lulls in operation. CBOCS could provide Mr. Doyle and other aggrieved employees with a seat or stool in its work areas, with reasonable or no modification to these work areas, but instead denies employees seating and forces Mr. Doyle and other aggrieved employees to stand throughout the day.

CBOCS did not provide Mr. Doyle 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. Doyle and other aggrieved employees engaged in duties in which the nature of the work required standing, CBOCS denied them the use of seats nearby during lulls in their work duties. Moreover, CBOCS did not inform Mr. Doyle and other aggrieved employees of their rights to a seat or stool under California law. In fact, CBOCS's management instructed Mr. Doyle and other aggrieved employees to stand whenever they were working.

As a result of CBOCS'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. Doyle and other aggrieved employees were forced to stand during shifts and denied seats. CBOCS's failure to provide suitable seating to Mr. Doyle and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(B).

Mr. Doyle and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring CBOCS 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 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."

CBOCS, on a company-wide basis, has required other aggrieved employees to purchase basic office supplies that were necessary for completion of assigned tasks. For example, other aggrieved employees were required to buy pens and notepads in order to take down customers' orders. CBOCS failed to provide basic supplies to other aggrieved employees, forcing them to procure their own, and failed to reimburse other aggrieved employees for the costs of these supplies.

Additionally, CBOCS, on a company-wide basis, expected Mr. Doyle and other aggrieved employees to report to work in clean and presentable uniforms, including a chef's jacket, which forced Mr. Doyle and other aggrieved employees to wash their uniforms more frequently than they would otherwise do laundry, and incur expenses for doing so. For example, Mr. Doyle and other aggrieved employees were only provided one (1) chef's jacket each, but were scheduled to work five (5) days in a week, and thus incurred laundry expenses for the upkeep of their uniforms, as the nature of their work resulted in their uniforms becoming sweaty and/or dirty.

CBOCS could have provided Mr. Doyle and/or other aggrieved employees with the actual tools required for use on the job, including office supplies, and an adequate number of uniforms or access to a cleaning service. Or, CBOCS could have reimbursed Mr. Doyle and/or other aggrieved employees for their cost of their office supplies and laundry or dry-cleaning expenses. Instead,

CBOCS passed these operating costs off onto Mr. Doyle and/or other aggrieved employees. At all relevant times, Mr. Doyle did not earn at least two (2) times the minimum wage.

Thus, CBOCS 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. Doyle and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 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.

CBOCS failed to provide Mr. Doyle and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, CBOCS failed to provide Mr. Doyle and other aggrieved employees with the rate or rates of pay, including any rates for overtime, as applicable, in violation of section 2810.5(a)(1)(A).

Mr. Doyle and other aggrieved employees are therefore 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." CBOCS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Doyle's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Doyle 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. Doyle, 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 CBOCS for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 212, 213, 221, 223, 224, 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. Doyle seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

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

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

1. CBOCS shall pay Mr. Doyle and all other aggrieved employees employed by CBOCS at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. CBOCS 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 and provided lawful meal and rest periods.
3. CBOCS shall conduct a survey or interview all current and former aggrieved employees in California who worked for CBOCS 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 office supplies and laundry expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. CBOCS 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, 516, and 1198. CBOCS 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. CBOCS shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for CBOCS's benefit, including, but not limited to, costs of office supplies and laundry expenses, as required by Labor Code section 2802.
6. CBOCS shall pay each aggrieved employee unpaid wages and compensation for violations arising from its unlawful use of payroll debit cards, including unlawful direct deposit and

discount of wages (Labor Code sections 212 and 213), secret payment of lower wages (Labor Code section 223), and unlawful deductions (Labor Code sections 221 and 224).

