

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

JUL 14 2021

BY

Crystal K. Davila
DEPUTY

1 Bevin Allen Pike (SBN 221936)
2 Bevin.Pike@capstonelawyers.com
3 Daniel S. Jonathan (SBN 262209)
4 Daniel.Jonathan@capstonelawyers.com
5 Trisha K. Monesi (SBN 303512)
6 Trisha.Monesi@capstonelawyers.com
7 Capstone Law APC
8 1875 Century Park East, Suite 1000
9 Los Angeles, California 90067
10 Telephone: (310) 556-4811
11 Facsimile: (310) 943-0396

12 Attorneys for Plaintiffs Phillip Hill Mendoza
13 and Berenice Aguirre

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

PHILLIP HILL MENDOZA and
BERENICE AGUIRRE, as aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiffs,

vs.

COTTI FOODS CALIFORNIA, INC., a
California corporation; COTTI FOODS
CORPORATION, a California corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: CIVSB2029143

**FIRST AMENDED 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 Phillip Hill Mendoza and Berenice Aguirre, 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”) 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 notice to the Labor and Workforce Development Agency (“LWDA”) in this case on October 16, 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 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

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

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

THE PARTIES

6. Plaintiff Phillip Hill Mendoza is a resident of Victorville, in San Bernardino County, California. Defendants employed Plaintiff Hill Mendoza as an hourly paid, non-exempt Crew employee from approximately October 2019 to May 2020. Plaintiff worked for Defendants at their Wendy's restaurant located at 14181 U.S. Highway 395, Victorville, California. During his employment, Plaintiff Hill Mendoza typically worked six (6) to eight (8) hours per day, two (2) to four (4) days per week, and 30 to 40 hours per week, from 6:00 p.m. to 1:00 a.m. At the time Plaintiff Hill Mendoza's employment with Defendants ended, he earned approximately \$12.00 per hour. His job duties included, without limitation, cooking and preparing food, operating the cash register, taking customer orders, and processing payments.

7. Plaintiff Berenice Aguirre is a resident of Desert Hot Springs, in Riverside County, California. Defendants employed Plaintiff Aguirre as an hourly paid, non-exempt Crew Member and Key Holder employee from approximately June 2017 to June 2020. Plaintiff Aguirre worked for Defendants at their Wendy's restaurant located at 78030 Country Club Drive, Palm Desert, California. During her employment, Plaintiff Aguirre typically worked seven (7) to eight (8) hours per day, five (5) days per week, and 30 to 40 hours per week, from 5:30 a.m. to 2:00 p.m. or 4:30 p.m. to 12:00 a.m. At the time Plaintiff Aguirre's employment with Defendants ended, she earned approximately \$13.50 per hour. Her job duties included, without limitation, preparing food and cleaning the kitchen.

8. On information and belief, Defendants required some employees, including Plaintiffs, to execute a dispute resolution policy and/or arbitration agreement at the time of their

1 hire or during their employment. On further information and belief, Defendants' dispute
2 resolution policy and/or arbitration agreement was and is both procedurally and substantively
3 unconscionable. Specifically, Defendants presented new hires with an Employment-At-Will
4 and Arbitration Agreement ("Arbitration Agreement") during the onboarding process, which
5 had to be reviewed and acknowledged immediately. In fact, upon information and belief, the
6 Arbitration Agreement was one of several documents presented to new employees for signature
7 during the orientation process, including Acknowledgement of Receipt of Employee Handbook;
8 Policy Against Unlawful Harassment, Discrimination and Retaliation; and Personal Appearance
9 and Behavior Policy, among other documents. Also, employees did not have a meaningful
10 opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to
11 Defendants' employees for them to sign on a take-it or leave-it basis at the time they were hired,
12 along with other on-boarding documents. Further, Defendants did not set forth in the agreement
13 or otherwise provide employees with the rules which will govern the arbitration, instead forcing
14 employees to seek this information out on their own.

15 9. COTTI FOODS CALIFORNIA, INC. was and is, upon information and belief, a
16 California corporation, and at all times hereinafter mentioned, an employer whose employees
17 are engaged throughout this county and the State of California.

18 10. COTTI FOODS CORPORATION was and is, upon information and belief, a
19 California corporation, and at all times hereinafter mentioned, an employer whose employees
20 are engaged throughout this county and the State of California.

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

25 12. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
26 were the partners, agents, owners, or managers of COTTI FOODS CALIFORNIA, INC. and
27 COTTI FOODS CORPORATION at all relevant times.

28 13. Plaintiffs are informed and believe, and thereon allege, that each and all of the

1 acts and omissions alleged herein was performed by, or is attributable to, COTTI FOODS
2 CALIFORNIA, INC.; COTTI FOODS CORPORATION; and/or DOES 1 through 10
3 (collectively, “Defendants” or “COTTI FOODS”), each acting as the agent, employee, alter ego,
4 and/or joint venturer of, or working in concert with, each of the other co-Defendants and was
5 acting within the course and scope of such agency, employment, joint venture, or concerted
6 activity with legal authority to act on the others’ behalf. The acts of any and all Defendants
7 were in accordance with, and represent, the official policy of Defendants.

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

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

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

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

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

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

21 19. COTTI FOODS CALIFORNIA, INC.; COTTI FOODS CORPORATION; and
22 DOES 1 through 10 are therefore alter egos of each other.

23 20. Adherence to the fiction of the separate existence of Defendants would permit an
24 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
25 liability for the wrongful acts committed by them under the name COTTI FOODS.

26 21. Plaintiffs further allege, upon information and belief, that Defendants COTTI
27 FOODS CALIFORNIA, INC. and COTTI FOODS CORPORATION are alter egos of each
28 other for the following reasons:

1 (a) On the California Secretary of State's website
2 (<https://businesssearch.sos.ca.gov/>), COTTI FOODS CALIFORNIA,
3 INC. and COTTI FOODS CORPORATION share the same entity address
4 and mailing address, "29801 Santa Margarita Parkway, Rancho Santa
5 Margarita, CA 92688";

6 (b) According to the most recent "Statement of Information" forms filed with
7 the California Secretary of State, COTTI FOODS CALIFORNIA, INC.
8 and COTTI FOODS CORPORATION share the agent for service of
9 process, "I STEVEN SIGLIN";

10 (c) According to the most recent "Statement of Information" forms filed with
11 the California Secretary of State, COTTI FOODS CALIFORNIA, INC.
12 and COTTI FOODS CORPORATION share the same officers and/or
13 directors, including, but not limited to:

14 (1) Peter Capriotti II as Chief Executive Officer, Secretary,
15 and Director of both entities;

16 (2) John Holden Capriotti as Chief Financial Officer and
17 Director of both entities;

18 (3) Bronwyn Elizabeth Capriotti as a Director of both entities;
19 and

20 (d) On information and belief, COTTI FOODS CALIFORNIA, INC. and
21 COTTI FOODS CORPORATION utilize the same standardized
22 employment forms and issue the same employment policies.

23 **PAGA REPRESENTATIVE ALLEGATIONS**

24 22. Defendants own and operate approximately 49 Wendy's fast-food restaurant
25 locations in California. Upon information and belief, Defendants maintain a single, centralized
26 Human Resources (HR) department at their corporate headquarters in Rancho Santa Margarita,
27 California, for all non-exempt, hourly paid employees working for Defendants in California,
28 including Plaintiffs and other non-party Aggrieved Employees; the HR department is

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. At all relevant times, Defendants issued and maintained uniform, standardized
5 scheduling and timekeeping practices and procedures for all non-exempt, hourly paid
6 employees in California, including Plaintiffs and other non-party Aggrieved Employees,
7 regardless of their location or position

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

17 25. Defendants continue to employ non-exempt or hourly paid employees in
18 California.

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

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

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

1 for overtime compensation.

2 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
3 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
4 be paid at a regular rate of pay, and corresponding overtime rates of pay, that included as eligible
5 income all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
6 compensation, but failed to do so.

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

13 31. 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 meal periods in accordance with the California Labor Code and applicable IWC Wage Order or
16 payment of one (1) additional hour of pay at their regular rates of pay when they were not
17 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and other
18 non-party Aggrieved Employees were not provided with all meal periods or payment of one (1)
19 additional hour of pay at their regular rates of pay when they did not receive a timely,
20 uninterrupted, thirty (30) minute meal period.

21 32. 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 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
24 payment of one (1) additional hour of pay at their regular rates of pay when they were not
25 authorized and permitted to take a compliant rest period. In violation of the California Labor
26 Code, Plaintiffs and other non-party Aggrieved Employees were not authorized and permitted
27 to take compliant rest periods, nor did Defendants provide Plaintiffs and other non-party
28 Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of

1 pay when they were not authorized and permitted to take a compliant rest period.

2 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
3 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
4 receive complete and accurate wage statements in accordance with California law. In violation
5 of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not
6 provided complete and accurate wage statements.

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

11 35. 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 timely payment of wages during their employment. In violation of the California Labor Code,
14 Plaintiffs and other non-party Aggrieved Employees did not receive payment of all wages,
15 including, but not limited to, overtime wages, minimum wages, meal and rest period premiums,
16 and/or reporting time pay, within permissible time periods.

