

BY FAX

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rsanmiguel
By _____, Deputy
Case Number:
34-2020-00282730

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and Carlos Avila

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

TONY DOYLE and CARLOS AVILA, as
aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA"), on
behalf of the State of California and other
aggrieved employees,

Plaintiffs,

vs.

RED LOBSTER RESTAURANTS LLC, a
Delaware limited liability company; RED
LOBSTER HOSPITALITY LLC, a
Delaware limited liability company; RED
LOBSTER MANAGEMENT LLC, a
Delaware limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 34-2020-00282730-CU-OE-GDS

Honorable Gerrit W. Wood, Dept. 31

**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

1 Plaintiffs Tony Doyle and Carlos Avila, as aggrieved employees and on behalf of the
2 State of California and all other aggrieved employees, allege as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiffs, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on May 20, 2020, until judgment (“non-party Aggrieved Employees”).
14 Plaintiffs’ share of civil penalties sought in this action does not exceed \$75,000.

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

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional
22 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
23 in this action given that the State of California, as the real party in interest in this action, is not
24 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
25 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
26 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
27 in this action, and that diversity jurisdiction cannot be established when Plaintiffs’ share of the
28 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 Doyle 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 Tony Doyle is a resident of Sacramento, in Sacramento County, California. Defendants employed Plaintiff Doyle as an hourly paid, non-exempt Cook from approximately May 2019 to March 2020. Plaintiff Doyle worked for Defendants at their Sacramento, California restaurant located at 1400 Howe Ave, Sacramento, California, 95825. During his employment, Plaintiff Doyle typically worked 6-8 hours per day, 4-5 days per week, and 20-40 hours per week. At the time Plaintiff Doyle's employment with Defendants ended, he earned approximately \$14.00 per hour. His job duties included, without limitation, preparing food, baking, assembling meals, stocking food inventory, and cleaning the kitchen.

7. Plaintiff Carlos Avila is a resident of San Diego, in San Diego County, California. Defendants employed Plaintiff Avila as an hourly paid, non-exempt Restaurant Manager, Kitchen Manager, Front of House Manager, and Beverage and Hospitality manger from approximately July 2016 to February 2021. Plaintiff Avila worked for Defendants at their restaurants located in Garden Grove, Chula Vista, and La Mesa, California. During his employment, Plaintiff Avila typically worked eight (8) hours or more per day, five (5) days per week, and approximately 40-50 hours per week. At the time Plaintiff Avila's employment with Defendants ended, he earned approximately \$22.70 per hour. His job duties included, without limitation, hiring and supervising servers, handling customer service issues, and supporting employees to ensure operation and production efficiency.

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

1 their 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 a "Dispute Resolution
4 Process Acknowledgement" ("Arbitration Agreement") during the onboarding process, which
5 had to be reviewed and signed immediately. In fact, upon information and belief, this
6 Arbitration Agreement was one of several documents presented to new employees for
7 signature during the orientation process, including the Cash Handling Service Check Coupon
8 Procedures, CA Meal and Rest Periods policy, and CA Paid Family Leave policy, among
9 other documents. Also, employees did not have a meaningful opportunity to negotiate the
10 terms of the Arbitration Agreement. Rather, it was provided to Defendants' employees for
11 them to sign on a take-it or leave-it basis at the time they were hired, along with all of the
12 other on-boarding documents. Further, Defendants did not set forth in the agreement or
13 otherwise provide employees with the rules which will govern the arbitration, instead forcing
14 employees to seek this information out on their own ("The AAA's Employment Arbitration
15 Rules and Mediation Procedures are available online at www.adr.org under the heading 'Rules
16 & Procedures' or can be found using an internet search engine (for example, Google) by
17 search for 'AAA Employment Arbitration Rules and Mediation Procedures.'").

18 9. RED LOBSTER RESTAURANTS LLC was and is, upon information and
19 belief, a Delaware limited liability company, and at all times hereinafter mentioned, an
20 employer whose employees are engaged throughout this county, the State of California, or the
21 various states of the United States of America.

22 10. RED LOBSTER HOSPITALITY LLC was and is, upon information and belief,
23 a Delaware limited liability company, and at all times hereinafter mentioned, an employer
24 whose employees are engaged throughout this county, the State of California, or the various
25 states of the United States of America.

26 11. RED LOBSTER MANAGEMENT LLC was and is, upon information and
27 belief, a Delaware limited liability company, and at all times hereinafter mentioned, an
28 employer whose employees are engaged throughout this county, the State of California, or the

1 various states of the United States of America.

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

6 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
7 were the partners, agents, owners, or managers of RED LOBSTER RESTAURANTS LLC;
8 RED LOBSTER HOSPITALITY LLC; and RED LOBSTER MANAGEMENT LLC, at all
9 relevant times.

10 14. Plaintiffs are informed and believe, and thereon allege, that each and all of the
11 acts and omissions alleged herein was performed by, or is attributable to, RED LOBSTER
12 RESTAURANTS LLC; RED LOBSTER HOSPITALITY LLC; RED LOBSTER
13 MANAGEMENT LLC; and/or DOES 1 through 10 (collectively, “Defendants” or “RED
14 LOBSTER”), each acting as the agent, employee, alter ego, and/or joint venturer of, or
15 working in concert with, each of the other co-Defendants and was acting within the course and
16 scope of such agency, employment, joint venture, or concerted activity with legal authority to
17 act on the others’ behalf. The acts of any and all Defendants were in accordance with, and
18 represent, the official policy of Defendants.

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

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

26 17. Under California law, Defendants are jointly and severally liable as employers
27 for the violations alleged herein because they have each exercised sufficient control over the
28 wages, hours, working conditions, and employment status of Plaintiffs and other non-party

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

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

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

employment.

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

20. RED LOBSTER RESTAURANTS LLC; RED LOBSTER HOSPITALITY LLC; and RED LOBSTER MANAGEMENT LLC; and DOES 1 through 10 are therefore alter egos of each other.

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

22. Plaintiffs further allege, upon information and belief, that Defendants RED LOBSTER RESTAURANTS LLC; RED LOBSTER HOSPITALITY LLC; and RED LOBSTER MANAGEMENT LLC are alter egos of each other for the following reasons:

- (a) On the California Secretary of State's website (<https://businesssearch.sos.ca.gov/>) and the Florida Secretary of State's website (<https://dos.myflorida.com/sunbiz/search/>), RED LOBSTER RESTAURANTS LLC; RED LOBSTER HOSPITALITY LLC; and RED LOBSTER MANAGEMENT LLC share the same entity address and mailing address, "450 S. ORANGE AVE, STE. 800, ORLANDO, FL 32801;"
- (b) According to information filed with the California Secretary of State and Florida Secretary of State, RED LOBSTER RESTAURANTS LLC; RED LOBSTER HOSPITALITY LLC; and RED LOBSTER MANAGEMENT LLC, share the same officers and/or managers, including Kim Lopdrup, Horace Dawson III and Norma Rivera;
- (c) On information and belief, RED LOBSTER RESTAURANTS LLC; RED LOBSTER HOSPITALITY LLC; and RED LOBSTER MANAGEMENT LLC share the same agent for service of process,

1 “CORPORATE CREATIONS NETWORK INC.,” and

2 (d) On information and belief, RED LOBSTER RESTAURANTS LLC;
3 RED LOBSTER HOSPITALITY LLC; and RED LOBSTER
4 MANAGEMENT LLC utilize the same standardized employment forms
5 and issue the same employment policies.

6 **PAGA REPRESENTATIVE ALLEGATIONS**

7 23. Defendants own and operate the world’s largest chain of seafood restaurants,
8 with over 700 restaurant locations in the United States, including approximately 43 Red
9 Lobster restaurant locations in California. Upon information and belief, Defendants maintain
10 a single, centralized Human Resources (“HR”) department at their corporate headquarters in
11 Orlando, Florida, which is responsible for recruiting and hiring of new employees, and
12 communicating and implementing Defendants’ company-wide policies, including timekeeping
13 policies and meal and rest period policies, to employees throughout California.

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

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

1 employment ends.

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

4 27. Plaintiffs are informed and believe, and thereon allege, that at all times herein
5 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
6 and advisors knowledgeable about California labor and wage law, employment and personnel
7 practices, and about the requirements of California law.

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

11 29. 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 receive certain wages for overtime compensation and that they were not receiving certain
14 wages for overtime compensation.

15 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known that Plaintiff Avila and other non-party Aggrieved Employees were
17 entitled to be paid at a regular rate of pay, and corresponding overtime rates of pay, that
18 included as eligible income all remuneration required by law, including but not limited to, all
19 income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
20 compensation, but failed to include all forms of remuneration in calculating the regular rate of
21 pay for Plaintiff Avila and other non-party Aggrieved Employees.

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

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

1 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
2 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
3 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
4 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and
5 other non-party Aggrieved Employees were not provided with all meal periods or payment of
6 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
7 uninterrupted, thirty (30) minute meal period.

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

17 34. 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 receive complete and accurate wage statements in accordance with California law. In
20 violation of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees
21 were not provided complete and accurate wage statements.

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

26 36. 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 timely payment of all wages earned upon termination of employment. In violation of the

1 California Labor Code, Plaintiffs and other non-party Aggrieved Employees did not receive
2 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
3 and/or meal and rest period premiums, within permissible time periods.

4 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
5 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
6 timely payment of wages during their employment. In violation of the California Labor Code,
7 Plaintiffs and other non-party Aggrieved Employees did not receive payment of all wages,
8 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
9 premiums, within permissible time periods.

10 38. Plaintiffs are informed and believes, and thereon allege, that Defendants knew
11 or should have known that they were prohibited from issuing instruments for the payment of
12 wages that were not payable in cash on demand, without discount and with authorization, but
13 did so, in violation of the California Labor Code.

14 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
16 the portion of wages previously paid and subsequently unlawfully deducted by Defendants.

17 40. 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 payment of wages as designated by statute. In violation of the California Labor Code,
20 Defendants secretly paid Plaintiffs and other non-party Aggrieved Employees lower wages
21 than required by statute while purporting to pay them proper wages.

22 41. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
24 suitable seating and/or were entitled to sit when it did not interfere with the performance of
25 their duties and also have seats nearby to use during a lull in tasks that do require moving
26 about or standing. In violation of the California Labor Code and applicable IWC Wage Order,
27 Defendants failed to provide Plaintiff Doyle and other non-party Aggrieved Employees
28 suitable seating.

1 42. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiff Avila and other non-party Aggrieved Employees were
3 entitled to receive reimbursement for all business-related expenses and costs they incurred
4 during the course and scope of their employment and that they did not receive reimbursement
5 of applicable business-related expenses and costs incurred.