7. CBOCS shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. CBOCS shall provide Mr. Doyle and all aggrieved employees employed by CBOCS 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).
9. CBOCS shall cease the practice of requiring aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks (Labor Code section 206.5).
10. CBOCS shall implement and provide suitable seating to all aggrieved employees.
11. CBOCS 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).
12. CBOCS 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. CBOCS 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, 225.5, 226.3, 256, 558, 1174.5, 1197.1, 1199, 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:

Michelle Kennedy
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 712-8146

Best Regards,



Michelle Kennedy

Copy: CBOCS WEST, INC. (via U.S. Certified Mail); CRACKER BARREL OLD COUNTRY STORE, INC. (via U.S. Certified Mail)

EXHIBIT 2

MICHELLE KENNEDY
310.712.8146 Direct
Michelle.Kennedy@capstonelawyers.com

March 9, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Billy Jefferson v. CBOCS West, Inc., et al.*

Dear PAGA Administrator:

This office represents Billy Jefferson in connection with his claims under the California Labor Code. Mr. Jefferson was an employee of CBOCS WEST, INC. and/or CRACKER BARREL OLD COUNTRY STORE, INC. For the purpose of this letter, Mr. Jefferson collectively refers to these entities as "CBOCS."

The employers may be contacted directly at the addresses below:

CBOCS WEST, INC.
307 HARTMANN DRIVE
LEBANON, TN 37087

CRACKER BARREL OLD COUNTRY STORE, INC.
305 S HARTMANN DR
LEBANON, TN 37087-4960

CRACKER BARREL OLD COUNTRY STORE, INC.
PO BOX 787
LEBANON, TN 37088-0787

Mr. Jefferson 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. Jefferson seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CBOCS as a non-exempt, hourly paid employee in California 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.

CBOCS employed Mr. Jefferson as an hourly paid, non-exempt employee from approximately April 2019 to June 2019. Mr. Jefferson worked for CBOCS as a Server at its Cracker Barrel restaurant located in Rialto, California. During his employment, Mr. Jefferson typically worked six (6) to ten (10) hours per day, five (5) to six (6) days per week, and 20 to 50 hours per week, from 3:00 p.m. or 4:00 p.m. to 11:00 p.m. or 12:00 a.m. At the time Mr. Jefferson's employment with CBOCS ended, he earned approximately \$12.00 per hour. His job duties included, without limitation, greeting customers and responding to customer inquiries, taking customer orders, serving food and beverages, and cleaning the premises.

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

CBOCS's Company-Wide and Uniform Payroll and HR Practices

CBOCS WEST, INC. and CRACKER BARREL OLD COUNTRY STORE, INC. are Tennessee corporations. CBOCS owns and operates approximately six (6) Cracker Barrel restaurant locations in California. Upon information and belief, CBOCS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Lebanon, Tennessee, for all non-exempt, hourly paid employees working for CBOCS in California, including Mr. Jefferson and other aggrieved employees. At all relevant times, CBOCS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Jefferson and other aggrieved employees, regardless of its location or position.

Upon information and belief, CBOCS maintains a centralized Payroll department at its corporate headquarters in Lebanon, Tennessee, which processes payroll for all non-exempt, hourly paid employees working for CBOCS in California, including Mr. Jefferson and other aggrieved employees. Further, CBOCS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Jefferson and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, CBOCS utilized the same methods and formulas when calculating wages due to Mr. Jefferson 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 (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40)

¹ These facts, theories, and claims are based on Mr. Jefferson's experience and counsel's review of those records currently available relating to Mr. Jefferson'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. Jefferson 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 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.

CBOCS willfully failed to pay all overtime wages owed to Mr. Jefferson and other aggrieved employees. During the relevant time period, Mr. Jefferson 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) 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 period, CBOCS had, and continues to have, a company-wide policy of discouraging and impeding Mr. Jefferson 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. Mr. Jefferson and other aggrieved employees were forced to work off-the-clock performing tasks after their scheduled shift times, but were not provided a means by CBOCS to account for this time. For example, Mr. Jefferson worked up to 1-2 hours after clocking out from closing shifts, continuing to perform "side work," such as refilling the condiments on the table, organizing the kitchen, and cleaning the premises. At all times, Mr. Jefferson and other aggrieved employees remained under the control of CBOCS. This off-the-clock work could have been recorded by CBOCS, but it refused to do so to avoid payment of additional wages to Mr. Jefferson and other aggrieved employees.