17 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
18 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
19 timely payment of all wages earned upon termination of employment. In violation of the
20 California Labor Code, Plaintiffs and other non-party Aggrieved Employees did not receive
21 payment of all wages due, including, but not limited to, overtime wages, minimum wages, meal
22 and rest period premiums, and/or reporting time pay, within permissible time periods.

23 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
25 be paid reporting time pay when they reported to work for their scheduled shift but were put to
26 work for less than half of the regular schedule. In violation of the California Labor Code,
27 Defendants did not pay Plaintiffs and other non-party Aggrieved Employees all reporting time
28 pay due.

1 38. 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 suitable seating and/or have seats nearby to use during a lull in tasks that do require moving
4 about or standing.

5 39. 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 reimbursement for all business-related expenses and costs they incurred during the
8 course and scope of their employment and that they did not receive reimbursement of applicable
9 business-related expenses and costs incurred.

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

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

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

27 43. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
28 person who was employed by the alleged violator and against whom one or more of the alleged

violations was committed.”

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

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

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

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

- (a) The aggrieved employee or representative shall give written notice by

1 online filing to the LWDA and by certified mail to the employer of the
2 specific provisions of the California Labor Code alleged to have been
3 violated (other than those listed in Section 2699.5), including the facts
4 and theories to support the alleged violation.

5 (b) An aggrieved employee's notice filed with the LWDA pursuant to
6 2699.3(c) and any employer response to that notice shall be accompanied
7 by a filing fee of seventy-five dollars (\$75).

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

16 47. On October 16, 2020, Plaintiff Phillip Hill Mendoza provided written notice by
17 online filing to the LWDA and by certified mail to Defendants of the specific provisions of the
18 California Labor Code alleged to have been violated, including facts and theories to support the
19 alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff Hill
20 Mendoza's written notice was accompanied with the applicable filing fee of seventy-five dollars
21 (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff Hill Mendoza's
22 written notice and assigned Plaintiff Hill Mendoza PAGA Case Number LWDA-CM-809874-
23 20. A true and correct copy of Plaintiff Hill Mendoza's written notice to the LWDA and
24 Defendants dated October 16, 2020, is attached hereto as "Exhibit 1."

25 48. On May 6, 2021, Plaintiff Berenice Aguirre provided written notice by online
26 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
27 California Labor Code alleged to have been violated, including facts and theories to support the
28 alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff Aguirre's

1 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
2 LWDA PAGA Administrator has confirmed receipt of Plaintiff Aguirre's written notice and
3 assigned Plaintiff Aguirre PAGA Case Number LWDA-CM-831445-21. A true and correct
4 copy of Plaintiff Aguirre's written notice to the LWDA and Defendants dated May 6, 2021, is
5 attached hereto as "Exhibit 2."

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

9 50. Thus, Plaintiffs have satisfied the administrative prerequisites under California
10 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
11 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
12 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

13 51. Labor Code section 558(a) provides "[a]ny employer or other person acting on
14 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
15 provision regulating hours and days of work in any order of the Industrial Welfare Commission
16 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
17 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
18 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
19 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
20 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
21 criminal penalty provided by law." Plaintiffs, acting in the public interest as a private attorney
22 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
23 themselves, all other non-party Aggrieved Employees, and the State of California against
24 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
25 IWC Wage Order. Plaintiffs, acting in the public interest as a private attorney general, do not
26 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
27 of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order.

28 52. Defendants, at all times relevant to this complaint, were employers or persons

1 acting on behalf of an employer(s) who violated Plaintiffs' and other non-party Aggrieved
2 Employees' rights by violating various sections of the California Labor Code as set forth above.

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

6 54. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
7 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as a private
8 attorney general, seeks assessment and collection of civil penalties for themselves, all other
9 non-party Aggrieved Employees, and the State of California against Defendants for violations
10 of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
11 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

12 **FIRST CAUSE OF ACTION**

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

14 **(Against all Defendants)**

15 55. Plaintiffs incorporate by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 56. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover
18 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
19 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a), 226.7,
20 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits
21 aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those
22 Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

23 57. Defendants' conduct, as alleged herein, violates numerous sections of the
24 California Labor Code, including, but not limited to, the following:

- 25 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
26 Wage Order for Defendants' failure to compensate Plaintiffs and other
27 non-party Aggrieved Employees with all required overtime pay, as set
28 forth below;

- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiffs and other non-party Aggrieved Employees with at least minimum wages for all hours worked as set forth below;
- (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiffs and other non-party Aggrieved Employees with meal periods, as set forth below;
- (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiffs and other non-party Aggrieved Employees to take rest periods, as set forth below;
- (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiffs and other non-party Aggrieved Employees, as set forth 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 1198 and the applicable IWC Wage Order for failure to pay reporting time pay when Plaintiffs and other non-party Aggrieved Employees were put to work for less than half of their regular scheduled shifts, as set forth below;
- (j) Violation of Labor Code section 1198 for failing to provide suitable seating to Plaintiffs and other non-party Aggrieved Employees, as set

1 forth below;

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

5 (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
6 provide written notice of information material to Plaintiffs' and other
7 non-party Aggrieved Employees' employment with Defendants, as set
8 forth below.

9 **FAILURE TO PAY OVERTIME**

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

11 58. Labor Code section 1198 makes it illegal to employ an employee under
12 conditions of labor that are prohibited by the applicable wage order. California Labor Code
13 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
14 be the . . . standard conditions of labor for employees. The employment of any employee . . .
15 under conditions of labor prohibited by the order is unlawful.”

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

20 60. Specifically, the applicable IWC Wage Order provides that Defendants are and
21 were required to pay Plaintiffs and other non-party Aggrieved Employees working more than
22 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
23 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
24 hours in a workweek.

25 61. The applicable IWC Wage Order further provides that Defendants are and were
26 required to pay Plaintiffs and other non-party Aggrieved Employees working more than twelve
27 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
28 An employee's regular rate of pay includes all remuneration for employment paid to, or on

1 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

2 62. California Labor Code section 510 codifies the right to overtime compensation
3 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
4 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
5 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
6 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
7 the seventh (7th) day of work.

8 63. First, during the relevant period, on information and belief, Defendants had, and
9 continue to have, a company-wide policy and/or practice of strictly staffing their restaurant
10 locations based on the labor hours allocated by each restaurant's labor or payroll budget, which
11 has resulted in and continues to result in chronic understaffing and a lack of adequate meal
12 period coverage, because there were too few employees on duty to handle the workload and
13 attend to customers. As a result of this lack of meal period coverage, Plaintiff Hill Mendoza
14 and other non-party Aggrieved Employees were not always afforded 30-minute meal periods
15 during shifts when they were entitled to receive a meal period. For example, Plaintiff Hill
16 Mendoza had meal periods cut short or interrupted because the restaurant was short-handed.
17 Defendants did not pay Plaintiff Hill Mendoza and other non-party Aggrieved Employees for
18 the time they continued to perform tasks during meal periods.

19 64. Moreover, Defendants had a practice of failing to schedule meal periods, which
20 further caused Plaintiff Hill Mendoza and other non-party Aggrieved Employees to not be
21 relieved of their duties for compliant meal periods. Also, Defendants' company-wide
22 timekeeping system further prevented Plaintiff Hill Mendoza and other non-party Aggrieved
23 Employees from recording all hours worked when their meal periods were shortened or
24 interrupted, because the system locked Plaintiff Hill Mendoza and other non-party Aggrieved
25 Employees out once they clocked out for a meal period and would not permit them to clock
26 back in from a meal before 30 minutes elapsed. Consequently, Plaintiff Hill Mendoza and other
27 non-party Aggrieved Employees performed work during meal periods for which they were not
28 paid.

1 65. Second, Defendants’ policy and/or practice of understaffing while assigning
2 heavy workloads also led to Plaintiffs and other non-party Aggrieved Employees performing
3 work off-the-clock after their shifts in order to complete their assigned tasks. For example, a
4 few times per week, Plaintiff Hill Mendoza would clock out and continue working for
5 approximately one (1) hour after his shift, to assist coworkers on the following shift with their
6 workload and serve food to customers. Every time Plaintiff Aguirre worked a night shift, she
7 would clock out and continue working for approximately fifteen (15) minutes after her shift to
8 clean and restock the kitchen in preparation for the morning shift

9 66. Third, Defendants’ company-wide closing procedures required Plaintiffs and
10 other non-party Aggrieved Employees remain under the control of Defendants after clocking
11 out for their shifts, but Plaintiff Hill Mendoza and other non-party Aggrieved Employees were
12 not paid for this time. For example, on closing shifts, Plaintiffs and other non-party Aggrieved
13 Employees would complete their own closing tasks, clock out, and then gather in the
14 restaurant’s parking lot waiting to be released by a managerial employee. The purported reason
15 for this was safety— Plaintiffs and other non-party Aggrieved Employees were explicitly told
16 by the closing-shift supervisor to wait in the parking lot until the supervisor had confirmed all
17 subordinate employees had coordinated their respective transportation home and the supervisor
18 was ready to release them. This process could take ten (10) minutes or more per instance, time
19 that Plaintiffs and other non-party Aggrieved Employees spent under Defendants’ control and
20 off the clock.