6 43. Plaintiffs are informed and believe, and thereon allege, that at all times herein
7 mentioned, Defendants knew or should have known that Defendants had a duty to provide
8 Plaintiff Avila and other non-party Aggrieved Employees with written notice of the material
9 terms of their employment with Defendants as required by the California Wage Theft
10 Prevention Act, but failed to do so.

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

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

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

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

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

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

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

- 25 (a) The aggrieved employee or representative shall give written notice by
26 online filing to the LWDA and by certified mail to the employer of the
27 specific provisions of the California Labor Code alleged to have been
28 violated (other than those listed in Section 2699.5), including the facts

1 and theories to support the alleged violation.

2 (b) An aggrieved employee's notice filed with the LWDA pursuant to
3 2699.3(c) and any employer response to that notice shall be
4 accompanied by a filing fee of seventy-five dollars (\$75).

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

13 50. On May 20, 2020, Plaintiff Doyle provided written notice by online filing to the
14 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
15 Code alleged to have been violated, including facts and theories to support the alleged
16 violations, in accordance with California Labor Code section 2699.3. Plaintiff Doyle's written
17 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
18 LWDA PAGA Administrator has confirmed receipt of Plaintiff Doyle's written notice and
19 assigned Plaintiff Doyle PAGA Case Number LWDA-CM-787308-20. A true and correct
20 copy of Plaintiff Doyle's written notice to the LWDA and Defendants dated May 20, 2020, is
21 attached hereto as "Exhibit 1."

22 51. On December 10, 2021, Plaintiff Avila provided written notice by online filing
23 to the LWDA and by certified mail to Defendants of the specific provisions of the California
24 Labor Code alleged to have been violated, including facts and theories to support the alleged
25 violations, in accordance with California Labor Code section 2699.3. Plaintiff Avila's written
26 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
27 LWDA PAGA Administrator has confirmed receipt of Plaintiff Avila's written notice and
28 assigned Plaintiff Avila PAGA Case Number LWDA-CM-857150-21. A true and correct

1 copy of Plaintiff Avila's written notice to the LWDA and Defendants dated December 10,
2 2021, is attached hereto as "Exhibit 2."

3 52. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
4 sent their initial written notices described above, and the LWDA has not responded that it
5 intends to investigate Plaintiffs' claims, and Defendants have not cured the violations.

6 53. Thus, Plaintiffs have satisfied the administrative prerequisites under California
7 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
8 violations of California Labor Code sections 201, 202,, 204, 212, 213, 221, 223, 224, 226(a),
9 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

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

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

1 above.

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

5 57. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
6 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as
7 private attorneys general, seek assessment and collection of civil penalties for themselves, all
8 other non-party Aggrieved Employees, and the State of California against Defendants for
9 violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a),
10 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

11 **FIRST CAUSE OF ACTION**

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

13 **(Against all Defendants)**

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

16 59. California Labor Code §§ 2698, *et seq.* (“PAGA”) permit Plaintiffs to recover
17 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
18 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 212, 213, 221,
19 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code
20 section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties
21 for violations of those Labor Code sections not found in section 2699.5, including sections
22 516, 1182.12, and 2810.5.

23 60. 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 and 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 and
28 failure to properly calculate the overtime rates paid to Plaintiff Avila

- 1 and other non-party Aggrieved Employees, as set forth below;
- 2 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
- 3 the applicable IWC Wage Order for Defendants' failure to compensate
- 4 Plaintiffs and other non-party Aggrieved Employees with at least
- 5 minimum wages for all hours worked, as set forth below;
- 6 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
- 7 applicable IWC Wage Order for Defendants' failure to provide
- 8 Plaintiffs and other non-party Aggrieved Employees with meal periods,
- 9 as set forth below;
- 10 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
- 11 applicable IWC Wage Order for Defendants' failure to authorize and
- 12 permit Plaintiffs and other non-party Aggrieved Employees to take rest
- 13 periods, as set forth below;
- 14 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
- 15 IWC Wage Order for failure to provide accurate and complete wage
- 16 statements to Plaintiffs and other non-party Aggrieved Employees, as
- 17 set forth below;
- 18 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
- 19 IWC Wage Order for failure to maintain payroll records, as set forth
- 20 below;
- 21 (g) Violation of Labor Code section 204 for failure to pay all earned wages
- 22 during employment, as set forth below;
- 23 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
- 24 earned wages upon termination, as set forth below;
- 25 (i) Violation of Labor Code sections 212 and 213 for issuing instruments
- 26 for the payment of wages that were not payable in cash on demand,
- 27 without discount, and with prior authorization, as set forth below;
- 28 (j) Violation of Labor Code sections 221 and 224 for unlawfully deducting

a portion of wages previously paid to Plaintiffs and other non-party Aggrieved Employees, as set forth below;

- (k) Violation of Labor Code section 223 for secretly paying Plaintiffs and other non-party Aggrieved Employees lower wages than required by statute, while purporting to pay the proper wages, as set forth below;
- (l) Violation of Labor Code section 1198 for failing to provide suitable seating to Plaintiff Doyle and other non-party Aggrieved Employees, as set forth below;
- (m) Violation of Labor Code section 2802 for failure to reimburse Plaintiff Avila and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and
- (n) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff Avila's and other non-party Aggrieved Employees' employment with Defendants, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

61. 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.”

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

63. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and other non-party Aggrieved Employees working more than

1 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
2 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
3 (40) hours in a workweek.

4 64. The applicable IWC Wage Order further provides that Defendants are and were
5 required to pay Plaintiffs and other non-party Aggrieved Employees working more than
6 twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate
7 of pay. An employee's regular rate of pay includes all remuneration for employment paid to,
8 or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

9 65. California Labor Code section 510 codifies the right to overtime compensation
10 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
11 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
12 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
13 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
14 in a day on the seventh (7th) day of work.

15 66. During the relevant time period, Defendants willfully failed to pay all overtime
16 wages owed to Plaintiffs and other non-party Aggrieved Employees. During the relevant time
17 period, Plaintiffs and other non-party Aggrieved Employees were not paid overtime premiums
18 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
19 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
20 not recorded.

21 67. First, during the relevant time period, Defendants had, and continue to have, a
22 company-wide policy and/or practice of discouraging and impeding Plaintiffs and other non-
23 party Aggrieved Employees from recording hours worked that were outside of their scheduled
24 shifts, in order to limit the amount of overtime employees could accrue. On information and
25 belief, this limitation on overtime accrual was based on a company-wide policy of staffing
26 restaurant locations strictly based on the labor hours or labor budget set by corporate. This
27 policy of limiting overtime, coupled with Defendants' understaffing policy and assignment of
28 heavy workloads, led Plaintiffs and other non-party Aggrieved Employees to work off-the-

1 clock before and after their scheduled shift times, but they were not provided a means by
2 Defendants to account for this time. For example, Defendants would require Plaintiff Avila to
3 perform pre-shift opening tasks, such as performing an outdoor inspection of the restaurant
4 and parking lot, turning on all of the lights, unlocking all of the doors, and disarming the
5 restaurant alarm, before being able to clock in for his shift. In addition, Defendants'
6 management would also require Plaintiff Avila to perform post-shift closing responsibilities
7 after clocking out at the end of his shifts, including turning off all of the lights, conducting a
8 final walk-through of the restaurant, locking all of the doors, and activating the restaurant
9 alarm.

10 68. Moreover, Plaintiff Avila and other non-party Aggrieved Employees were
11 required to respond to phone communications from management and complete other work-
12 related tasks on their days off. For example, at least three (3) times a week, Plaintiff Avila
13 was called by Defendants' management on his day off to discuss the restaurant's scheduling
14 or inventory needs, typically taking 10-15 minutes per instance. Further, also on his off-days
15 or outside scheduled shifts, Plaintiff Avila was required to complete tasks such as preparing
16 staff schedules or picking up food and beverage supplies from Defendants' other restaurant
17 locations.

18 69. Additionally, Defendants required Plaintiffs and other non-party Aggrieved
19 Employees to complete online training modules from home, on their off days, or during their
20 unpaid meal periods, but did not compensate them for this time. For example, Plaintiff Doyle
21 was asked by management on at least two occasions to complete mandatory online trainings
22 after he had clocked out. As another example, on at least 10-15 occasions, Plaintiff Avila
23 spent approximately 20-30 minutes completing Defendants' requisite online training modules
24 at home, but was not paid for this time. Furthermore, Defendants required Plaintiff Avila and
25 other non-party Aggrieved Employees to attend mandatory meetings held at Defendants' other
26 restaurant locations, but did not compensate them for their time spent attending and traveling
27 to and from these meetings. At all times, Plaintiffs remained under the control of Defendants.
28 Thus, Defendants failed to track this time spent working before and after scheduled shifts, and

1 Plaintiffs and other non-party Aggrieved Employees received no compensation for this time.

2 70. Second, Defendants had a company-wide security policy requiring employees
3 to enter and leave the restaurant premises in pairs. Before clocking in at the start of their
4 shifts, Plaintiff Avila and other non-party Aggrieved Employees were required to wait for at
5 least one other employee to arrive to the restaurant premises or complete his or her opening
6 duties before they could enter the restaurant's premises and clock-in. Also, after clocking out
7 at the end of their shifts, Plaintiff Avila and other non-party Aggrieved Employees were
8 required to wait for at least one other employee to complete his or her closing duties before
9 they could leave Defendants' premises. For example, Plaintiff Avila would arrive to work at
10 his scheduled shift start-time and wait for up to 10-15 minutes off-the-clock for another
11 employee to arrive to the restaurant's premises, before he was permitted to enter the
12 restaurant. As a result of this security policy, Plaintiff Avila and other non-party Aggrieved
13 Employees were subject to Defendants' control before they had clocked in and/or after they
14 had clocked out for their shifts, but were not compensated for this time.

15 71. Third, Defendants had, and continue to have, a company-wide policy and/or
16 practice of strictly staffing their restaurant locations based on the labor hours allocated by
17 each restaurant's labor or payroll budget, which has resulted in and continues to result in
18 chronic understaffing and a lack of adequate meal period coverage, because there were too
19 few employees on duty to handle the workload and attend to customers. As a result of this
20 inadequate meal period coverage, Plaintiffs and other non-party Aggrieved Employees worked
21 through meal periods or had their meal periods interrupted or cut short because there were not
22 enough employees on duty to meet customer demands. For example, Plaintiff Doyle's unpaid
23 meal periods were interrupted at least twice per week by Defendants' management assignment
24 of tasks to him during his meal periods. Moreover, Defendants had a practice of failing to
25 schedule meal periods and/or adhere to a schedule for meal periods, which further caused
26 Plaintiffs and other non-party Aggrieved Employees to not be relieved of their duties for
27 compliant meal periods. Consequently, Plaintiffs and other non-party Aggrieved Employees
28 were required to work through and/or had their unpaid meal periods interrupted in order to

1 complete their assigned duties and handle customer demand, time for which they were not
2 paid.