Second, CBOCS had, and continues to have, a company-wide policy strictly staffing its restaurant locations based on the labor hours allocated by each restaurant's labor or payroll budget, which has resulted in and continues to result in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. As a result of this inadequate meal period coverage, Mr. Jefferson and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Mr. Jefferson and other aggrieved employees worked through meal periods or had their meal periods cut short or interrupted because there were not enough employees on duty to meet customer demands. For example, Mr. Jefferson's unpaid meal periods were sometimes interrupted by CBOCS's management requesting that he run trays to customer tables. Consequently, Mr. Jefferson and other aggrieved employees performed work during meal periods for which they were not paid.

Third, CBOCS has a company-wide loss prevention policy requiring employees to undergo mandatory security checks by a managerial employee after entering or before leaving the store premises. For example, before clocking in at the beginning of a shift, or after clocking out at the end of the shift or for a meal period, Mr. Jefferson and other aggrieved employees were required to wait up to five (5) minutes for a manager to check their belongings. Although CBOCS's requirement that Mr. Jefferson and other aggrieved employees undergo security checks was mandatory, CBOCS did not compensate them for the time it took them to wait for a manager to become available and undergo these checks. Thus, Mr. Jefferson and other aggrieved employees were not compensated for the time spent waiting and undergoing security screenings while off-the-clock.

Fourth, CBOCS has a company-wide policy of requiring employees to undergo mandatory walkthroughs or performance checks by a managerial employee before leaving the store premises.

As a result of CBOCS's policy, other aggrieved employees were required to perform work after clocking out for their shifts, resulting in employees working off the clock, but other aggrieved employees were not paid for those hours worked. For example, after clocking out at the end of their shifts, other aggrieved employees were required to wait approximately five (5) minutes for management to become available to review and confirm completion of their side work, such as cleaning the kitchen and grill, putting away food and ingredients, disposing of perishable items, and restocking frozen foods.

CBOCS knew or should have known that as a result of these company-wide practices and/or policies, Mr. Jefferson and other aggrieved employees were working after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Jefferson and other aggrieved employees 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. Therefore, Mr. Jefferson and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

Mr. Jefferson 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 Wage Order No. 5 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 CBOCS's restrictions on overtime accrual, CBOCS systematically failed to pay Mr. Jefferson and other aggrieved employees for actual hours worked after scheduled shifts, because these hours were not accurately recorded. Additionally, as set forth above, due to CBOCS's uniform practice of utilizing labor budgets, resultant understaffing, and a lack of meal period coverage, Mr. Jefferson and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. In addition, CBOCS implemented a loss prevention policy requiring that Mr. Jefferson and other aggrieved employees undergo security checks after entering or before leaving store premises, which forced them to wait off-the-clock at the front of the store for a managerial employee to become available to perform security screening before they could leave. Finally, CBOCS had a company-wide policy of

requiring other aggrieved employees to undergo mandatory walkthroughs or performance checks by a managerial employee before leaving the store premises.

Thus, CBOCS did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, CBOCS 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, and 1197.1. Accordingly, CBOCS regularly failed to pay at least minimum wages to Mr. Jefferson 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. Jefferson and other aggrieved employees are therefore 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, 1198 and the applicable IWC Wage Order require employers to provide meal and rest period 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 (Cal. 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 set forth above, during the relevant time period, CBOCS had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting, which resulted in a lack of adequate meal period coverage and prevented Mr. Jefferson and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, CBOCS failed to schedule or failed to adhere to a schedule of meal periods, resulting in Mr. Jefferson and other aggrieved employees waiting extended periods of time before taking meal periods due to the heavy workload.