21 67. Defendants knew or should have known that, as a result of these company-wide
22 practices and/or policies, Plaintiffs and other non-party Aggrieved Employees were working
23 during their meal periods and after their shifts, and were suffered or permitted to perform work
24 for which they were not paid. Because Plaintiffs and other non-party Aggrieved Employees
25 worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this
26 off-the-clock work qualified for overtime premium pay. Therefore, Plaintiffs and other non-
27 party Aggrieved Employees were not paid overtime wages for all of the overtime hours they
28 actually worked.

1 68. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
2 the balance of overtime compensation as required by California law, violates the provisions of
3 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
4 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
5 2699(a), (f), and (g).

6 //

7 //

8 **FAILURE TO PAY MINIMUM WAGES**

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

10 69. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
11 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
12 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
13 Compensable work time is defined by the applicable wage order as "the time during which an
14 employee is subject to the control of an employer, and includes all the time the employee is
15 suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8,
16 § 11050(2)(K) (defining "Hours Worked").

17 70. As set forth above, due to Defendants' uniform practice of utilizing labor
18 budgets, resultant understaffing, and a lack of meal period coverage, Plaintiffs and other non-
19 party Aggrieved Employees were impeded from taking all uninterrupted meal periods to which
20 they were entitled and were required to work off-the-clock. And, as described above,
21 Defendants' timekeeping system did not permit Plaintiffs and other non-party Aggrieved
22 Employees to clock back in early when their meal periods were interrupted or cut short.
23 Furthermore, Plaintiffs and other non-party Aggrieved Employees were required to remain
24 under the control of Defendants and/or perform work off-the-clock after their shifts, including
25 waiting to leave the restaurant premises or by assisting the following shift with their workload
26 after clocking out.

27 71. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiffs
28 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not

1 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
2 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
3 1197, and 1198.

4 72. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
5 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
6 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
7 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

8 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
9 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

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

13 74. At all relevant times herein set forth, California Labor Code section 512(a)
14 provides that an employer may not require, cause, or permit an employee to work for a period
15 of more than five (5) hours per day without providing the employee with a meal period of not
16 less than thirty (30) minutes, except that if the total work period per day of the employee is not
17 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
18 and the employee. Under California law, first meal periods must start after no more than five
19 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

20 75. At all relevant times herein set forth, California Labor Code sections 226.7,
21 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
22 meal period mandated by an applicable order of the IWC.

23 76. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
24 1198, and the applicable IWC Wage Order also require employers to provide a second meal
25 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
26 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
27 the total hours worked is no more than twelve (12) hours, the second meal period may be waived
28 by mutual consent of the employer and the employee only if the first meal period was not

1 waived.

2 77. As set forth above, during the relevant time period, Defendants had, and continue
3 to have, a company-wide policy and/or practice of understaffing due to labor budgeting, which
4 resulted in a lack of adequate meal period coverage and prevented Plaintiff Hill Mendoza and
5 non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to which
6 they were entitled. Additionally, Defendants failed to schedule meal periods, resulting in
7 Plaintiff Hill Mendoza and/or non-party Aggrieved Employees waiting extended periods of time
8 before taking meal periods due to the heavy workload. Furthermore, as described above,
9 Defendants implemented an electronic timekeeping system that locked Plaintiff Hill Mendoza
10 and other non-party Aggrieved Employees out and prevented them from clocking in early before
11 the end of their 30-minute meal period. As a result of Defendants' timekeeping system, Plaintiff
12 Hill Mendoza and other non-party Aggrieved Employees were prevented from accurately
13 recording when they had to return early from a meal period so that they could be compensated
14 for that time. Consequently, Plaintiff Hill Mendoza and/or other non-party Aggrieved
15 Employees performed work during meal periods for which they were not paid.

16 78. As a result of Defendants' practices and/or policies, Plaintiff Hill Mendoza and
17 other non-party Aggrieved Employees had to work through part or all of their meal periods,
18 have their meal periods interrupted, and/or wait extended periods of time before taking meal
19 periods. For example, during his employment, Plaintiff Hill Mendoza's meal periods were cut
20 short several times per week to take customer orders, due to a lack of coverage resulting from
21 having too few employees on duty to handle the workload.

22 79. In addition, during the relevant time period, other non-party Aggrieved
23 Employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second
24 30-minute meal period. Plaintiff Hill Mendoza and other non-party Aggrieved Employees did
25 not sign valid meal period waivers on days that they were entitled to meal periods and were not
26 relieved of all duties.

27 80. Defendants knew or should have known that as a result of their company-wide
28 policies, Plaintiff Hill Mendoza and other non-party Aggrieved Employees were not actually

1 relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or
2 should have known that they did not pay Plaintiff Hill Mendoza and other non-party Aggrieved
3 Employees meal period premium wages when meal periods were missed, late, short, and/or
4 interrupted.

5 81. Defendants also have engaged in a company-wide practice and/or policy of not
6 paying meal period premiums owed when compliant meal periods are not provided. Because
7 of this practice and/or policy, Plaintiff Hill Mendoza and other non-party Aggrieved Employees
8 have not received premium pay for missed, late, and interrupted meal periods.

9 82. Thus, Defendants failed to provide Plaintiff Hill Mendoza and other non-party
10 Aggrieved Employees compliant meal periods and failed to pay the full meal period premiums
11 due. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
12 sections 226.7, 512(a), 516, and 1198. Plaintiff Hill Mendoza and other non-party Aggrieved
13 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
14 2699(a), (f), and (g).

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

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

17 83. At all relevant times herein set forth, the applicable IWC Wage Order and
18 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs and other
19 non-party Aggrieved Employees' employment by Defendants.

20 84. At all relevant times, the applicable IWC Wage Order provides that "[e]very
21 employer shall authorize and permit all employees to take rest periods, which insofar as
22 practicable shall be in the middle of each work period" and that the "rest period time shall be
23 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
24 hours or major fraction thereof" unless the total daily work time is less than three and one-half
25 (3½) hours.

26 85. At all relevant times, California Labor Code section 226.7 provides that no
27 employer shall require an employee to work during any rest period mandated by an applicable
28 order of the California IWC. To comply with its obligation to authorize and permit rest periods

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

6 86. Pursuant to the applicable IWC Wage Order and California Labor Code section
7 226.7(c), Plaintiffs and other non-party Aggrieved Employees are entitled to recover from
8 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
9 required rest period was not authorized and permitted.

10 87. During the relevant time period, Defendants regularly failed to authorize and
11 permit Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest period
12 per each four (4) hour period worked or major fraction thereof. As with meal periods,
13 Defendants’ company-wide practices, including utilizing labor budgets, resultant understaffing,
14 and assigning heavy workloads, resulted in a lack of rest period coverage and prevented
15 Plaintiffs and other non-party Aggrieved Employees from being relieved of all duty in order to
16 take compliant rest periods. Defendants also failed to schedule rest periods, which, coupled
17 with Defendants’ failure to provide adequate rest period coverage, further led to Plaintiffs and
18 other non-party Aggrieved Employees not being authorized and permitted to take rest periods.
19 Moreover, Plaintiff Hill Mendoza and other non-party Aggrieved Employees were assigned
20 drive-thru headsets and were expected to carry and keep them on while clocked in for their
21 shifts, including during rest periods

22 88. Furthermore, upon information and belief, Defendants maintained and
23 implemented a company-wide on-premises rest period policy, which mandated that Plaintiffs
24 and other non-party Aggrieved Employees remain on Defendants’ premises during their rest
25 periods. Upon information and belief, Defendants’ company-wide on-premises rest period
26 policy prevented Plaintiffs and other non-party Aggrieved Employees from being relieved of
27 all duties for rest periods and caused them to perform work during rest periods.

28 89. As a result of Defendants’ practices and policies, Plaintiffs and other non-party

1 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
2 excess of 10 hours without being permitted and authorized to take all ten (10) minute rest
3 periods to which they were entitled. For example, Plaintiff Hill Mendoza was explicitly told by
4 supervisors that regardless the length of shift, he was entitled to only one (1) rest period per
5 shift. As a result, Plaintiff Hill Mendoza was not authorized and permitted to take second 10-
6 minute rest periods when he worked shifts of six (6) or more hours. Other times, Plaintiff Hill
7 Mendoza and other non-party Aggrieved Employees had their rest periods interrupted, due to
8 Defendants' understaffing and resultant lack of rest period coverage, which forced them to
9 continue to take customers' orders through their drive-thru headsets.

10 90. Plaintiff Aguirre did not receive any rest periods while working night shifts; and
11 approximately three (3) times per week during day shifts, she would not be permitted to take
12 one of the rest periods to which she was entitled.

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

17 92. Defendants' conduct violates the applicable IWC Wage Order and California
18 Labor Code sections 226.7, 516, and 1198. Plaintiffs and other non-party Aggrieved Employees
19 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
20 2699(a), (f), and (g).

21 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

22 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

28 94. During the relevant time period, Defendants have knowingly and intentionally

1 provided Plaintiffs and other non-party Aggrieved Employees with uniform, incomplete, and
2 inaccurate wage statements. For example, Defendants issued uniform wage statements to
3 Plaintiffs and other non-party Aggrieved Employees that fail to correctly list: gross wages
4 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
5 the pay period, including overtime rates of pay, and the corresponding number of hours worked
6 at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5),
7 and 226(a)(9).