3 72. In conjunction with understaffing their restaurants, Defendants had a
4 requirement that a managerial employee be present on the floor at all times and prohibited
5 managers from leaving the premises unless another manager was also on duty. At the same
6 time, the labor budgets Defendants implemented did not always allow for more than one
7 manager to be on the schedule at all times, resulting in a lack of meal period coverage for
8 managerial employees. Moreover, Defendants had a practice of failing to adhere to a schedule
9 for managerial employees' meal periods. As a result, Plaintiff Avila and other non-party
10 Aggrieved Employees were sometimes the only managers on duty, and were expected to
11 supervise the restaurant and respond to customer complaints at all times. Because managerial
12 employees were effectively prohibited from leaving Defendants' premises for meal periods
13 without coverage, and because there were too few employees and other managers on duty to
14 handle the workload and attend to customers, Plaintiff Avila and other non-party Aggrieved
15 Employees were denied uninterrupted 30-minute meal periods, and were required to work
16 through and/or to return early from meal periods. For example, Plaintiff Avila's meal periods
17 were interrupted 2-3 times per week to resolve issues for employees.

18 73. Moreover, Defendants had, and continue to have, a policy and/or practice of
19 requiring that Plaintiff Avila and other non-party Aggrieved Employees carry a company-
20 issued radio at all times to respond to requests from management and other employees.
21 Defendants' management and other working employees contacted Plaintiff Avila and other
22 non-party Aggrieved Employees on their radios and/or personal mobile phones during unpaid
23 meal periods to instruct them to complete tasks and assist other working employees. For
24 example, Plaintiff Avila received requests from supervisors or co-workers on his company-
25 issued radio and/or personal mobile phone during unpaid meal periods and would cut his meal
26 periods short and/or work off-the-clock to comply with these requests. Defendants knew or
27 should have known that Plaintiff Avila and other non-party Aggrieved Employees were being
28 made to respond to management and/or other working employees and complete tasks while

1 off-the-clock in order to meet Defendants' expectations, but failed to compensate them for this
2 off-the-clock work.

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

16 75. Defendants knew or should have known that, as a result of these company-wide
17 practices and/or policies, Plaintiffs and other non-party Aggrieved Employees were
18 performing their assigned duties off-the-clock, and were suffered or permitted to perform
19 work for which they were not paid. Because Plaintiffs and other non-party Aggrieved
20 Employees sometimes worked shifts of eight (8) hours a day or more or forty (40) hours a
21 week or more, some of this off-the-clock work qualified for overtime premium pay.

22 76. Furthermore, on information and belief, Defendants did not pay Plaintiff Avila
23 and other non-party Aggrieved Employees the correct overtime rates for the recorded overtime
24 hours that they generated. In addition to an hourly wage, Defendants paid Plaintiff Avila and
25 other non-party Aggrieved Employees incentive pay, nondiscretionary bonuses, and/or other
26 forms of remuneration. However, in violation of the California Labor Code, Defendants
27 failed to incorporate all compensation, including incentive pay and/or nondiscretionary
28 bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime

1 wage rates. Therefore, during times when Plaintiff Avila and other non-party Aggrieved
2 Employees worked overtime and received these other forms of pay, Defendants failed to pay
3 all overtime wages by paying a lower overtime rate than required.

4 77. For example, Defendants paid Plaintiff Avila and other non-party Aggrieved
5 Employees nondiscretionary bonuses and/or incentive pay for meeting certain metrics. On
6 information and belief, some of these nondiscretionary bonuses and/or incentive pay were
7 listed on Plaintiff Avila's and other non-party Aggrieved Employees' wage statements as
8 "MGRBONCA." During pay periods that Plaintiff Avila and other aggrieved employees were
9 paid overtime wages, on information and belief, Defendants failed to incorporate these
10 nondiscretionary bonuses and/or incentive pay into Plaintiff Avila's and other non-party
11 Aggrieved Employees' regular rate of pay and, as a result, paid them at incorrect and lower
12 rates of pay for overtime hours worked. Specifically, Defendants paid Plaintiff and other non-
13 party Aggrieved Employees 1.5 times their hourly rate of pay instead of 1.5 times their regular
14 rate of pay. Defendants' failure to properly calculate the overtime rates of pay based on all
15 remuneration paid has resulted in an underpayment of overtime wages to Plaintiff Avila and
16 other non-party Aggrieved Employees on a company-wide basis.

17 78. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
18 the balance of overtime compensation as required by California law, violates the provisions of
19 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
20 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
21 558 and/or 2699(a), (f), and (g).

22 **FAILURE TO PAY MINIMUM WAGES**

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

24 79. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
25 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
26 to be paid to employees, and the payment of a wage less than the minimum so fixed is
27 unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time
28 during which an employee is subject to the control of an employer, and includes all the time

1 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
2 Regs. Tit. 8, § 11050(2)(K) (defining “Hours Worked”).

3 80. As set forth above, due to Defendants’ restrictions on overtime accrual,
4 Defendants systematically failed to record all hours worked and Plaintiffs and other non-party
5 Aggrieved Employees were forced to work off-the-clock before and after scheduled shifts to
6 complete their assigned duties, including pre-shift opening tasks, post-shift closing
7 responsibilities, responding to phone calls and completing tasks on days off, completing
8 online trainings, and attending mandatory meetings. Moreover, also set forth above,
9 Defendants’ company-wide security policy required employees to enter and leave their
10 restaurant premises in pairs, resulting in Plaintiff Avila and other non-party Aggrieved
11 Employees having to wait for other employees before clocking in or after clocking out, but
12 Defendants did not compensate them for this time.

13 81. Additionally, as stated above, due to Defendants’ uniform practice of utilizing
14 labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods
15 and/or adhere to a schedule for meal periods, subsequent lack of meal period coverage, and
16 policies requiring managerial employees to stay on or near the restaurant premises during
17 meal periods, and/or requiring employees carry company-issued radios and/or personal mobile
18 phones at all times to respond to requests, Plaintiffs and other non-party Aggrieved
19 Employees were forced to forego meal periods, have their meal periods interrupted, and/or
20 were otherwise not relieved of all duties during meal periods.

21 82. Moreover, as stated above, on information and belief, in order to limit meal
22 penalties that Defendants would otherwise owe, Defendants pressured Plaintiff Avila and
23 other non-party Aggrieved Employees to clock out for meal periods, on threat of discipline,
24 and/or adjusted employee time records to reflect complaint meal periods, but required them to
25 continue working, time for which they were not paid. Also, as set forth above, Defendants’
26 timekeeping system did not permit Plaintiff Doyle and other non-party Aggrieved Employees
27 to clock back in early when their meal periods were interrupted.

28 83. Thus, Defendants did not pay minimum wages for all hours worked by

1 Plaintiffs and other non-party Aggrieved Employees. To the extent that these off-the-clock
2 hours did not qualify for overtime premium payment, Defendants did not pay at least
3 minimum wages for those hours worked off-the-clock in violation of California Labor Code
4 sections 1182.12, 1194, 1197, and 1198.

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

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

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

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

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

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

1 waived by mutual consent of the employer and the employee only if the first meal period was
2 not waived.

3 89. As stated, Defendants have, and continue to have, a company-wide policy
4 and/or practice of understaffing pursuant to their labor budget practices, while simultaneously
5 assigning heavy workloads, and failing to schedule meal periods and/or adhere to a schedule
6 for meal periods, which resulted in a lack of meal period coverage and prevented Plaintiffs
7 and other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods
8 to which they were entitled. In conjunction with understaffing their restaurants, as stated
9 above, on information and belief, Defendants had a requirement that a managerial employee
10 be present on the restaurant floor at all times, but Defendants' labor budgets did not always
11 allow for more than one manager to be on the schedule at all times. As a result, Plaintiff
12 Avila and other managerial employees were sometimes the only managers on duty, and would
13 have their meal periods interrupted or would work through them in order to assist their
14 coworkers and customers. Additionally, as stated, Defendants had a policy and/or practice of
15 requiring that Plaintiff Avila and other non-party Aggrieved Employees carry a company-
16 issued radio to respond to requests from management or co-workers at all times, including
17 during meal periods. As a result, Plaintiffs and other non-party Aggrieved Employees had to
18 work through all or part of their meal periods, had their meal periods interrupted, and/or had
19 to wait extended periods of time before taking meal periods. For example, approximately 2-3
20 times per week, Plaintiff Avila was required to work through his meal periods to assist his co-
21 workers or customers due to the heavy workload and lack of coverage. Similarly, Plaintiff
22 Doyle periodically missed meal periods due to the heavy workload and lack of coverage, and
23 would have his meal periods interrupted twice per week due to management assigning tasks
24 during his meal periods.

25 90. Additionally, as stated, on information and belief, because Defendants frowned
26 upon employees accruing meal period penalties, Defendants' management pressured
27 employees to clock out for meal periods, upon threat of discipline, and/or would adjust
28 Plaintiff Avila's and other non-party Aggrieved Employees' time records to reflect compliant

1 meal periods, regardless of whether they had received a compliant meal period or not, in order
2 to strictly limit meal penalties that would need to be paid by Defendants. For example,
3 Defendants' management would instruct Plaintiff Avila to clock out to record a compliant
4 meal period, or would adjust Plaintiff Avila's time records to reflect a compliant meal period
5 when he had worked through his meal period. Further, as described above, Defendants
6 implemented an electronic timekeeping system that locked Plaintiffs and other non-party
7 Aggrieved Employees out and prevented them from clocking in early before the end of their
8 30-minute meal period. As a result of Defendants' timekeeping system, Plaintiff Doyle and
9 other non-party Aggrieved Employees were prevented from accurately recording when they
10 had to return early from a meal period so that they could be compensated for that time.