As a result, Mr. Jefferson and other aggrieved employees had to work through part or all of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, during his employment, Mr. Jefferson missed at least three (3) meal periods per week due to workload and lack of coverage resulting from having too few employees on duty to handle the workload. Moreover, his meal periods were interrupted several times per week when he was asked to serve food to the customers during his meal periods.

In addition, during the relevant time period, other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Jefferson 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, CBOCS had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. CBOCS took the position that non-exempt, hourly paid employees had waived their rights to 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. Specifically, CBOCS's "Voluntary Meal Break Waiver" form provides that the waiver remains in effect until the employee provides his or her manager with advanced notice of his or her decision to revoke: "I understand that even if I sign this waiver, I may temporarily revoke it on any given day by providing notice to my Manager of my desire to take a meal break on that day." CBOCS's company-wide use of 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. Jefferson and other aggrieved employees from taking all meal periods to which they were entitled. And, CBOCS's presumption that second meal periods would not be provided for shifts in excess of ten (10) hours but less than twelve (12) hours due to blanket meal period waivers discouraged other aggrieved employees from taking second meal periods.

What's more, an employer's obligation to provide a meal break 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)).

Further, under Labor Code section 512(a) and the applicable IWC Wage Order, employees may waive their second meal periods only if they took their first meal period. That CBOCS requires 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 CBOCS's obligation to provide Mr. Jefferson and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

CBOCS knew or should have known that as a result of its non-compliant policies and practice of understaffing locations, that Mr. Jefferson and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. CBOCS further knew or should have known that it did not pay Mr. Jefferson and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, CBOCS 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. Jefferson and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that CBOCS did pay meal

period premium wages to other aggrieved employees, it did so at the incorrect rates. Because CBOCS did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, CBOCS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Jefferson 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 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 (3½) 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, CBOCS regularly failed to authorize and permit Mr. Jefferson 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, CBOCS's company-wide labor budget policies and resultant understaffing, prevented Mr. Jefferson and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. CBOCS also failed to adhere to a schedule of rest periods, which, coupled with CBOCS's failure to provide adequate rest period coverage, further led to Mr. Jefferson and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, CBOCS maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Jefferson and other aggrieved employees remain on CBOCS's premises during their rest periods. Upon information and belief, CBOCS's company-wide on-premises rest period policy prevented Mr. Jefferson and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result, Mr. Jefferson and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Mr. Jefferson frequently worked through his shifts without taking his 10-minute rest periods.

CBOCS 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 and permitted. Alternatively, to the extent that CBOCS did pay rest period premiums to other aggrieved employees, it did so at the incorrect rates. Because CBOCS did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, CBOCS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Jefferson 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. CBOCS has not provided Mr. Jefferson 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 wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 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, CBOCS has knowingly and intentionally provided Mr. Jefferson and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CBOCS issued uniform wage statements to Mr. Jefferson and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, CBOCS violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because CBOCS did not record the time Mr. Jefferson and other aggrieved employees spent working off-the-clock, CBOCS did not list the correct amount of gross wages and net wages earned by Mr. Jefferson and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, CBOCS failed to accurately list the total number of hours worked by Mr. Jefferson 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).

Second, because CBOCS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, CBOCS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, CBOCS also failed to list the correct amount of net wages in violation of section 226(a)(5). CBOCS also failed to correctly list all

applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, CBOCS issued uniform wage statements to Mr. Jefferson and/or other aggrieved employees that failed to correctly list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Other aggrieved employees' wage statements incorrectly list the employer as "CRACKER BARREL OLD COUNTRY STORE, INC.," but, according to the California Secretary of State's website, there is no such entity by that name. Additionally, the employer address listed is an incomplete address, "Hartmann Drive, Lebanon, TN 37088." *See example paystub below.*