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

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

24 97. California Labor Code section 1198 provides that the maximum hours of work
25 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
26 forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment
27 of any employees for longer hours than those fixed by the order or under conditions of labor
28 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers

1 are required to keep accurate time records showing when the employee begins and ends each
2 work period and meal period. During the relevant time period, Defendants failed, on a
3 company-wide basis, to keep accurate records of work period and meal period start and stop
4 times for Plaintiffs and other non-party Aggrieved Employees, in violation of section 1198.
5 Furthermore, in light of Defendants' failure to provide other non-party Aggrieved Employees
6 with second 30-minute meal periods to which they were entitled, Defendants kept no records of
7 meal start and end times for second meal periods.

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

18 99. Because Defendants' violations of 226(a) and 1174(d) were committed against
19 Plaintiffs and other non-party Aggrieved Employees, Plaintiffs and other non-party Aggrieved
20 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3, 1174.5,
21 and/or 2699(a), (f), and (g).

22 **FAILURE TO PAY WAGES DURING EMPLOYMENT**
23 **VIOLATION OF LABOR CODE SECTION 204**

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

1 employment between the 16th and the last day, inclusive, of any calendar month, other than
2 those wages due upon termination of an employee, are due and payable between the 1st and the
3 10th day of the following month.

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

10 102. During the relevant time period, Defendants failed to pay Plaintiffs and other
11 non-party Aggrieved Employees all wages due to them within any time period specified by
12 California Labor Code section 204 including, but not limited to, overtime wages, minimum
13 wages, meal and rest period premium wages, and/or reporting time pay.

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

16 **FAILURE TO PAY WAGES UPON TERMINATION**

17 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

18 104. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
19 that if an employer discharges an employee, the wages earned and unpaid at the time of
20 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
21 her employment, his or her wages shall become due and payable not later than seventy-two (72)
22 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
23 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
24 quitting.

25 105. On information and belief, Defendants have a company-wide practice or policy
26 of paying departing employees their final wages on the next regular pay cycle, instead of
27 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
28 Plaintiff Hill Mendoza resigned from his employment on May 22, 2020, but Defendants failed

1 to provide Plaintiff Hill Mendoza with his final wages within seventy-two (72) hours of his
2 resignation. Instead, Defendants did not tender Plaintiff Hill Mendoza's final wages to him
3 until the next regular pay cycle, June 11, 2020. Thus, Defendants failed to timely pay Plaintiff
4 Hill Mendoza's owed wages within the requisite time limit, in violation of Labor Code section
5 202

6 106. In addition, Defendants willfully failed to pay Plaintiffs and other non-party
7 Aggrieved Employees who are no longer employed by Defendants all their earned wages,
8 including, but not limited to, overtime wages, minimum wages, meal and rest period premium
9 wages, and/or reporting time pay, either at the time of discharge, or within seventy-two (72)
10 hours of their leaving Defendants' employ.

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

17 **FAILURE TO PAY REPORTING TIME PAY**

18 **VIOLATION OF LABOR CODE SECTION 1198**

19 108. California Labor Code section 1198 makes it illegal to employ an employee
20 under conditions of labor that are prohibited by the applicable wage order. California Labor
21 Code section 1198 requires that ". . . the standard conditions of labor fixed by the commission
22 shall be the . . . standard conditions of labor for employees. The employment of any employee
23 . . . under conditions of labor prohibited by the order is unlawful."

24 109. California Code of Regulations, Title 8, section 11050(5)(A) provides that
25 "[e]ach workday an employee is required to report for work and does report, but is not put to
26 work or is furnished less than half said employee's usual or scheduled day's work, the employee
27 shall be paid for half the usual or scheduled day's work, but in no event for less than two (2)
28 hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be

1 less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to
2 guarantee at least partial compensation for employees who report to work expecting to work a
3 specified number of hours, and who are deprived of that amount because of inadequate
4 scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal.
5 App. 4th 556 (2012).

6 110. Upon information and belief, Defendants violated California Labor Code section
7 1198 and California Code of Regulations, Title 8, section 11050(5), because Defendants failed
8 to pay Plaintiff Hill Mendoza and other non-party Aggrieved Employees reporting time pay
9 when they reported to work for their scheduled shift but were put to work for less than half of
10 the regular schedule.

11 111. During the relevant period, Defendants had a company-wide practice of sending
12 Plaintiff Hill Mendoza and other non-party Aggrieved Employees home early from their shifts,
13 including before they had worked at least half of their regular shift, but would not pay Plaintiff
14 Hill Mendoza and other non-party Aggrieved Employees for half of their scheduled shift. For
15 example, on occasion, Plaintiff Hill Mendoza would report to work, but would be sent home
16 within 10 minutes by Defendants’ management and was not paid anything for those days.
17 Although Plaintiff Hill Mendoza and other non-party Aggrieved Employees would report to
18 work based on the schedule that Defendants provided to them, Defendants would send them
19 home before they had worked at least half of their scheduled shifts without giving them
20 reporting time pay. Accordingly, Plaintiff Hill Mendoza and other non-party Aggrieved
21 Employees were not properly compensated with reporting time pay in violation of California
22 Labor Code section 1198.

23 112. Plaintiff Hill Mendoza and other non-party Aggrieved Employees are therefore
24 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

25 ///

26 ///

27 ///

28 ///

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

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

114. 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.”

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

116. Defendants’ California restaurants are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Plaintiffs and other non-party Aggrieved Employees during lulls in operation. Defendants could have provided Plaintiff and other non-party Aggrieved Employees with a seat or stool in their work areas, but instead denied Plaintiffs and other non-party Aggrieved Employees suitable seating altogether and effectively forced Plaintiffs and other non-party Aggrieved Employees to stand throughout the day.

117. Defendants did not provide Plaintiffs and other non-party Aggrieved Employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when

1 it would not interfere with the performance of their duties for times when they were not engaged
2 in active duties that require standing. In other words, to the extent Plaintiffs and other non-
3 party Aggrieved Employees engaged in duties in which the nature of the work required standing,
4 Defendants denied them the use of seats nearby during lulls in their work duties. Moreover,
5 Defendants did not inform Plaintiffs and other non-party Aggrieved Employees of their rights
6 to a seat or stool under California law.

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

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

16 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

17 **VIOLATION OF LABOR CODE SECTION 2802**

18 120. At all times herein set forth, California Labor Code section 2802 provides that
19 an employer must reimburse employees for all necessary expenditures and losses incurred by
20 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
21 to prevent employers from passing off their cost of doing business and operating expenses on
22 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
23 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools
24 or equipment are required by the employer or are necessary to the performance of a job, such
25 tools and equipment shall be provided and maintained by the employer, except that an employee
26 whose wages are at least two (2) times the minimum wage may provide and maintain hand tools
27 and equipment customarily required by the particular trade or craft."

28 121. During the relevant time period, Defendants failed to provide Plaintiffs and other

1 non-party Aggrieved Employees with an adequate number of uniform shirts (t-shirts
2 embroidered with the Wendy's logo) in relation to their scheduled shifts, which forced Plaintiffs
3 and other non-party Aggrieved Employees to clean their uniform shirts frequently and incur
4 expenses for doing so. For example, Defendants' written uniforms and appearance policy states
5 that employees are "expected to arrive at work well groomed, clean and in uniform." Plaintiff
6 Hill Mendoza was given just one (1) uniform shirt at the start of his employment, and yet was
7 often scheduled to work four (4) days in a week. Since Defendants expected him to report to
8 work with his uniform "clean and in good repair," he was required to wash his uniform shirt at
9 least several times a week—much more frequently than he would otherwise do laundry. In
10 addition, due to the nature of restaurant work, Plaintiffs' uniform shirts would become stained
11 and/or acquire an unpleasant odor, which made them disinclined to mix their uniform shirts in
12 with their other clothing. As a result, Plaintiffs usually washed their uniform shirts separately
13 from their other clothes, increasing their overall laundry costs even more

14 122. Defendants could have provided Plaintiffs and other non-party Aggrieved
15 Employees with an adequate number of uniforms or access to a cleaning service, or reimbursed
16 Plaintiffs and other non-party Aggrieved Employees for the cost of laundering their uniforms.
17 Instead, Defendants passed these operating costs off onto Plaintiffs and other non-party
18 Aggrieved Employees. At all relevant times, Plaintiffs and other non-party Aggrieved
19 Employees did not earn at least two (2) times the minimum wage.

20 123. Defendants' company-wide policy and/or practice of passing on their operating
21 costs to Plaintiffs and other non-party Aggrieved Employees violates California Labor Code
22 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiffs and
23 other non-party Aggrieved Employees for necessary business-related expenses and costs.

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

26 ///

27 ///

28 ///

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

125. 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, 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.

126. During the relevant time period, Defendants failed to provide Plaintiff Hill Mendoza and other non-party Aggrieved Employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, Defendants failed to provide Plaintiff Hill Mendoza and other non-party Aggrieved Employees with the rate(s) of pay and overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A). Instead, the wage theft forms Defendants provided to Plaintiff Hill Mendoza and other non-party Aggrieved Employees are blank and/or list "\$0.00" where wage information should be filled in.