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

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

21 93. Defendants also have engaged in a company-wide practice and/or policy of not
22 paying meal period premiums owed when compliant meal periods are not provided. Because
23 of this practice and/or policy, Plaintiffs and other non-party Aggrieved Employees have not
24 received premium pay for missed, interrupted, or late meal periods. Alternatively, to the
25 extent that Defendants did pay meal period premiums to Plaintiff Avila and other non-party
26 Aggrieved Employees, they did so at the incorrect rates. Because Defendants did not properly
27 calculate Plaintiff Avila's and other non-party Aggrieved Employees' regular rates of pay by
28 including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any

1 premiums paid for meal period violations were also paid at an incorrect rate and resulted in an
2 underpayment of meal period premiums.

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

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

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

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

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

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

28 98. Pursuant to the applicable IWC Wage Order and California Labor Code section

1 226.7(c), Plaintiffs and other non-party Aggrieved Employees are entitled to recover from
2 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
3 required rest period was not authorized and permitted.

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

15 100. Furthermore, Defendant maintained and implemented a written on-premises
16 rest period policy, which mandated that Plaintiffs and other non-party Aggrieved Employees
17 remain on Defendants' premises during their rest periods. Specifically, the non-compliant
18 policy states that employees "must remain on the facility premises" during rest periods. Upon
19 information and belief, Defendants' company-wide on-premises rest period policy prevented
20 Plaintiffs and other non-party Aggrieved Employees from being relieved of all duties for rest
21 periods and caused them to perform work during rest periods. Because Plaintiffs and other
22 non-party Aggrieved Employees were restricted from leaving the work premises during rest
23 periods, they were denied the ability to use their rest periods freely for their own purposes,
24 such as running personal errands. Thus, Defendants effectively maintained control over
25 Plaintiffs and other non-party Aggrieved Employees during rest periods, and, as a result of
26 this rest period policy, Defendants did not relinquish control over Plaintiffs and other non-
27 party Aggrieved Employees during rest periods.

28 101. 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 receiving all ten (10) minute rest periods to which they were
3 entitled. For example, Plaintiffs frequently worked through their shifts without taking their
4 10-minute rest periods.

5 102. Defendants also have engaged in a company-wide practice and/or policy of not
6 paying all rest period premiums owed when compliant rest periods are not authorized or
7 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved
8 Employees have not received premium pay for all missed rest periods. Alternatively, to the
9 extent that Defendants did pay rest period premiums to Plaintiff Avila and other non-party
10 Aggrieved Employees, they did so at the incorrect rates. Because Defendants did not properly
11 calculate Plaintiff Avila and other non-party Aggrieved Employees' regular rates of pay by
12 including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any
13 premiums paid for rest period violations were also paid at an incorrect rate and resulted in an
14 underpayment of rest period premiums.

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

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

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

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

1 Plaintiffs and other non-party Aggrieved Employees that fail to correctly list: gross wages
2 earned; total hours worked; net wages earned; the correct name of the legal entity that is the
3 employer; and all applicable hourly rates in effect during the pay period, including rates of
4 pay for overtime wages and/or meal and rest period premiums, and the corresponding number
5 of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
6 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

7 106. First, because Defendants did not record the time Plaintiffs and other non-party
8 Aggrieved Employees spent working off-the-clock and deducted time from their records for
9 meal periods that were interrupted and/or missed (and therefore time for which they should
10 have been paid), Defendants did not list the correct amount of gross wages and net wages
11 earned by Plaintiffs and other non-party Aggrieved Employees in compliance with section
12 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
13 number of hours worked by Plaintiffs and other non-party Aggrieved Employees in violation
14 of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the
15 pay period and corresponding accurate number of work hours worked at each hourly rate in
16 violation of section 226(a)(9).

17 107. Second, because Defendants did not calculate Plaintiffs' and Subclass
18 members' regular rate of pay correctly for purposes of paying overtime wages, meal and rest
19 period premiums, and/or paid sick leave, Defendants did not list the correct amount of gross
20 wages earned by Plaintiffs and Subclass members in compliance with section 226(1)(1). For
21 the same reason, Defendants failed to list the correct amount of net wages earned by Plaintiffs
22 and Subclass members in violation of section 226(1)(5). Defendants also failed to correctly
23 list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for
24 overtime wages meal, and rest periods premiums, and/or paid sick leave, in violations of
25 section 226(a)(9).

26 108. Third, and separate from these violations, Defendants issued uniform wage
27 statements to Plaintiffs and other non-party Aggrieved Employees that failed to correctly list
28 the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of

1 section 226(a)(8) is to provide California employees with transparency as to the true identity
2 of their employer, to allow the employee to contact their employer during employment in the
3 future for various reasons, including filing an administrative claim, judicial claim, or other
4 action to seek relief against their employer, to obtain unemployment benefits, etc. Plaintiffs’
5 and other non-party Aggrieved Employees’ wage statements incorrectly list the employer as
6 “RED LOBSTER RESTAURANTS LLC,” but, according to the California Secretary of
7 State’s website, there is no such entity by this name.

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

16 110. California Labor Code section 1198 provides that the maximum hours of work
17 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
18 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
19 employment of any employees for longer hours than those fixed by the order or under
20 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
21 Wage Order, employers are required to keep accurate time records showing when the
22 employee begins and ends each work period and meal period. During the relevant time
23 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
24 and meal period start and stop times for Plaintiffs and other non-party Aggrieved Employees,
25 in violation of section 1198. As stated, Defendants engaged in a company-wide practice
26 and/or policy of recording that compliant meal periods were taken regardless of if or when
27 meal periods were actually taken, and thereby failed to keep accurate records of meal start and
28 end times for Plaintiffs and other non-party Aggrieved Employees. Furthermore, in light of

1 Defendants failure to provide other non-party Aggrieved Employees with second 30-minute
2 meal periods to which they were entitled, Defendants kept no records of meal start and end
3 times for second meal periods.

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

14 112. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d),
15 and 1198. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
16 recover civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and
17 (g).

18 **FAILURE TO PAY WAGES DURING EMPLOYMENT**
19 **VIOLATION OF LABOR CODE SECTION 204**

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

28 114. At all relevant times herein, California Labor Code section 204 also requires

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

6 115. During the relevant time period, Defendants willfully failed to pay Plaintiffs
7 and other non-party Aggrieved Employees all wages due to them within any time period
8 specified by California Labor Code section 204 including, but not limited to, overtime wages,
9 minimum wages, and/or meal and rest period premium wages.

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

12 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

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

26 119. Defendants' failure to pay Plaintiffs and those non-party Aggrieved Employees
27 who are no longer employed by Defendants their wages earned and unpaid at the time of
28 discharge, or within seventy-two (72) hours of their leaving Defendant's employ, violates

1 Labor Code sections 201 and 202. Plaintiffs and other non-party Aggrieved Employees are
2 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
3 2699(a), (f), and (g).

4 **UNLAWFUL DIRECT DEPOSIT AND DISCOUNT OF WAGES**
5 **VIOLATION OF LABOR CODE SECTIONS 212 AND 213**

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

13 121. California Labor Code section 213 permits employers to pay employees via
14 direct deposit so long as the employee authorizes payment via direct deposit.

15 122. Under California law, employers are permitted to fulfill their wage payment
16 obligations to employees by using payroll debit cards, but only so long as the employee is
17 given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson*
18 *v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL
19 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor
20 Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible
21 relied heavily on:

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

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

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

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

124. Further, the DLSE notes that the Labor Code manifests:

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

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

125. During the relevant time period, Defendants had an agreement with a payroll service provider for the issuance of payroll cards to employees, including Plaintiffs and other non-party Aggrieved Employees, to discharge their wage payment obligations to their employees. On information and belief, Defendants had a practice and/or policy of

1 automatically issuing payroll debit cards to departing employees without giving them the
2 option to elect their form of payment for their final wages. For example, Plaintiffs and other
3 non-party Aggrieved Employees received their final wages on a payroll debit card without a
4 choice of an alternative method, such as a written check. Instead, Defendants automatically
5 enrolled Plaintiffs and other non-party Aggrieved Employees in their payroll debit card
6 program for the purpose of issuing their final wages to them.

7 126. Moreover, under Defendants' payroll debit program, on information and belief,
8 Defendants did not permit Plaintiffs and other non-party Aggrieved Employees to withdraw
9 their entire wages in at least one transaction without incurring a fee. For example, Plaintiff
10 Doyle utilized an ATM to try to withdraw his final wages but could not obtain the entire
11 amount because ATMs only disburse cash in limited denominations. Additionally, on
12 information and belief, Plaintiff Doyle and other non-party Aggrieved Employees encountered
13 an ATM fee of approximately \$3.00 each time they utilized an ATM to withdraw funds from
14 their payroll debit card in addition to a multitude of other transaction fees that Defendants did
15 not disclose or properly inform Plaintiffs and other non-party Aggrieved Employees of at the
16 time of issuance of payroll cards, including but not limited to: card replacement fees of
17 approximately \$6-\$35; inactivity fees of approximately \$4 per month; and foreign transaction
18 fees of approximately 3% of transaction amount, among other undisclosed fees, which
19 resulted in a discount in their pay. In sum, Defendants' payroll debit card program presented
20 a number of obstacles and hurdles that combined, made it difficult for Plaintiffs and other
21 non-party Aggrieved Employees to access their entire wages without discount and without
22 delay.

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

28 //

1 **COLLECTING OR RECEIVING WAGES ALREADY PAID**
2 **VIOLATION OF LABOR CODE SECTION 221 AND 224**

3 128. At all times relevant herein, California Labor Code section 221 provides that it
4 shall be unlawful for any employer to collect or receive from an employee any part of wages
5 theretofore paid by said employer to said employee. California Labor Code section 224 also
6 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
7 deduction is expressly authorized in writing by the employee."

8 129. During the relevant time period, Defendants unlawfully deducted a portion of
9 wages previously paid to Plaintiffs and other non-party Aggrieved Employees in violations of
10 California Labor Code section 221. Defendants systematically, and on a company-wide basis,
11 provided Plaintiffs and other non-party Aggrieved Employees with payroll debit cards as
12 payment of their wages and/or final wages. Under Defendants' payroll debit card program,
13 Plaintiffs and other non-party Aggrieved Employees were assessed various fees in connection
14 with their use of the payroll debit cards. Plaintiffs and other non-party Aggrieved Employees
15 were required to pay per-transaction fees, ATM fees, and/or other fees to obtain and/or spend
16 their earned and due wages. The fees charged to Plaintiffs and other non-party Aggrieved
17 Employees resulted in a discount of their wages.

18 130. Defendants' payroll debit card program, which resulted in a discount of wages
19 to employees, is tantamount to taking deductions from Plaintiffs' and other non-party
20 Aggrieved Employees' paychecks without their written authorization and therefore constitutes
21 an unlawful deduction of wages, in violation of Labor Code sections 221 and 224.