CRACKER BARREL OLD COUNTRY STORE,
INC.
Hartmann Drive
Lebanon, TN 37088



WAGE STATEMENT	
Employee: [REDACTED]	PayDate: 6/6/2019
	Advice Number: [REDACTED]
Pay Period Begin: 5/25/2019	Pay Period End: 5/31/2019
Location: 00754	

TAX DATA	Federal	State
Tax Status	[REDACTED]	[REDACTED]
Allowances	[REDACTED]	[REDACTED]
Additional Amount	[REDACTED]	[REDACTED]

WAGE STATEMENT SUMMARY	Current	YTD
Total Gross	546.30	1,828.63
Total Taxes and Deductions	203.74	601.54
Total Wages	342.56	1,227.09
Net Pay	342.56	1,227.09

The wage statement deficiencies also include, among other things, 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 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 inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they 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), CBOCS willfully failed to maintain accurate payroll records for Mr. Jefferson 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 Orders. 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, CBOCS failed, on a company-wide basis, to keep accurate records of meal period start and stop times for Mr. Jefferson and other aggrieved employees, in violation of section 1198. As stated, CBOCS engaged in a company-wide practice and/or policy of 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 meal start and end times for Mr. Jefferson and other aggrieved employees. Furthermore, in light of CBOCS’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, CBOCS kept no records of meal start and end times for second meal periods.

Because CBOCS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Jefferson 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. Jefferson 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. Jefferson 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, CBOCS failed to pay Mr. Jefferson and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Jefferson 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, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 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.

CBOCS willfully failed to pay Mr. Jefferson and other aggrieved employees who are no longer employed by CBOCS all their earned wages, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving CBOCS's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Jefferson 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 § 206.5 – Release of Claims for Wages Due

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

During the relevant time period, CBOCS required Mr. Jefferson and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks. For example, on information and belief, CBOCS required Mr. Jefferson and other aggrieved employees to sign verifications on their daily timesheets that stated that they were "provided all meal periods and authorized/permitted to take all rest breaks to which [they] were entitled," regardless if they were provided with a compliant meal period or permitted or authorized to take a compliant rest period. CBOCS compelled Mr. Jefferson and other aggrieved employees to sign this false verification when they, in fact, had not received all earned and unpaid wages, including meal and rest period premium wages. CBOCS's policy and practice of requiring Mr. Jefferson and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks is in violation of California Labor Code section 206.5.

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

Violation of California Labor Code §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment.

Johnson v. Sunrise Senior Living Management, Inc., No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily on:

. . . [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that “[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees’] participation is optional.” The DLSE also stated, “[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing . . .” (internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”
- (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”
- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

. . . [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as *agents* of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both

an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter 2008.07.07.2*.

During the relevant time period, CBOCS had an agreement with a payroll service provider for the issuance of payroll cards to employees, including Mr. Jefferson and other aggrieved employees, to discharge its wage payment obligations to its employees. On information and belief, CBOCS had a practice and/or policy of automatically issuing payroll debit cards to departing employees without giving them the option to elect their form of payment for their final wages. CBOCS’s payroll debit card program was not voluntary or optional to employees. CBOCS had a practice and/or policy of automatically issuing payroll debit cards to employees without giving them the option to elect their form of payment for their final wages. For example, Mr. Jefferson received his final wages on a payroll debit card without a choice of an alternative method, including a written check. Instead, CBOCS automatically enrolled Mr. Jefferson in its payroll debit card payment for the purpose of issuing his final wages to him.