127. Defendants' failure to provide Plaintiff Hill Mendoza and other non-party Aggrieved Employees with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5. Plaintiff Hill Mendoza and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor

Code section 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

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

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

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 204 (by failing timely to pay all earned wages during employment); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 1198 (by failing to provide reporting time pay); 1198 (by failing to provide suitable seating); 2802 (by failing to reimburse business expenses) and 2810.5 (by failing to provide written notice of information material to employment);

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,

1 1194, 1197, 1198, 2802, and 2810.5;

2 5. For pre-judgment and post-judgment interest as provided by law; and

3 6. For such other and further relief as the Court may deem equitable and
4 appropriate.

5

6 Dated: July 14, 2021

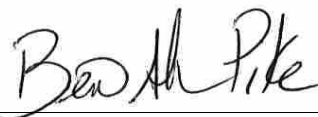
Respectfully submitted,

7

Capstone Law APC

8

9

By: 

10

Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi

11

12

Attorneys for Plaintiffs Phillip Hill Mendoza
and Berenice Aguirre

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT “1”

ALEXANDER LIMA
310.712.8142 Direct
Alexander.Lima@capstonelawyers.com

October 16, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/295>)

Subject: *Phillip Hill Mendoza v. Cotti Foods California, Inc., et al.*

Dear PAGA Administrator:

This office represents Phillip Hill Mendoza in connection with his claims under the California Labor Code. Mr. Hill Mendoza was an employee of COTTI FOODS CALIFORNIA, INC; COTTI FOODS CORPORATION; COTTI FOODS MIDWEST, INC.; and/or COTTI FOODS PIZZA CALIFORNIA. For the purpose of this letter, Mr. Hill Mendoza collectively refers to these entities as “COTTI FOODS.”

The employers may be contacted directly at the addresses below:

COTTI FOODS CALIFORNIA, INC.
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688

COTTI FOOD CORPORATION
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688

COTTI FOODS MIDWEST, INC.
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688

COTTI FOODS PIZZA CALIFORNIA
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688

Mr. Hill Mendoza 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. Hill Mendoza seeks relief on behalf of himself, the State of California, and other persons who are or were employed by COTTI FOODS 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.

COTTI FOODS employed Mr. Hill Mendoza as an hourly paid, non-exempt employee from approximately October 2019 to May 2020. Mr. Hill Mendoza worked for COTTI FOODS as a Crew Member at its Wendy’s restaurant located at 14181 US Hwy 395, Victorville, California 92392 (store #11550). During his employment, Mr. Hill Mendoza typically worked six (6) to eight (8) hours per

day, two (2) to four (4) days per week, and 30 to 40 hours per week, from 6:00 p.m. to 1:00 a.m. At the time Mr. Hill Mendoza's employment with COTTI FOODS ended, he earned approximately \$12.00 per hour. His job duties included, without limitation, cooking and preparing food, operating the cash register, taking customer orders, and processing payments.

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

COTTI FOODS's Company-Wide and Uniform Payroll and HR Practices

COTTI FOODS CALIFORNIA, INC; COTTI FOODS CORPORATION; COTTI FOODS MIDWEST, INC.; and COTTI FOODS PIZZA CALIFORNIA are California corporations. On information and belief, all of the aforementioned companies are headquartered at 29801 Santa Margarita Parkway, Rancho Santa Margarita, California 92688. COTTI FOODS owns and operates approximately 49 Wendy's fast-food restaurant locations in California. Upon information and belief, COTTI FOODS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Rancho Santa Margarita, California, for all non-exempt, hourly paid employees working for COTTI FOODS in California, including Mr. Hill Mendoza and other aggrieved employees. At all relevant times, COTTI FOODS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Hill Mendoza and other aggrieved employees, regardless of its location or position.

Upon information and belief, COTTI FOODS maintains a centralized Payroll department at its corporate headquarters in Rancho Santa Margarita, California, which processes payroll for all non-exempt, hourly paid employees working for COTTI FOODS in California, including Mr. Hill Mendoza and other aggrieved employees. Further, COTTI FOODS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Hill Mendoza and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, COTTI FOODS utilized the same methods and formulas when calculating wages due to Mr. Hill Mendoza 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. Hill Mendoza's experience and counsel's review of those records currently available relating to Mr. Hill Mendoza'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. Hill Mendoza 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.

COTTI FOODS willfully failed to pay all overtime wages owed to Mr. Hill Mendoza and other aggrieved employees. During the relevant time period, Mr. Hill Mendoza 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, on information and belief, COTTI FOODS had, and continues to have, a company-wide policy and/or practice of 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 lack of meal period coverage, Mr. Hill Mendoza and other aggrieved employees were not always afforded 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Hill Mendoza had meal periods cut short or interrupted because the restaurant was shorthanded. COTTI FOODS did not pay Mr. Hill Mendoza and other aggrieved employees for the time they continued to perform tasks during meal periods.

Moreover, COTTI FOODS had a practice of failing to schedule meal periods, which further caused Mr. Hill Mendoza and other aggrieved employees to not be relieved of their duties for compliant meal periods. Also, COTTI FOODS's company-wide timekeeping system further prevented Mr. Hill Mendoza and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked Mr. Hill Mendoza and other aggrieved employees out once they clocked out for a meal period and would not permit them to clock back in from a meal before 30 minutes elapsed. Consequently, Mr. Hill Mendoza and other aggrieved employees performed work during meal periods for which they were not paid.

Second, COTTI FOODS's policy and/or practice of understaffing while assigning heavy workloads also led to Mr. Hill Mendoza and other aggrieved employees performing work off-the-clock after their shifts in order to complete their assigned tasks. For example, a few times per week, Mr. Hill Mendoza would clock out and continue working for approximately one (1) hour after his shift, to assist coworkers on the following shift with their workload and serve food to customers.

Third, COTTI FOODS's company-wide closing procedures required Mr. Hill Mendoza and other aggrieved employees remain under the control of COTTI FOODS after clocking out for their shifts, but Mr. Hill Mendoza and other aggrieved employees were not paid for this time. For example, on closing shifts, Mr. Hill Mendoza and other aggrieved employees would complete their own closing tasks, clock out, and then gather in the restaurant's parking lot waiting to be released by a managerial employee. The purported reason for this was safety—Mr. Hill Mendoza and other aggrieved employees were explicitly told by the closing-shift supervisor to wait in the parking lot until the supervisor had confirmed all subordinate employees had coordinated their respective transportation home and the supervisor was ready to release them. This process could take ten (10) minutes or more per instance, time that Mr. Hill Mendoza and other aggrieved employees spent under COTTI FOODS's control and off the clock.

COTTI FOODS knew or should have known that as a result of these company-wide practices and/or policies, Mr. Hill Mendoza 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. COTTI FOODS also knew, or should have known, that it did not compensate Mr. Hill Mendoza and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Mr. Hill Mendoza 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. Hill Mendoza and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. COTTI FOODS's failure to pay Mr. Hill Mendoza and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, COTTI FOODS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, COTTI FOODS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, COTTI FOODS 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, COTTI FOODS failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Hill Mendoza 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 set forth above, due to COTTI FOODS's uniform practice of utilizing labor budgets, resultant understaffing, and a lack of meal period coverage, Mr. Hill Mendoza 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. And, as described above, COTTI FOODS's timekeeping system did not permit Mr. Hill Mendoza and other aggrieved employees to clock back in early when their meal periods were interrupted or cut short. In addition, Mr. Hill Mendoza and other aggrieved employees were required to remain under the control of COTTI FOODS and/or perform work off-the-clock after their shifts, including waiting to leave the restaurant premises or by assisting the following shift with their workload after clocking out.

Thus, COTTI FOODS 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, COTTI FOODS 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, COTTI FOODS regularly failed to pay at least minimum wages to Mr. Hill Mendoza 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. Hill Mendoza 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 periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break 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, COTTI FOODS 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. Hill Mendoza and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, COTTI FOODS failed to schedule meal periods, resulting in Mr. Hill Mendoza and/or other aggrieved employees waiting extended periods of time before taking meal periods due to the heavy workload. Furthermore, as described above, COTTI FOODS implemented an electronic timekeeping system that locked Mr. Hill Mendoza and other aggrieved employees out and prevented them from clocking in early before the end of their 30-minute meal period. As a result of COTTI FOODS's timekeeping system, Mr. Hill Mendoza and other aggrieved employees were prevented from accurately recording when they had to return early from a meal period so that they could be compensated for that time. Consequently, Mr. Hill Mendoza and/or other aggrieved employees performed work during meal periods for which they were not paid.

As a result, Mr. Hill Mendoza 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. Hill Mendoza's meal periods were cut short several times per week to take customer orders, due to a lack of coverage

resulting from having too few employees on duty to handle the workload.

In addition, COTTI FOODS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Hill Mendoza 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.