22 131. Defendants' conduct as alleged herein violates California Labor Code sections
23 221 and 224. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
24 recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

25 **SECRET PAYMENT OF A LOWER WAGE**
26 **VIOLATION OF LABOR CODE SECTION 223**

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

1 wages.

2 133. During the relevant time period, Defendants willfully and systematically issued
3 payroll debit cards to Plaintiffs and other non-party Aggrieved Employees that discounted
4 their wages by charging various fees in connection with the use of the payroll debit cards.
5 Defendants' payroll debit card program resulted in the payment of less than statutorily-
6 required wages to Plaintiffs and other non-party Aggrieved Employees. In doing so,
7 Defendants acted with the intent to deprive Plaintiffs and other non-party Aggrieved
8 Employees of statutory wages, including, but not limited to, overtime wages and minimum
9 wages, to which they were entitled to under California law. Thus, Defendants paid Plaintiffs
10 and other non-party Aggrieved Employees lower wages than those they were entitled to while
11 purporting that Plaintiffs and other non-party Aggrieved Employees were properly paid.

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

17 **FAILURE TO PROVIDE SUITABLE SEATING**
18 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
19 **REGULATIONS, TITLE 8, SECTION 11050(14)(A)**

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

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

1 137. Plaintiffs allege that Defendants' California restaurant locations are generally
2 similar in their layout and design and there was, and continues to be space behind the host
3 stands to allow for the presence and use of a seat or stool by other non-party Aggrieved
4 Employees (with reasonable or no modification to these work areas) during the performance
5 of their work duties. Defendants could have provided other non-party Aggrieved Employees
6 with a seat or stool at their host stands, but instead denies employees seating and forces other
7 non-party Aggrieved Employees to stand throughout the day.

8 138. Other non-party Aggrieved Employees spent a substantial portion of their day
9 behind these host stands. The nature of the work of an employee performing host duties at
10 host stands can reasonably be accomplished from a seated position. However, Defendants
11 systematically, and on a company-wide basis, did not provide seats or stools at or near each
12 host stand, forcing other non-party Aggrieved Employees to stand throughout their work
13 shifts.

14 139. During the relevant time period, Defendants violated California Labor Code
15 section 1198 and California Code of Regulations, Title 8, section 11050(14)(A), because other
16 non-party Aggrieved Employees were not allowed to sit, even when it would not have
17 interfered with the performance of their duties, nor were they provided with suitable seats.
18 Defendants' management did not inform other non-party Aggrieved Employees that they were
19 allowed to sit down, provide any means for them to sit down, or mention any policy regarding
20 sitting.

21 140. As a result of Defendants' company-wide policy and/or practice of prohibiting
22 employees assigned host duties from sitting during their shifts and failure to provide suitable
23 seating to these employees, other non-party Aggrieved Employees were forced to stand during
24 shifts and denied seats. Defendants' failure to provide suitable seating to other non-party
25 Aggrieved Employees violated and continues to violate California Labor Code section 1198
26 and IWC Wage Order No. 5-2001, subdivision 14(A).

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

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

142. 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.”

143. 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.”

144. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because Plaintiff Doyle 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.

145. As stated, Plaintiffs allege that 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 Plaintiff Doyle and other non-party Aggrieved Employees during lulls in operation. Defendants could have provided Plaintiff Doyle and other non-party Aggrieved Employees with a seat or stool in their work areas, but instead denied Plaintiff Doyle and other non-party Aggrieved Employees suitable seating altogether and effectively forced other non-party Aggrieved Employees to stand throughout the day.

146. Defendants did not provide Plaintiff Doyle and other non-party Aggrieved

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

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

15 148. Plaintiff Doyle and other non-party Aggrieved Employees are therefore entitled
16 to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

17 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

18 **VIOLATION OF LABOR CODE SECTION 2802**

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

1 150. First, Defendants on a company-wide basis required that Plaintiff Avila and
2 other non-party Aggrieved Employees use their own personal mobile devices, including but
3 not limited to cellular phones, and/or mobile data to carry out their job duties, but failed to
4 reimburse them for the costs of their work-related cellular phone expenses. Specifically,
5 Plaintiff Avila was required to use his personal cellular phone to respond to calls from his
6 General Manager or other managers regarding restaurant staffing or inventory needs.
7 Although Defendants required Plaintiff Avila and other non-party Aggrieved Employees to
8 utilize their personal mobile devices and/or mobile data to carry out their work-related
9 responsibilities, Defendants failed to reimburse them for these costs.

10 151. Second, Defendants had a company-wide policy of requiring Plaintiff Avila and
11 other non-party Aggrieved Employees to utilize their own personal vehicles for work
12 purposes, but failed to reimburse them for all costs of travel, including mileage. For example,
13 Plaintiff Avila periodically was required to drive to Defendants' other restaurant location in
14 Chula Vista, California to obtain food or restaurant supplies, such as alcohol and other
15 supplies. As a further example, as stated, Plaintiff Avila was required to drive himself to
16 other Red Lobster restaurants in other locations to attend mandatory trainings. Although
17 Defendants required Plaintiff Avila and other non-party Aggrieved Employees to utilize their
18 own vehicles to carry out their work-related responsibilities, Defendants did not reimburse
19 them for all of their travel expenses.

20 152. Defendants could have provided Plaintiff Avila and other non-party Aggrieved
21 Employees with the actual tools required for use on the job, including company mobile
22 devices and company vehicles, or Defendants could have reimbursed them for their cost of
23 their mobile device usage, travel, and mileage. Instead, Defendants passed these operating
24 costs off onto Plaintiff Avila and other non-party Aggrieved Employees.

25 153. Defendants' company-wide policy and/or practice of passing on their operating
26 costs to Plaintiff Avila and other non-party Aggrieved Employees violates California Labor
27 Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff
28 Avila and other non-party Aggrieved Employees for necessary business-related expenses and

1 costs.

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

4 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
5 **EMPLOYMENT**

6 **VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

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

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

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

26 **REQUEST FOR JURY TRIAL**

27 Plaintiffs request a trial by jury.

28 //

1 **PRAYER FOR RELIEF**

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

4 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
5 (\$25,000). Plaintiffs reserve the right to amend their prayer for relief to seek a different
6 amount.

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

8 2. That the Court declare, adjudge and decree that Defendants violated the
9 following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved
10 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
11 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
12 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
13 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
14 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
15 earned wages upon termination); 204 (by failing to timely pay all earned wages during
16 employment); 212 and 213 (by failing to make earned wages accessible without discount);
17 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying
18 wages lower than required by statute); 1198 and the applicable IWC Wage Order (by failing to
19 provide suitable seating); 2802 (by failing to reimburse business expenses); and 2810.5 (by
20 failing to provide written notice of information material to employment);

21 3. For civil penalties, pursuant to California Labor Code sections 210, 225.5,
22 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
23 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
24 1194, 1197, 1198, 2802, and 2810.5;

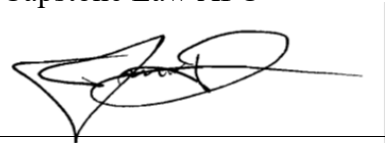
25 4. For attorneys' fees and costs pursuant to California Labor Code section
26 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
27 Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516,
28 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

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- 5. For pre-judgment and post-judgment interest as provided by law; and
- 6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: May 23, 2022

Respectfully submitted,
Capstone Law APC



By: _____
Robert Drexler
Molly DeSario
Jonathan Lee

Attorneys for Plaintiffs Tony Doyle and Carlos Avila

EXHIBIT “1”

MICHELLE KENNEDY
310.712.8146 Direct
Michelle.Kennedy@capstonelawyers.com

May 20, 2020

VIA ONLINE SUBMISSION

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

Subject: *Tony Doyle v. Red Lobster Restaurants LLC, et al.*

Dear PAGA Administrator:

This office represents Tony Doyle in connection with his claims under the California Labor Code. Mr. Doyle was an employee of RED LOBSTER RESTAURANTS LLC, RED LOBSTER MANAGEMENT LLC, and/or RED LOBSTER HOSPITALITY LLC. For the purpose of this letter, Mr. Doyle collectively refers to these entities as “RED LOBSTER.”

The employers may be contacted directly at the addresses below:

RED LOBSTER RESTAURANTS LLC
450 S. ORANGE AVENUE, SUITE 800
ORLANDO, FL 32801

RED LOBSTER MANAGEMENT LLC
450 S. ORANGE AVENUE, SUITE 800
ORLANDO, FL 32801

RED LOBSTER HOSPITALITY LLC
450 S. ORANGE AVENUE, SUITE 800
ORLANDO, FL 32801

Mr. Doyle intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Doyle seeks relief on behalf of himself, the State of California, and other persons who are or were employed by RED LOBSTER 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.

RED LOBSTER employed Mr. Doyle as an hourly paid, non-exempt employee from approximately May 2019 to March 2020. Mr. Doyle worked for RED LOBSTER as a Line Cook at its restaurant located in Sacramento, California. During his employment, Mr. Doyle typically worked six (6) to eight (8) hours per day, five (5) days per week, in the afternoons and evenings. At the time Mr. Doyle’s employment with RED LOBSTER ended, he earned approximately \$14.00 per hour. His job

duties included, without limitation, preparing food, baking, assembling meals, stocking food inventory, and cleaning the kitchen.

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

RED LOBSTER’s Company-Wide and Uniform Payroll and HR Practices

Upon information and belief, RED LOBSTER RESTAURANTS LLC, RED LOBSTER MANAGEMENT LLC, and RED LOBSTER HOSPITALITY LLC are Delaware limited liability companies. RED LOBSTER owns and operates approximately 43 “Red Lobster” restaurant locations in California. Upon information and belief, RED LOBSTER maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Orlando, Florida, for all non-exempt, hourly paid employees working for RED LOBSTER in California, including Mr. Doyle and other aggrieved employees. At all relevant times, RED LOBSTER issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Doyle and other aggrieved employees, regardless of its location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

RED LOBSTER willfully failed to pay all overtime wages owed to Mr. Doyle and other aggrieved employees. During the relevant time period, Mr. Doyle and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, RED LOBSTER had, and continues to have, a company-wide policy of discouraging and impeding Mr. Doyle and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. Mr. Doyle and other aggrieved employees were forced to work off-the-clock performing tasks outside of their scheduled shift times, but were not provided a means by RED LOBSTER to account for this time. For example, Mr. Doyle was asked by management on at least two occasions to complete mandatory online trainings after he had clocked out. At all times, Mr. Doyle and other aggrieved employees remained under the control of RED LOBSTER. This off-the-clock work could have been recorded by RED LOBSTER, but it refused to do so to avoid payment of additional wages to Mr. Doyle and other aggrieved employees.