Moreover, under CBOCS’s payroll debit program, on information and belief, CBOCS did not permit Mr. Jefferson and other aggrieved employees to withdraw their entire wages in at least one transaction without incurring a fee. For example, Mr. Jefferson utilized an ATM to try to withdraw his final wages but could not obtain the entire amount because ATMs only disburse cash in limited denominations. Additionally, Mr. Jefferson also encountered an ATM fee of approximately \$3.00 when he utilized an ATM to withdraw his final payment from the payroll debit card, which resulted in a discount in his pay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. CBOCS’s payroll card program is inconsistent with this policy. Because CBOCS’s company-wide payroll debit card program is involuntary and denies aggrieved employees of easy access to the entirety of their wages, the program violates California Labor Code sections 212 and 213. Mr. Jefferson and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee’s wages if “a deduction is expressly authorized in writing by the employee.” During the relevant time period, CBOCS unlawfully deducted a portion of wages previously paid to Ms. Lopez and other aggrieved employees in violation of California Labor Code section 221.

CBOCS systematically, and on a company-wide basis, provided Mr. Jefferson and other aggrieved employees with payroll debit cards as payment of their wages and/or final wages. Under CBOCS’s payroll debit card program, Mr. Jefferson and other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. Mr. Jefferson and other aggrieved employees were required to pay per-transaction fees, ATM fees, in-person teller fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to Mr. Jefferson and other aggrieved employees resulted in a discount of their wages.

CBOCS’s payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from Mr. Jefferson’s and other aggrieved employees’ paychecks

without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Mr. Jefferson and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, CBOCS willfully and systematically issued payroll debit cards to Mr. Jefferson and other aggrieved employees. The payroll debit cards discounted the wages of Mr. Jefferson and other aggrieved employees by charging various fees in connection with the use of the payroll debit cards. CBOCS's payroll debit card program resulted in the payment of less than statutorily-required wages to Mr. Jefferson and other aggrieved employees. In doing so, CBOCS acted with the intent to deprive Mr. Jefferson and other aggrieved employees of statutory wages, including, but not limited to, overtime wages and minimum wages to which they were entitled to under California law. Thus, CBOCS paid Mr. Jefferson and other aggrieved employees lower wages than those they were entitled to while purporting that Mr. Jefferson and other aggrieved employees were properly paid.

Mr. Jefferson and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – 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(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."

"The 'nature of the work' refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." *See id.*

CBOCS's California restaurants are generally similar in their layout and design and there was, and continues to be, space behind cash registers and/or host stands to allow for the presence and use of a seat or stool by other aggrieved employees during the performance of their work duties. CBOCS could provide other aggrieved employees with a seat or stool at its cash registers and/or host stands, with reasonable or no modification to these work areas, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these cash registers and/or host stands. The nature of the work of an employee performing cashier and host duties at cash registers and/or host stands can reasonably be accomplished from a seated position. However, as set forth herein, CBOCS systematically, and on a company-wide basis, does not provide seats or stools at or near the cash registers and/or host stands, forcing other aggrieved employees to stand throughout their work shifts.

CBOCS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. CBOCS's management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of CBOCS's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. CBOCS's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(A).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring CBOCS 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 § 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(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 section 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 section 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 section 14(B) during “lulls in operation.” *Id.*

As stated, CBOCS’s California restaurants are generally similar in their layout and design and there was, and continues to be, space near their work areas to allow for the presence and use of a seat or stool by Mr. Jefferson and other aggrieved employees during lulls in operation. CBOCS could provide Mr. Jefferson and other aggrieved employees with a seat or stool in its work areas, with reasonable or no modification to these work areas, but instead denies employees seating and forces Mr. Jefferson and other aggrieved employees to stand throughout the day.

CBOCS did not provide Mr. Jefferson 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. Jefferson and other aggrieved employees engaged in duties in which the nature of the work required standing, CBOCS denied them the use of seats nearby during lulls in their work duties. Moreover, CBOCS did not inform Mr. Jefferson and other aggrieved employees of their rights to a seat or stool under California law. In fact, CBOCS’s management instructed Mr. Jefferson and other aggrieved employees to stand whenever they were working.

As a result of CBOCS’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. Jefferson and other aggrieved employees were forced to stand during shifts and denied seats. CBOCS’s failure to provide suitable seating to Mr. Jefferson and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(B).