COTTI FOODS knew or should have known that as a result of its company-wide policies and/or practices, that Mr. Hill Mendoza and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. COTTI FOODS further knew or should have known that it did not pay Mr. Hill Mendoza and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, COTTI FOODS 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. Hill Mendoza and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that COTTI FOODS did pay other aggrieved employees for missed, late, and interrupted meal periods, COTTI FOODS did not pay other aggrieved employees at the correct rate of pay for premium wages because COTTI FOODS systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (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, COTTI FOODS regularly failed to authorize and permit Mr. Hill Mendoza 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, COTTI FOODS's company-wide practices, including utilizing labor budgets, resultant understaffing, and assigning of heavy workloads, resulted in a lack of rest period coverage and prevented Mr. Hill Mendoza and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. COTTI FOODS also failed to schedule rest periods, which, coupled with COTTI FOODS's failure to provide adequate rest period coverage, further led to Mr. Hill Mendoza and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, Mr. Hill Mendoza and other aggrieved employees were assigned drive-thru headsets and were expected to carry and keep them on while clocked in for their shifts, including during rest periods.

Furthermore, COTTI FOODS maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Hill Mendoza and other aggrieved employees remain on COTTI FOODS's premises during their rest periods. Upon information and belief, COTTI FOODS's company-wide on-premises rest period policy prevented Mr. Hill Mendoza 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. Hill Mendoza 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. Hill Mendoza was explicitly told by supervisors that regardless the length of shift, he was entitled to only one (1) rest period per shift. As a result, Mr. Hill Mendoza was not authorized and permitted to take second 10-minute rest periods when he worked shifts of six (6) or more hours. Other times, Mr. Hill Mendoza and other aggrieved employees had their rest periods interrupted, due to COTTI FOODS's understaffing and resultant lack of rest period coverage, which forced them to continue to take customers' orders through their drive-thru headsets.

COTTI FOODS 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. Because of this practice and/or policy, Mr. Hill Mendoza and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that COTTI FOODS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, COTTI FOODS did not pay other aggrieved employees at the correct rate of pay for premium wages because COTTI FOODS failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, COTTI FOODS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Hill Mendoza 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. COTTI FOODS has not provided Mr. Hill Mendoza 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, COTTI FOODS has knowingly and intentionally provided Mr. Hill Mendoza and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, COTTI FOODS issued uniform wage statements to Mr. Hill Mendoza and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, COTTI FOODS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

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

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 name and address of the legal entity that is the employer; 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), COTTI FOODS willfully failed to maintain accurate payroll records for Mr. Hill Mendoza 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, COTTI FOODS failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Hill Mendoza and other aggrieved employees, in violation of section 1198. Furthermore, in light of COTTI FOODS’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, COTTI FOODS kept no records of meal start and end times for second meal periods.

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

Mr. Hill Mendoza 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.

On information and belief, COTTI FOODS has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Hill Mendoza resigned from his employment on May 22, 2020, but COTTI FOODS failed to provide Mr. Hill Mendoza with his final wages within seventy-two (72) hours of his resignation. Instead, COTTI FOODS did not tender Mr. Hill Mendoza's final wages to him until the next regular pay cycle, June 11, 2020. Thus, COTTI FOODS failed to timely pay Mr. Hill Mendoza's owed wages within the requisite time limit, in violation of Labor Code section 202.

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

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C) – Failure to Pay Reporting Time Pay

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

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

During the relevant time period, COTTI FOODS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because COTTI FOODS failed to pay Mr.

Hill Mendoza and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule.

COTTI FOODS had a company-wide practice of sending employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay employees for half of their scheduled shift. For example, on occasion, Mr. Hill Mendoza would report to work, but would be sent home within 10 minutes by COTTI FOODS's management and was not paid anything for those days. Although Mr. Hill Mendoza and other aggrieved employees would report to work based on the schedule that COTTI provided to them, COTTI would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Hill Mendoza and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 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.*

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

COTTI FOODS did not provide Mr. Hill Mendoza 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. Hill Mendoza and other aggrieved employees engaged in duties in which the nature of the work required standing, COTTI FOODS denied them the

use of seats nearby during lulls in their work duties. Moreover, COTTI FOODS did not inform Mr. Hill Mendoza and other aggrieved employees of their rights to a seat or stool under California law.

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

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

During the relevant time period, COTTI FOODS failed to provide Mr. Hill Mendoza and other aggrieved employees with an adequate number of uniform shirts (t-shirts embroidered with the Wendy's logo) in relation to their scheduled shifts, which forced Mr. Hill Mendoza and other aggrieved employees to clean their uniform shirts frequently and incur expenses for doing so. For example, COTTI FOODS's written uniforms and appearance policy states that employees are "expected to arrive at work well groomed, clean and in uniform." Mr. Hill Mendoza was given just one (1) uniform shirt at the start of his employment, and yet was often scheduled to work four (4) days in a week. Since COTTI FOODS expected him to report to work with his uniform "clean and in good repair," he was required to wash his uniform shirt at least several times a week—much more frequently than he would otherwise do laundry. In addition, due to the nature of restaurant work, Mr. Hill Mendoza's uniform shirt would become stained and/or acquire an unpleasant odor, which made him disinclined to mix his uniform shirt in with his other clothing. As a result, Mr. Hill Mendoza usually washed his uniform shirt separately from his other clothes, increasing his overall laundry costs even more.

COTTI FOODS could have provided Mr. Hill Mendoza and other aggrieved employees with an adequate number of uniforms or access to a cleaning service, or reimbursed Mr. Hill Mendoza and other aggrieved employees for the cost of laundering their uniforms. Instead, COTTI FOODS passed these operating costs off onto Mr. Hill Mendoza and other aggrieved employees. At all relevant times, Mr. Hill Mendoza did not earn at least two (2) times the minimum wage. Thus, COTTI FOODS 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. Hill Mendoza and 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.

COTTI FOODS failed to provide Mr. Hill Mendoza and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C) on a company-wide basis. Specifically, COTTI FOODS failed to provide Mr. Hill Mendoza and other aggrieved employees with the rate(s) of pay and overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A). Instead, the wage theft forms COTTI FOODS provided to Mr. Hill Mendoza are blank and/or list "\$0.00" where wage information should be filled in.

COTTI FOODS's failure to provide Mr. Hill Mendoza and other aggrieved employees with written notice of basic information regarding their employment with COTTI FOODS is in violation of Labor Code section 2810.5. Mr. Hill Mendoza and other aggrieved employees are therefore entitled to recover civil 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." COTTI FOODS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Hill Mendoza's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Hill Mendoza 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. Hill Mendoza, 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 COTTI FOODS for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Hill Mendoza 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. Hill Mendoza's reasonable attempt to settle his dispute with COTTI FOODS prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform COTTI FOODS of Mr. Hill Mendoza's aforementioned grievances and the proposed remedies as detailed below, while affording COTTI FOODS a reasonable opportunity to satisfy Mr. Hill Mendoza's demands.

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

1. COTTI FOODS shall pay Mr. Hill Mendoza and all other aggrieved employees employed by COTTI FOODS at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. COTTI FOODS shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid reporting time pay.
3. COTTI FOODS shall conduct a survey or interview all current and former aggrieved employees in California who worked for COTTI FOODS in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for uniform maintenance expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. COTTI FOODS 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. COTTI FOODS 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. COTTI FOODS shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for COTTI FOODS's benefit, including, but not limited to, costs of uniform maintenance or laundering costs, as required by Labor Code section 2802.
6. COTTI FOODS shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.

7. COTTI FOODS shall provide Mr. Hill Mendoza and all aggrieved employees employed by COTTI FOODS at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. COTTI FOODS shall implement and provide suitable seating to all aggrieved employees.
9. COTTI FOODS 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).
10. COTTI FOODS 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.
11. COTTI FOODS shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 5-2001, section 20.

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

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

Best Regards,



Alexander Lima

Copy: COTTI FOODS CALIFORNIA, INC (via U.S. Certified Mail); COTTI FOODS CORPORATION (via U.S. Certified Mail); COTTI FOODS MIDWEST, INC. (via U.S. Certified Mail); COTTI FOODS PIZZA CALIFORNIA (via U.S. Certified Mail)

CERTIFIED MAIL®



7019 2280 0000 7398 5698

tone
LAW APC
ury Park East, Ste 1000
es, CA 90067

COTTI FOODS CALIFORNIA, INC.
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

COTTI FOODS CALIFORNIA, INC.
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688



9590 9402 5816 0034 8473 49

2. Article Number (Transfer from service label)

7019 2280 0000 7398 5698

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery over \$500
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.50
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

COTTI FOODS CALIFORNIA, INC.
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688

Postmark
Here

Mendoza v. Cotti
Foods California
Inc.

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

See Reverse for Instructions

7019 2280 0000 7398 5698

CERTIFIED MAIL



7019 2280 0000 7398 5681

tone

LAW APC

ury Park East, Ste 1000
ss, CA 90067



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

COTTI FOOD CORPORATION
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA



9590 9402 5816 0034 8473 56

2. Article Number (Transfer from service label)

7019 2280 0000 7398 5681

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

COTTI FOOD CORPORATION
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

COTTI FOOD CORPORATION
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688

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

See Reverse for Instructions

Postmark
Here

Mendoza v. Cotti
Food Corporation

7019 2280 0000 7398 5681

CERTIFIED MAIL®



7019 2280 0000 7398 5674

tone
LAW APC
ury Park East, Ste 1000
es, CA 90067



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

COTTI FOODS MIDWEST, INC.
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688



9590 9402 5816 0034 8473 63

2. Article Number (Transfer from service label)

7019 2280 0000 7398 5674

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery over \$500
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

COTTI FOODS MIDWEST, INC.
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 3.50
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

COTTI FOODS MIDWEST, INC.
Street and Apt. No., or PO Box No.
29801 SANTA MARGARITA PARKWAY
City, State, ZIP+4®
RANCHO SANTA MARGARITA, CA 92688

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

See Reverse for Instructions

Postmark
Here

Mendoza v. Cotti
Foods Midwest,
Inc.