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

Moreover, RED LOBSTER's company-wide timekeeping system further prevented Mr. Doyle and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Doyle and other aggrieved employees once they clocked out for a meal period and would not permit them to clock back in from a meal before the 30 minutes elapsed. Thus, RED LOBSTER's timekeeping system further prevented Mr. Doyle and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

RED LOBSTER knew or should have known that as a result of these company-wide practices and/or policies, Mr. Doyle and other aggrieved employees were working after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Doyle and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Doyle and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, RED LOBSTER did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, RED LOBSTER paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of

remuneration. However, in violation of the California Labor Code, RED LOBSTER 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, RED LOBSTER failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Doyle and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

As stated above, due to RED LOBSTER's restrictions on overtime accrual, RED LOBSTER systematically failed to pay Mr. Doyle and other aggrieved employees for actual hours worked after scheduled shifts, because these hours were not accurately recorded. Additionally, as set forth above, due to RED LOBSTER's uniform practice of utilizing labor budgets, resultant understaffing, and a lack of meal period coverage, Mr. Doyle and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Moreover, as stated, RED LOBSTER's timekeeping system did not permit Mr. Doyle and other aggrieved employees to clock back in early when their meal periods were interrupted.

Thus, RED LOBSTER 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, RED LOBSTER 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, RED LOBSTER regularly failed to pay at least minimum wages to Mr. Doyle and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

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

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

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal and rest period and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except

that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As set forth above, during the relevant time period, RED LOBSTER had, and continues to have, a company-wide policy and/or practice of understaffing its restaurant locations due to labor budgeting, which resulted in a lack of adequate meal period coverage and prevented Mr. Doyle and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Doyle and other aggrieved employees had to work through part or all of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, during his employment, Mr. Doyle would periodically miss meal periods due to the heavy workload and lack of coverage, and would have his meal periods interrupted twice per week due to supervisors assigning tasks during his meal periods.

Further, as described above, RED LOBSTER implemented an electronic timekeeping system that locked Mr. Doyle 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 RED LOBSTER's timekeeping system, Mr. Doyle 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.

In addition, during the relevant time period, other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Doyle and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

Furthermore, RED LOBSTER engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Doyle and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that RED LOBSTER did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because RED LOBSTER did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

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

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

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

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

During the relevant time period, RED LOBSTER regularly failed to authorize and permit Mr. Doyle and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, RED LOBSTER's company-wide labor budget policies and resultant understaffing, prevented Mr. Doyle and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. RED LOBSTER also failed to schedule rest periods, which, coupled with RED LOBSTER's failure to provide adequate rest period coverage, further led to Mr. Doyle and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, RED LOBSTER maintained and implemented a written on-premises rest period policy, which mandated that Mr. Doyle and other aggrieved employees remain on RED LOBSTER's premises during their rest periods. Specifically, the non-compliant policy states that employees “must remain on the facility premises” during rest periods. Upon information and belief, RED LOBSTER's company-wide on-premises rest period policy prevented Mr. Doyle and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods. *See example language from rest period policy below.*

A rest break is paid time when you are relieved of all work duties and responsibilities, although you must remain on the facility premises.[The 10-minute rest period begins at the time an employee reaches an area away from the work area that is appropriate for rest.]

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

RED LOBSTER also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that RED LOBSTER did pay rest period premiums to other aggrieved employees, it did so at the incorrect rates. Because RED LOBSTER did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

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

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. RED LOBSTER has not provided Mr. Doyle and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, RED LOBSTER has knowingly and intentionally provided Mr. Doyle and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, RED LOBSTER issued uniform wage statements to Mr. Doyle and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, RED LOBSTER violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

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

Third, and separate from these violations, RED LOBSTER issued uniform wage statements to Mr. Doyle and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Doyle's and other aggrieved employees' wage statements incorrectly list the employer as "RED LOBSTER RESTAURANTS LLC," but, according to the California Secretary of State's website, there is no such entity by that name. *See example paystub below.*

<pre>CO-----Empl ID----- ***** ***** Dept : 0367-Sacramento-Howe Location : Howe Ave - Sacramento, Ca Red Lobster Restaurants LLC 450 S. Orange Avenue, Suite 800 Orlando, FL 32801 Taxable Marital Status: Exemptions Addl Amt Addl % Fed: CA(M): Sick Hrs Avail:</pre>	Earnings Statement Page 001 of 001 Period Beg/End: 10/07/2019 - 10/13/2019 Advice Date: 10/18/2019 Advice Number: Batch Number:
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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 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 “[keep, 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), RED LOBSTER willfully failed to maintain accurate payroll records for Mr. Doyle and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

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

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

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

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

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

During the relevant time period, RED LOBSTER failed to pay Mr. Doyle and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

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

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

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

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

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

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

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

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212

and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

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

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

Further, the DLSE notes that the Labor Code manifests:

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

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

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

Moreover, under RED LOBSTER’s payroll debit program, on information and belief, RED LOBSTER did not permit Mr. Doyle and other aggrieved employees to withdraw their entire wages in at least one transaction without incurring a fee. For example, Mr. Doyle utilized an ATM to try to withdraw his final wages but could not obtain the entire amount because ATMs only disburse cash in limited denominations. Additionally, Mr. Doyle also encountered an ATM fee of approximately

\$3.00 when he utilized an ATM to withdraw his final payment from the payroll debit card, which resulted in a discount in his pay.

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

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

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

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

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

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

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

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

employees lower wages than those they were entitled to while purporting that Mr. Doyle and other aggrieved employees were properly paid.

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

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

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

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

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

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

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

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

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

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

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

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

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

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

As a result of RED LOBSTER's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Doyle and

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

Mr. Doyle and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring RED LOBSTER into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 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." RED LOBSTER, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Doyle's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Doyle seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Doyle, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against RED LOBSTER for violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

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

Pre-Litigation Demand

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

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

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

2. RED LOBSTER shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. RED LOBSTER shall conduct a survey or interview all current and former aggrieved employees in California who worked for RED LOBSTER 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; and the number of rest periods which were not authorized and permitted, with the investigation to be completed within 60 days.
4. RED LOBSTER 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. RED LOBSTER 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. RED LOBSTER shall pay each aggrieved employee unpaid wages and compensation for violations arising from its unlawful use of payroll debit cards, including unlawful direct deposit and discount of wages (Labor Code sections 212 and 213), unlawful deductions (Labor Code sections 221 and 224), secret payment of lower wages (Labor Code section 223).
6. RED LOBSTER shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. RED LOBSTER shall provide Mr. Doyle and all aggrieved employees employed by RED LOBSTER 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. RED LOBSTER shall implement and provide suitable seating to all aggrieved employees.
9. RED LOBSTER 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.
10. RED LOBSTER shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, 1199, and 2699, and Wage Order No. 5-2001, section 20.

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

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

Best Regards,

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

Michelle Kennedy

Copy: RED LOBSTER RESTAURANTS LLC (via U.S. Certified Mail); RED LOBSTER MANAGEMENT LLC (via U.S. Certified Mail); RED LOBSTER HOSPITALITY LLC (via U.S. Certified Mail)

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LAW APC
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es, CA 90067



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1. Article Addressed to:

RED LOBSTER RESTAURANTS LLC
450 S. ORANGE AVENUE, SUITE 800
ORLANDO, FL 32801



9590 9402 4882 9032 7442 67

2. Article Number (Transfer from service label)

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RED LOBSTER RESTAURANTS LLC
450 S. ORANGE AVENUE, SUITE 800
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Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

RED LOBSTER RESTAURANTS LLC

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

450 S. ORANGE AVENUE, SUITE 800

City, State, ZIP+4®

ORLANDO, FL 32801

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

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Doyle v. Red
Lobster Restaurants
LLC

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stone
LAW APC
Century Park East, Ste 1000
Fresno, CA 93721

RED LOBSTER MANAGEMENT LLC
450 S. ORANGE AVENUE, SUITE 800
ORLANDO, FL 32801

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1. Article Addressed to:

RED LOBSTER MANAGEMENT LLC
450 S. ORANGE AVENUE, SUITE 800
ORLANDO, FL 32801



9590 9402 4882 9032 7442 50

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4414

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

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Doyle v. Red Lobster
Management, LLC

PS Form 3800, April 2015 PSN 7530-02-000-8047

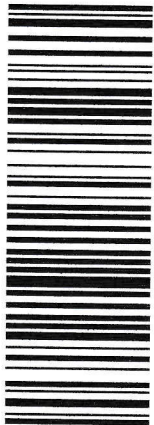
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stone

LAW APC

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Irvine, CA 90067

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1. Article Addressed to:

RED LOBSTER HOSPITALITY LLC
450 S. ORANGE AVENUE, SUITE 800
ORLANDO, FL 32801



9590 9402 4882 9032 7440 45

2. Article Number (Transfer from service label)

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☐ Agent☐ Addressee

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C. Date of Delivery

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3. Service Type

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- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
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Extra Services & Fees (check box, add fee as appropriate)

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- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

RED LOBSTER HOSPITALITY LLC
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450 S. ORANGE AVENUE, SUITE 800
City, State, ZIP+4®
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Doyle v. Red Lobster
Hospitality LLC

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RED LOBSTER MANAGEMENT LLC
450 S. ORANGE AVENUE, SUITE 800
ORLANDO, FL 32801



9590 9402 4882 9032 7442 50

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4414

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X RL 118 C-19

☐ Agent
☐ Addressee

B. Received by (Printed Name)

ROBINSON

C. Date of Delivery

6-26-20

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
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- ☐ Insured Mail Restricted Delivery (over \$500)

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1. Article Addressed to:

RED LOBSTER RESTAURANTS LLC
450 S. ORANGE AVENUE, SUITE 800
ORLANDO, FL 32801



9590 9402 4882 9032 7442 67

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4407

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X RL 118 C-19

☐ Agent

☐ Addressee

B. Received by (Printed Name)

ROBINSON

C. Date of Delivery

5-26-20

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

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☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

Insured Mail

Insured Mail Restricted Delivery
(over \$500)

☐ Priority Mail Express®

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Delivery

☐ Return Receipt for
Merchandise

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1. Article Addressed to:

~~RED~~ LOBSTER HOSPITALITY LLC
450 S. ORANGE AVENUE, SUITE 800
~~OR~~ ANDO, FL 32801



9590 9402 4882 9032 7440 45

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4421

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X R-C 118 C-13

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

ROBINSON

C. Date of Delivery

5-26-20

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

EXHIBIT “2”



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December 10, 2021

VIA ONLINE SUBMISSION

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

Subject: *Carlos Avila v. Red Lobster Restaurants LLC, et al.*

Dear PAGA Administrator:

This office represents Carlos Avila in connection with his claims under the California Labor Code. Mr. Avila was an employee of RED LOBSTER RESTAURANTS LLC; RED LOBSTER MANAGEMENT LLC; and/or RED LOBSTER HOSPITALITY LLC. For the purpose of this letter, Mr. Avila collectively refers to these entities as "RED LOBSTER."