Mr. Jefferson and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring CBOCS 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 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.”

CBOCS, on a company-wide basis, has required Mr. Jefferson and other aggrieved employees to purchase basic office supplies that were necessary for completion of assigned tasks. For example, Mr. Jefferson was required to buy pens and notepads in order to take down customers’ orders. CBOCS failed to provide basic supplies to Mr. Jefferson and other aggrieved employees, forcing

them to procure their own, and failed to reimburse Mr. Jefferson and other aggrieved employees for the costs of these supplies.

Additionally, CBOCS, on a company-wide basis, expected other aggrieved employees to report to work in clean and presentable uniforms, such as a chef's jacket, which forced other aggrieved employees to wash their uniforms more frequently than they would otherwise do laundry, and incur expenses for doing so. For example, other aggrieved employees were only provided one (1) chef's jacket each, but were scheduled to work five (5) days in a week, and thus incurred laundry expenses for the upkeep of their uniforms, as the nature of their work resulted in their uniforms becoming sweaty and/or dirty.

CBOCS could have provided Mr. Jefferson and/or other aggrieved employees with the actual tools required for use on the job, including office supplies and an adequate number of uniforms or access to a cleaning service. Or, CBOCS could have reimbursed Mr. Jefferson and/or other aggrieved employees for their cost of their office supplies and laundry or dry-cleaning expenses. Instead, CBOCS passed these operating costs off onto Mr. Jefferson and other aggrieved employees. At all relevant times, Mr. Jefferson did not earn at least two (2) times the minimum wage.

Thus, CBOCS 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. Jefferson and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 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.

CBOCS failed to provide Mr. Jefferson and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, CBOCS failed to provide Mr. Jefferson and other aggrieved employees with the rate or rates of pay, including any rates for overtime, as applicable, in violation of section 2810.5(a)(1)(A). Instead, the wage theft form CBOCS provided to Mr. Jefferson is blank where wage information should be filled in.

Mr. Jefferson and other aggrieved employees are therefore 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.” CBOCS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Jefferson’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Jefferson 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. Jefferson, 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 CBOCS for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 212, 213, 221, 223, 224, 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. Jefferson seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

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

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

1. CBOCS shall pay Mr. Jefferson and all other aggrieved employees employed by CBOCS at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. CBOCS 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 and provided lawful meal and rest periods.
3. CBOCS shall conduct a survey or interview all current and former aggrieved employees in California who worked for CBOCS 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 office supplies and

laundry expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. CBOCS 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, 516, and 1198. CBOCS 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. CBOCS shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for CBOCS's benefit, including, but not limited to, costs of office supplies and laundry expenses, as required by Labor Code section 2802.
6. CBOCS shall pay each aggrieved employee unpaid wages and compensation for violations arising from its unlawful use of payroll debit cards, including unlawful direct deposit and discount of wages (Labor Code sections 212 and 213), secret payment of lower wages (Labor Code section 223), and unlawful deductions (Labor Code sections 221 and 224).
7. CBOCS shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. CBOCS shall provide Mr. Jefferson and all aggrieved employees employed by CBOCS 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).
9. CBOCS shall cease the practice of requiring aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks (Labor Code section 206.5).
10. CBOCS shall implement and provide suitable seating to all aggrieved employees.
11. CBOCS 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).
12. CBOCS 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. CBOCS 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, 225.5, 226.3, 256, 558, 1174.5, 1197.1, 1199, 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:

Michelle Kennedy
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 712-8146

Best Regards,

A handwritten signature in black ink, appearing to read 'Michelle Kennedy', with a stylized, cursive script.

Michelle Kennedy

Copy: CBOCS WEST, INC. (via U.S. Certified Mail); CRACKER BARREL OLD COUNTRY
STORE, INC. (via U.S. Certified Mail)