7019 2280 0000 7398 5674

CERTIFIED MAIL



7019 2280 0000 7398 5667

tone

LAW APC

ury Park East, Ste 1000
s, CA 90067

COTTI FOODS PIZZA CALIFORNIA
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

COTTI FOODS PIZZA CALIFORNIA
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688



9590 9402 5816 0034 8473 70

2. Article Number (Transfer from service label)

7019 2280 0000 7398 5667

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 1.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

COTTI FOODS PIZZA CALIFORNIA

Street and Apt. No., or PO Box No.

29801 SANTA MARGARITA PARKWAY

City, State, ZIP+4®

RANCHO SANTA MARGARITA, CA 92688

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

See Reverse for Instructions

Postmark
Here

Mendoza v. Cotti
Foods Pizza
California

7019 2280 0000 7398 5667

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X ☐ Agent ☐ Addressee	
		B. Received by (Printed Name)	C. Date of Delivery
1. Article Addressed to: COTTI FOODS MIDWEST, INC. 29801 SANTA MARGARITA PARKWAY RANCHO SANTA MARGARITA, CA 92688		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
9590 9402 5816 0034 8473 63		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500) ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X ☐ Agent ☐ Addressee	
		B. Received by (Printed Name)	C. Date of Delivery
1. Article Addressed to: COTTI FOODS CALIFORNIA, INC. 29801 SANTA MARGARITA PARKWAY RANCHO SANTA MARGARITA, CA 92688		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
9590 9402 5816 0034 8473 49		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500) ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X ☐ Agent ☐ Addressee	
		B. Received by (Printed Name)	C. Date of Delivery
1. Article Addressed to: COTTI FOODS PIZZA CALIFORNIA 29801 SANTA MARGARITA PARKWAY RANCHO SANTA MARGARITA, CA 92688		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
9590 9402 5816 0034 8473 70		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500) ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X ☐ Agent ☐ Addressee	
		B. Received by (Printed Name)	C. Date of Delivery
1. Article Addressed to: COTTI FOOD CORPORATION 29801 SANTA MARGARITA PARKWAY RANCHO SANTA MARGARITA, CA		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
9590 9402 5816 0034 8473 56		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500) ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	

EXHIBIT “2”

DANIEL JONATHAN
310.712.8007 Direct
Daniel.Jonathan@capstonelawyers.com

May 6, 2021

VIA ONLINE SUBMISSION

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

Subject: *Berenice Aguirre v. Cotti Foods California, Inc., et al.*

Dear PAGA Administrator:

This office represents Berenice Aguirre in connection with her claims under the California Labor Code. Ms. Aguirre was an employee of COTTI FOODS CALIFORNIA, INC. and/or COTTI FOODS CORPORATION. For the purpose of this letter, Ms. Aguirre collectively refers to these entities as “COTTI FOODS.”

The employers may be contacted directly at the addresses below:

COTTI FOODS CALIFORNIA, INC.	COTTI FOODS CORPORATION
29801 SANTA MARGARITA PARKWAY	29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688	RANCHO SANTA MARGARITA, CA 92688

Ms. Aguirre 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”). Ms. Aguirre seeks relief on behalf of herself, the State of California, and other persons who are or were employed by COTTI FOODS 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.

COTTI FOODS employed Ms. Aguirre as an hourly paid, non-exempt employee from approximately June 2017 to June 2020. Ms. Aguirre worked for COTTI FOODS as a Crew Member and Key Holder at its Wendy’s restaurant located at 78030 Country Club Drive, Palm Desert, California 92211 (store #9787). During her employment, Ms. Aguirre typically worked seven (7) to eight (8) hours per day, five (5) days per week, and 30 to 40 hours per week, from 5:30 a.m. to 2:00 p.m. or 4:30 p.m. to 12:00 a.m. At the time Ms. Aguirre’s employment with COTTI FOODS ended, she earned approximately \$13.50 per hour. Her job duties included, without limitation, preparing food and cleaning the kitchen.

COTTI FOODS committed one or more of the following Labor Code violations against Ms. Aguirre, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

COTTI FOODS’s Company-Wide and Uniform Payroll and HR Practices

COTTI FOODS CALIFORNIA, INC. and COTTI FOODS CORPORATION are California corporations. On information and belief, the aforementioned companies are headquartered at 29801 Santa Margarita Parkway, Rancho Santa Margarita, California 92688. COTTI FOODS owns and operates approximately 49 Wendy’s fast-food restaurant locations in California. Upon information and belief, COTTI FOODS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Rancho Santa Margarita, California, for all non-exempt, hourly paid employees working for COTTI FOODS in California, including Ms. Aguirre and other aggrieved employees. At all relevant times, COTTI FOODS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Aguirre and other aggrieved employees, regardless of its location or position.

Upon information and belief, COTTI FOODS maintains a centralized Payroll department at its corporate headquarters in Rancho Santa Margarita, California, which processes payroll for all non-exempt, hourly paid employees working for COTTI FOODS in California, including Ms. Aguirre and other aggrieved employees. Further, COTTI FOODS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Aguirre and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, COTTI FOODS utilized the same methods and formulas when calculating wages due to Ms. Aguirre 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 for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

COTTI FOODS willfully failed to pay all overtime wages owed to Ms. Aguirre and other aggrieved employees. During the relevant time period, Ms. Aguirre and other aggrieved employees were not

¹ These facts, theories, and claims are based on Ms. Aguirre’s experience and counsel’s review of those records currently available relating to Ms. Aguirre’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, Ms. Aguirre reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

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, on information and belief, COTTI FOODS had, and continues to have, a company-wide policy and/or practice of 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 lack of meal period coverage, other aggrieved employees were not always afforded 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, other aggrieved employees had meal periods cut short or interrupted because the restaurant was shorthanded. COTTI FOODS did not pay other aggrieved employees for the time they continued to perform tasks during meal periods.

Moreover, COTTI FOODS had a practice of failing to schedule meal periods, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods. Also, COTTI FOODS's company-wide timekeeping system further prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked other aggrieved employees out once they clocked out for a meal period and would not permit them to clock back in from a meal before 30 minutes elapsed. Consequently, other aggrieved employees performed work during meal periods for which they were not paid.

Second, COTTI FOODS's policy and/or practice of understaffing while assigning heavy workloads also led to Ms. Aguirre and other aggrieved employees performing work off-the-clock after their shifts in order to complete their assigned tasks. For example, every time she worked a night shift, Ms. Aguirre would clock out and continue working for approximately fifteen (15) minutes after her shift to clean and restock the kitchen in preparation for the morning shift.

Third, COTTI FOODS's company-wide closing procedures required other aggrieved employees remain under the control of COTTI FOODS after clocking out for their shifts, but other aggrieved employees were not paid for this time. For example, on closing shifts, other aggrieved employees would complete their own closing tasks, clock out, and then gather in the restaurant's parking lot waiting to be released by a managerial employee. The purported reason for this was safety—other aggrieved employees were explicitly told by the closing-shift supervisor to wait in the parking lot until the supervisor had confirmed all subordinate employees had coordinated their respective transportation home and the supervisor was ready to release them. This process could take ten (10) minutes or more per instance, time that other aggrieved employees spent under COTTI FOODS's control and off the clock.

COTTI FOODS knew or should have known that as a result of these company-wide practices and/or policies, Ms. Aguirre and other aggrieved employees were working during their meal periods and/or after their shifts, and were suffered or permitted to perform work for which they were not paid. COTTI FOODS also knew, or should have known, that it did not compensate Ms. Aguirre and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Ms. Aguirre 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, Ms. Aguirre and other aggrieved employees were not paid overtime wages for all of

the overtime hours they actually worked. COTTI FOODS's failure to pay Ms. Aguirre and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, COTTI FOODS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, COTTI FOODS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, COTTI FOODS 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, COTTI FOODS failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. Aguirre 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. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As set forth above, due to COTTI FOODS's uniform practice of utilizing labor budgets, resultant understaffing, and a lack of meal period coverage, other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. And, as described above, COTTI FOODS's timekeeping system did not permit other aggrieved employees to clock back in early when their meal periods were interrupted or cut short. In addition, Ms. Aguirre and other aggrieved employees were required to remain under the control of COTTI FOODS and/or perform work off-the-clock after their shifts, including waiting to leave the restaurant premises and/or preparing the kitchen for the following shift after clocking out.