The employers may be contacted directly at the addresses below:

RED LOBSTER RESTAURANTS LLC
450 S. ORANGE AVENUE, SUITE 800
ORLANDO, FL 32801

RED LOBSTER MANAGEMENT LLC
450 S. ORANGE AVENUE, SUITE 800
ORLANDO, FL 32801

RED LOBSTER HOSPITALITY LLC
450 S. ORANGE AVENUE, STE 800
ORLANDO, FL 32801

Mr. Avila 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. Avila seeks relief on behalf of himself, the State of California, and other persons who are or were employed by RED LOBSTER in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

RED LOBSTER employed Mr. Avila as a non-exempt, hourly paid employee from approximately July 2016 to February 2021. During his employment with RED LOBSTER, Mr. Avila worked as a Restaurant Manager, Kitchen Manager, Front of House Manager, and Beverage and Hospitality manager for RED LOBSTER at its restaurants located in Garden Grove, Chula Vista, and La Mesa, California. He typically worked eight (8) hours or more per day, five (5) days per week, and approximately 40-50 hours per week.

At the time his employment ended, Mr. Avila was compensated approximately \$22.70 per hour. His job duties included, without limitation, hiring and supervising servers, handling customer service issues, and supporting employees to ensure operation and production efficiency.

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

RED LOBSTER’s Company-Wide and Uniform Payroll and HR Practices

RED LOBSTER RESTAURANTS LLC, RED LOBSTER MANAGEMENT LLC, and RED LOBSTER HOSPITALITY LLC are Delaware limited liability companies. Upon information and belief, RED LOBSTER operates approximately 43 “Red Lobster” restaurant locations in California. Upon information and belief, RED LOBSTER maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Orlando, Florida, for all non-exempt, hourly paid employees working for RED LOBSTER in California, including Mr. Avila and other aggrieved employees. At all relevant times, RED LOBSTER issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Avila and other aggrieved employees, regardless of their location or position.

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

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

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

RED LOBSTER willfully failed to pay all overtime wages owed to Mr. Avila and other aggrieved employees. During the relevant time period, Mr. Avila 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

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

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 time period, RED LOBSTER had a company-wide policy and/or practice of discouraging and impeding Mr. Avila and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing restaurant locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with RED LOBSTER's understaffing policy and assignment of heavy workloads, led Mr. Avila and other aggrieved employees to work off-the-clock before and after their scheduled shift times, but they were not provided a means by RED LOBSTER to account for this time. For example, RED LOBSTER would require Mr. Avila to perform pre-shift opening tasks, such as performing an outdoor inspection of the restaurant and parking lot, turning on all of the lights, unlocking all of the doors, and disarming the restaurant alarm, before being able to clock in for his shift. In addition, RED LOBSTER's management would also require Mr. Avila to perform post-shift closing responsibilities after clocking out at the end of his shifts, including turning off all of the lights, conducting a final walk-through of the restaurant, locking all of the doors, and activating the restaurant alarm. Moreover, Mr. Avila and other aggrieved employees were required to respond to phone communications from management and complete other work-related tasks on their days off. For example, at least three (3) times a week, Mr. Avila was called by RED LOBSTER's management on his day off to discuss the restaurant's scheduling or inventory needs, typically taking 10-15 minutes per instance. Further, also on his off-days or outside scheduled shifts, Mr. Avila was required to complete tasks off the clock such as preparing staff schedules or picking up food and beverage supplies from other RED LOBSTER locations.

Additionally, RED LOBSTER required Mr. Avila and other aggrieved employees to complete online training modules from home, on their off days, or during their unpaid meal periods, but did not compensate them for this time. For example, on at least 10-15 occasions, Mr. Avila spent approximately 20-30 minutes completing RED LOBSTER's requisite online training modules at home, but was not paid for this time. Furthermore, RED LOBSTER required Mr. Avila and other aggrieved employees to attend mandatory meetings held at other RED LOBSTER restaurant locations, but did not compensate them for their time spent attending and traveling to and from these meetings. At all times, Mr. Avila remained under the control of RED LOBSTER. Thus, RED LOBSTER failed to track this time spent working before and after scheduled shifts, and Mr. Avila and other aggrieved employees received no compensation for this time.

Second, RED LOBSTER also had a company-wide security policy requiring employees to enter and leave the restaurant premises in pairs. Before clocking in at the start of their shifts, Mr. Avila and other aggrieved employees were required to wait for at least one other employee to arrive to the restaurant premises or complete his or her opening duties before they could enter the restaurant's premises and clock-in. Also, after clocking out at the end of their shifts, Mr. Avila and other aggrieved employees were required to wait for at least one other employee to complete his or her closing duties before they could leave RED LOBSTER's premises. For example, Mr. Avila would arrive to work at his scheduled shift start-time and wait for up to 10-15 minutes off-the-clock for another employee to arrive to the restaurant's premises, before he was permitted to enter the restaurant. As a result of this security policy, Mr. Avila and other aggrieved employees were subject to RED LOBSTER's control before they had clocked in and/or after they had clocked out for their shifts, but were not compensated for this time.

Third, as stated, RED LOBSTER had, and continues to have, a uniform practice and/or policy of strictly staffing its restaurant locations based on the labor hours allocated by corporate for each restaurant location. RED LOBSTER's uniform use of labor budgets, combined with heavy workloads, resulted in chronic understaffing and a failure to provide Mr. Avila and other aggrieved employees with adequate

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

In conjunction with understaffing its restaurants, RED LOBSTER had a requirement that a managerial employee be present on the floor at all times and prohibited managers from leaving the premises unless another manager was also on duty, resulting in a lack of meal period coverage for managerial employees. At the same time, the labor budgets RED LOBSTER implemented did not always allow for more than one manager to be on the schedule at all times. Moreover, RED LOBSTER had a practice of failing to adhere to a schedule for managerial employees' meal periods. As a result, Mr. Avila and other aggrieved employees were sometimes the only managers on duty, and were expected to supervise the restaurant and respond to customer complaints at all times. Because managerial employees were effectively prohibited from leaving RED LOBSTER's premises for meal periods without coverage, and because there were too few employees and other managers on duty to handle the workload and attend to customers, Mr. Avila and other aggrieved employees were denied uninterrupted 30-minute meal periods, and were required to work through and/or to return early from meal periods. For example, Mr. Avila's meal periods were interrupted 2-3 times per week to resolve issues for employees.

Moreover, RED LOBSTER had, and continues to have, a policy and/or practice of requiring that Mr. Avila and other aggrieved employees carry a company-issued radio at all times to respond to requests from management and other employees. RED LOBSTER's management and other working employees contacted Mr. Avila and other aggrieved employees on their radios and/or personal mobile phones during unpaid meal periods to instruct them to complete tasks and assist other working employees. For example, Mr. Avila received requests from supervisors or co-workers on his company-issued radio and/or personal mobile phone during unpaid meal periods and would cut his meal periods short and/or work off-the-clock to comply with these requests. RED LOBSTER knew or should have known that Mr. Avila and other aggrieved employees were being made to respond to management and/or other working employees and complete tasks while off-the-clock in order to meet RED LOBSTER's expectations, but failed to compensate them for this off-the-clock work.

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

RED LOBSTER knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Avila and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Avila and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

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

For example, RED LOBSTER paid Mr. Avila and other aggrieved employees nondiscretionary bonuses and/or incentive pay for meeting certain metrics. On information and belief, some of these nondiscretionary bonuses and/or incentive pay were listed on Mr. Avila's and other aggrieved employees' wage statements as "MGRBONCA." During pay periods that Mr. Avila and other aggrieved employees were paid overtime wages, on information and belief, RED LOBSTER failed to incorporate these nondiscretionary bonuses and/or incentive pay into other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, RED LOBSTER paid Mr. Avila and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. RED LOBSTER'S failure to properly calculate the overtime wages to Mr. Avila and other aggrieved employees on a company-wide basis.

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

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

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

As stated above, due to RED LOBSTER's restrictions on overtime accrual, RED LOBSTER systematically failed to record all hours worked and Mr. Avila and other aggrieved employees were forced to work off-the-clock before and after their scheduled shifts to complete their assigned duties, including pre-shift opening tasks, post-shift closing responsibilities, responding to phone calls and completing tasks on days off, completing online trainings, and attending mandatory meetings. Moreover, as also set forth above, RED LOBSTER's company-wide security policy required employees to enter and leave the premises in pairs, resulting in Mr. Avila and other aggrieved having to wait for other employees before clocking in or after clocking in, but did not compensate them for this time.

In addition, as set forth above, due to RED LOBSTER's uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods and/or adhere to a schedule for meal periods, subsequent lack of meal period coverage, and policies requiring managerial employees to stay on or near the restaurant premises during meal periods, and/or requiring employees carry company-issued radios and/or personal mobile phones at all times to respond to requests, Mr. Avila and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

Additionally, as stated above, on information and belief, in order to limit meal penalties that RED LOBSTER would otherwise owe, RED LOBSTER pressured Mr. Avila and other aggrieved employees to clock out for meal periods, on threat of discipline, and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Also, as set forth above, during the relevant time period, RED LOBSTER systematically failed to pay Mr. Avila and/or other aggrieved employees for actual hours worked during unpaid meal periods, because RED LOBSTER's timekeeping system locked out Mr. Avila and/or other aggrieved employees for 30 minutes when they clocked out for a meal period. Thus, RED LOBSTER systematically failed to pay Mr. Avila and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

Accordingly, RED LOBSTER regularly failed to pay at least minimum wages to Mr. Avila 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. Avila and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

As stated, RED LOBSTER had, and continues to have, company-wide policies and/or practices of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads, and

failing to schedule meal periods and/or adhere to a schedule for meal periods, which resulted in a lack of meal period coverage and prevented Mr. Avila and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with understaffing its restaurants, as stated above, on information and belief, RED LOBSTER had a requirement that a managerial employee be present on the restaurant floor at all times, but RED LOBSTER's labor budgets did not always allow for more than one manager to be on the schedule at all times. As a result, Mr. Avila and other managerial employees were sometimes the only managers on duty, and would have their meal periods interrupted or would work through them in order to assist their coworkers and customers. Additionally, as stated, RED LOBSTER had a policy and/or practice of requiring that Mr. Avila and other aggrieved employees carry a company-issued radio to respond to requests from management or co-workers at all times, including during meal periods. As a result, Mr. Avila and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, approximately 2-3 times per week, Mr. Avila was required to work through his meal periods to assist his co-workers or customers due to the heavy workload and lack of coverage.