Thus, COTTI FOODS did not pay at least minimum wages for all hours worked by Ms. Aguirre and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, COTTI FOODS 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, COTTI FOODS regularly failed to pay at least minimum wages to Ms. Aguirre 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. Ms. Aguirre and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break 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, COTTI FOODS 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 other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, COTTI FOODS failed to schedule meal periods, resulting in other aggrieved employees waiting extended periods of time before taking meal periods due to the heavy workload. Furthermore, as described above, COTTI FOODS implemented an electronic timekeeping system that locked other aggrieved employees out and prevented them from clocking in early before the end of their 30-minute meal period. As a result of COTTI FOODS's timekeeping system, other aggrieved employees were prevented from accurately recording when they had to return early from a meal period so that they could be compensated for that time. Consequently, other aggrieved employees performed work during meal periods for which they were not paid.

As a result, 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, other aggrieved employees' meal periods were cut short to take customer orders, due to a lack of coverage resulting from having too few employees on duty to handle the workload.

In addition, COTTI FOODS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Aguirre 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.

COTTI FOODS knew or should have known that as a result of its company-wide policies and/or practices, that Ms. Aguirre and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. COTTI FOODS further knew or should have known that it did not pay Ms. Aguirre and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

Furthermore, COTTI FOODS 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, Ms. Aguirre and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that COTTI FOODS did pay other aggrieved employees for missed, late, and interrupted meal periods, COTTI FOODS did not pay other aggrieved employees at the correct rate of pay for premiums because COTTI FOODS systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (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, COTTI FOODS regularly failed to authorize and permit Ms. Aguirre 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, COTTI FOODS's company-wide practices, including utilizing labor budgets, resultant understaffing, and assigning of heavy workloads, resulted in a lack of rest period coverage and prevented Ms. Aguirre and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. COTTI FOODS also failed to schedule rest periods, which, coupled with COTTI FOODS's failure to provide adequate rest period coverage, further led to Ms. Aguirre and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, other aggrieved employees were assigned drive-thru headsets and were expected to carry and keep them on while clocked in for their shifts, including during rest periods.

Furthermore, COTTI FOODS maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Aguirre and other aggrieved employees remain on COTTI FOODS's premises during their rest periods. Because Ms. Aguirre and other aggrieved employees

were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, COTTI FOODS effectively maintained control over Ms. Aguirre and other aggrieved employees during rest periods.

As a result, Ms. Aguirre 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, Ms. Aguirre did not receive any rest periods while working night shifts; and approximately three (3) times per week during day shifts, she would not be permitted to take one of the rest periods to which she was entitled.

COTTI FOODS 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. Because of this practice and/or policy, Ms. Aguirre and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that COTTI FOODS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, COTTI FOODS did not pay other aggrieved employees at the correct rate of pay for premiums because COTTI FOODS failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

Because COTTI FOODS did not record the time Ms. Aguirre and other aggrieved employees spent working off-the-clock, COTTI FOODS did not list the correct amount of gross wages and net wages

earned by Ms. Aguirre and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, COTTI FOODS failed to accurately list the total number of hours worked by Ms. Aguirre 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).

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

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 her or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; 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), COTTI FOODS willfully failed to maintain accurate payroll records for Ms. Aguirre 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, COTTI FOODS failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Aguirre and other aggrieved employees, in violation of section 1198. Furthermore, in light of COTTI FOODS's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, COTTI FOODS kept no records of meal start and end times for second meal periods.

Because COTTI FOODS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Aguirre 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, Ms. Aguirre 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.

Ms. Aguirre 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, COTTI FOODS failed to pay Ms. Aguirre and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Ms. Aguirre 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 her or her employment, her 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 her or her intention to quit, in which case the employee is entitled to her or her wages at the time of quitting.

On information and belief, COTTI FOODS has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. In addition, COTTI FOODS willfully failed to pay Ms. Aguirre and other aggrieved employees who are no longer employed by COTTI FOODS all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving COTTI FOODS's employ.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C) – Failure to Pay Reporting Time Pay

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

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

During the relevant time period, COTTI FOODS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because COTTI FOODS failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule.

COTTI FOODS had a company-wide practice of sending employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay employees for half of their scheduled shift. Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 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 her 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 she or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

COTTI FOODS’s California restaurant locations are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Ms. Aguirre and other aggrieved employees during lulls in operation. COTTI FOODS could provide Ms. Aguirre and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Ms. Aguirre and other aggrieved employees to stand throughout the day.

COTTI FOODS did not provide Ms. Aguirre 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 Ms. Aguirre and other aggrieved employees engaged in duties in which the nature of the work required standing, COTTI FOODS denied them the use of seats nearby during lulls in their work duties. Moreover, COTTI FOODS did not inform Ms. Aguirre and other aggrieved employees of their rights to a seat or stool under California law.

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

Ms. Aguirre and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring COTTI FOODS 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 her 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.”

During the relevant time period, COTTI FOODS failed to provide other aggrieved employees with an adequate number of uniform shirts (t-shirts embroidered with the Wendy’s logo) in relation to their scheduled shifts, which forced other aggrieved employees to clean their uniform shirts frequently and incur expenses for doing so.

COTTI FOODS could have provided other aggrieved employees with an adequate number of uniforms or access to a cleaning service, or reimbursed other aggrieved employees for the cost of

laundering their uniforms. Instead, COTTI FOODS passed these operating costs off onto other aggrieved employees.

Thus, COTTI FOODS 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. 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.

COTTI FOODS failed to provide other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C) on a company-wide basis. Specifically, COTTI FOODS failed to provide other aggrieved employees with the rate(s) of pay and overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A). Instead, the wage theft forms COTTI FOODS provided to other aggrieved employees are blank and/or list "\$0.00" where wage information should be filled in.

COTTI FOODS's failure to provide other aggrieved employees with written notice of basic information regarding their employment with COTTI FOODS is in violation of Labor Code section 2810.5. 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).

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." COTTI FOODS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Aguirre's and other aggrieved employees' rights by violating various sections of

the California Labor Code.

Accordingly, Ms. Aguirre seeks the remedies set forth in Labor Code section 558 for herself, 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, Ms. Aguirre, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against COTTI FOODS for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

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

Best Regards,

A handwritten signature in dark ink, appearing to read 'Daniel Jonathan', with a stylized flourish at the end.

Daniel Jonathan

Copy: COTTI FOODS CALIFORNIA, INC (via U.S. Certified Mail); COTTI FOODS CORPORATION (via U.S. Certified Mail)

CERTIFIED MAIL®



7020 1290 0001 8879 3795

tone

LAW APC

ury Park East, Ste 1000
s, CA 90067

COTTI FOODS CALIFORNIA, INC.
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

COTTI FOODS CALIFORNIA, INC.
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688



9590 9403 0424 5163 3671 85

2. Article Number (Transfer from service label)

7020 1290 0001 8879 3795

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.60

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.85
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

Street and Apt. No., or Box No.

City, State, ZIP+4®

COTTI FOODS CALIFORNIA, INC.

29801 SANTA MARGARITA PARKWAY

RANCHO SANTA MARGARITA, CA 92688

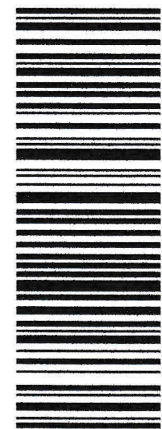
Postmark
Here

Aguirre v. Cotti
Food's California
Inc.

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

See Reverse for Instructions

CERTIFIED MAIL



7020 1290 0001 8879 3801

one
LAW
APC
Park East, Ste 1000
CA 90067

COTTI FOODS CORPORATION
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

COTTI FOODS CORPORATION
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688



9590 9403 0424 5163 3670 00

2. Article Number (Transfer from service label)

7020 1290 0001 8879 3801

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? If YES, enter delivery address below:

- ☐ Yes
- ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
\$ 3.60
Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$ 2.85
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage
\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

COTTI FOODS CORPORATION

Street and Apt. No., P.O. Box or

29801 SANTA MARGARITA PARKWAY

City, State, ZIP+4®

RANCHO SANTA MARGARITA, CA 92688

Postmark
Here

Aguirre v. Cotti
Foods Corporation

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

See Reverse for Instructions

7020 1290 0001 8879 3801

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

COTTI FOODS CALIFORNIA, INC.
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688



9590 9403 0424 5163 3671 85

2. Article Number (Transfer from service label)

7020 1290 0001 8879 3795

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

COTTI FOODS CORPORATION
29801 SANTA MARGARITA PARKWAY
RANCHO SANTA MARGARITA, CA 92688



9590 9403 0424 5163 3670 00

2. Article Number (Transfer from service label)

7020 1290 0001 8879 3801

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **July 14, 2021**, I served the document described as: **FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Aaron F. Olsen (SBN 224947)
aolsen@fisherphillips.com
Darcey M. Groden (SBN 296492)
dgroden@fisherphillips.com
FISHER & PHILLIPS LLP
4747 Executive Drive, Suite 1000
San Diego, CA 92121
Tel.: (858) 597-9600
Fax: (858) 597-9601

Attorneys for Defendants
COTTI FOODS CALIFORNIA, INC. and
COTTI FOODS CORPORATION

☒ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

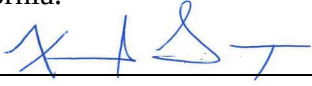
☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **July 14, 2021** at Los Angeles, California.

Xochitl Tapia

Type/Print Name



Signature