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

Also, on information and belief, RED LOBSTER did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Avila 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.

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

Furthermore, RED LOBSTER 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. Avila and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that RED LOBSTER did pay Mr. Avila and other aggrieved employees for missed, late, and interrupted meal periods, RED LOBSTER did not pay Mr. Avila and other aggrieved employees at the correct rate of pay for premiums because RED LOBSTER 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, RED LOBSTER failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Avila and other aggrieved employees are entitled to civil

penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

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

During the relevant time period, RED LOBSTER regularly failed to authorize and permit Mr. Avila 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, RED LOBSTER's policies and/or practices of understaffing and assigning heavy workloads prevented Mr. Avila and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. RED LOBSTER also failed to schedule rest periods, which, coupled with RED LOBSTER's failure to provide adequate rest period coverage, further led to Mr. Avila and other aggrieved employees not being authorized and permitted to take rest periods. Mr. Avila and other aggrieved employees were also required to keep their company-issued radios on them during their rest periods, in order to respond to coworkers' questions.

Furthermore, RED LOBSTER maintained and implemented a company-wide practice and written policy requiring that Mr. Avila and/or other aggrieved employees remain on the work premises during their rest periods. Specifically, the non-compliant policy states that employees "must remain on the facility premises" during rest periods. Upon information and belief, RED LOBSTER's company-wide on-premises rest period policy prevented Mr. Avila and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods. *See example language from rest period policy below.*

A rest break is paid time when you are relieved of all work duties and responsibilities, although you must remain on the facility premises.[The 10-minute rest period begins at the time an employee reaches an area away from the work area that is appropriate for rest.]

Because Mr. Avila and/or other aggrieved employees were restricted from leaving the work premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, RED LOBSTER effectively maintained control over Mr. Avila and/or other aggrieved employees during rest periods, and, as a result of this rest period policy, RED LOBSTER did not relinquish control over Mr. Avila and/or other aggrieved employees during rest periods.

As a result of RED LOBSTER's practices and policies, Mr. Avila and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Avila missed all of his rest periods in order to complete all of the work-related duties RED LOBSTER assigned to him.

RED LOBSTER also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Mr. Avila and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that RED LOBSTER did pay Mr. Avila and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, RED LOBSTER did not pay Mr. Avila and other aggrieved employees at the correct rate of pay for premiums because RED LOBSTER 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, RED LOBSTER failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Avila 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. RED LOBSTER has not provided Mr. Avila and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, RED LOBSTER has knowingly and intentionally provided Mr. Avila and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, RED LOBSTER issued uniform wage statements to Mr. Avila and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, RED LOBSTER violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8) and 226(a)(9).

Because RED LOBSTER did not record the time Mr. Avila and other aggrieved employees spent working off-the-clock and deducted time for their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), RED LOBSTER did not list the correct amount of gross wages and net wages earned by Mr. Avila and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, RED LOBSTER failed to accurately list the total number of the hours worked by Mr. Avila and other aggrieved employees, in violation of section

226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

Additionally, and separate from these violations, RED LOBSTER issued uniform wage statements to Mr. Avila and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Avila's and other aggrieved employees' wage statements incorrectly list the employer as "RED LOBSTER RESTAURANTS LLC," but, according to the California Secretary of State's website, there is no such entity by that name. *See example paystub below.*

CO Empl ID 000000-000000
STG [REDACTED]
Dept : 0504M-La Mesa
Location : La Mesa, Ca

Red Lobster Restaurants LLC
450 S. Orange Avenue, Suite 800
Orlando, FL 32801

Earnings Statement

Page 001 of 001
Period Beg/End: 02/08/2021 - 02/14/2021
Advice Date: 02/19/2021
Advice Number: [REDACTED]
Batch Number: [REDACTED]

CARLOS AVILA DE LEON
[REDACTED]

Click on PDF icon to view.

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

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

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

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

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

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

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not

later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

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

Mr. Avila 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 §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

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

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

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

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

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

Further, the DLSE notes that the Labor Code manifests:

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

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

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

Moreover, under RED LOBSTER's payroll debit program, on information and belief, RED LOBSTER did not permit Mr. Avila and other aggrieved employees to withdraw their entire wages in at least one transaction without incurring a fee. Additionally, on information and belief, other aggrieved employees also encountered approximately \$3 in ATM fees each time they utilized an ATM to withdraw funds from their payroll debit card in addition to a multitude of other transaction fees that RED LOBSTER did not disclose or properly inform other aggrieved employees of at the time of issuance of payroll cards, including but not limited to: card replacement fees of approximately \$6-\$35; inactivity fees of approximately \$4 per month; and foreign transaction fees of approximately 3% of transaction amount, among other undisclosed fees. Consequently, these undisclosed payroll debit card fees resulted in a discount in pay to other aggrieved employees. In sum, RED LOBSTER's payroll debit card program presented a number of obstacles and hurdles that combined, made it difficult for Mr. Avila and other aggrieved employees to access their entire wages without discount and without delay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. RED LOBSTER's payroll card program is inconsistent with this policy. Because RED LOBSTER's company-wide payroll debit card program is involuntary and denies aggrieved employees of easy access to the entirety of their wages, the program violates California Labor Code sections 212 and 213.

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

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

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, RED LOBSTER unlawfully deducted a portion of wages previously paid to Mr. Doyle and other aggrieved employees in violation of California Labor Code section 221.

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

RED LOBSTER's payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from Mr. Avila's and/or other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224.

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

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

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

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

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

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

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

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

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

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

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

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

As a result of RED LOBSTER’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. RED LOBSTER’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).

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

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

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for

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

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

RED LOBSTER’s 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 other aggrieved employees during lulls in operation. RED LOBSTER could have provided other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

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

As a result of RED LOBSTER’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, other aggrieved employees were forced to stand during shifts and denied seats. RED LOBSTER failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, RED LOBSTER, on a company-wide basis, required Mr. Avila and other aggrieved employees to use their own personal mobile devices, including, but not limited to cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the cost of their work-related mobile device expenses. Specifically, Mr. Avila was required to use his personal cellular phone to respond to calls from his General Manager or other managers regarding restaurant staffing or inventory needs. Although RED LOBSTER required Mr. Avila and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, RED LOBSTER failed to reimburse them for these costs.

In addition, RED LOBSTER had a company-wide policy of requiring Mr. Avila and other aggrieved employees to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Avila periodically was required to drive to RED LOBSTER’s other restaurant in Chula Vista, California to obtain food or restaurant supplies, such as alcohol and other supplies. As a further example, as stated, Mr. Avila was required to drive himself to other RED LOBSTER restaurants in other locations to attend mandatory trainings. Although RED LOBSTER required Mr. Avila and other aggrieved employees to utilize their own vehicles to carry out their work-related responsibilities, RED LOBSTER did not reimburse them for all of their travel expenses.

RED LOBSTER could have provided Mr. Avila and other aggrieved employees with the actual tools required for use on the job, such as company mobile devices and company vehicles, or RED LOBSTER could have reimbursed employees for the costs of their mobile device usage, travel, and mileage. Instead, RED LOBSTER passed these operating costs off onto Mr. Avila and other aggrieved employees.

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

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

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

RED LOBSTER failed to provide Mr. Avila and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). RED LOBSTER’s failure

to provide Mr. Avila and other aggrieved employees with written notice of basic information regarding their employment with RED LOBSTER is in violation of Labor Code section 2810.5.

Mr. Avila and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 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." RED LOBSTER, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Avila's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Avila 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. Avila, 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 RED LOBSTER for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Avila seeks all applicable 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:

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

Best Regards,



Alexander Lima

Copy: RED LOBSTER RESTAURANTS LLC (via U.S. Certified Mail); RED LOBSTER MANAGEMENT LLC (via U.S. Certified Mail); RED LOBSTER HOSPITALITY LLC (via U.S. Certified Mail); Sabrina L. Shadi, Nicholas D. Poper, Matthew J. Goodman, Baker & Hostetler LLP, 11601 Wilshire Boulevard, Suite 1400, Los Angeles, CA 90025 (via U.S. Certified Mail)

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Capstone
 LAW APC
 1875 Century Park East, Suite 1000
 Los Angeles, California 90067

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

OFFICIAL USE

Certified Mail Fee \$ _____ Extra Services & Fees (check box, add fee as appropriate) ☒ Return Receipt (hardcopy) \$ _____ ☐ Return Receipt (electronic) \$ _____ ☐ Certified Mail Restricted Delivery \$ _____ ☐ Adult Signature Required \$ _____ ☐ Adult Signature Restricted Delivery \$ _____ Postage \$ _____ Total Postage and Fees \$ _____	Postmark Here
--	------------------

Sent To
RED LOBSTER MANAGEMENT LLC
 Street and Apt. No., or PO Box No.
450 S. ORANGE AVE, STE 800
 City, State, ZIP+4®
ORLANDO, FL 32801

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Capstone
 LAW APC
 1875 Century Park East, Suite 1000
 Los Angeles, California 90067

RED LOBSTER MANAGEMENT LLC
 450 S. ORANGE AVENUE, SUITE 800
 ORLANDO, FL 32801

CERTIFIED MAIL

7021 0950 0001 0025 2437

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. 1. Article Addressed to: RED LOBSTER MANAGEMENT LLC 450 S. ORANGE AVE, STE 800 ORLANDO, FL 32801 2. Article Number (Transfer from service label) 7021 0950 0001 0025 2437	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 ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery

9590 9402 6979 1225 0606 89

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

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

Postage
 \$

Total Postage and Fees
 \$

Sent To
RED LOBSTER RESTAURANTS LLC
 Street and Apt. No., or PO Box No.
450 S. ORANGE AVE, STE 800
 City, State, ZIP+4®
ORLANDO, FL 32801

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7542 5200 1000 0560 1207

Capstone
 LAW APC

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

RED LOBSTER RESTAURANTS LLC
 450 S. ORANGE AVENUE, SUITE 800
 ORLANDO, FL 32801

CERTIFIED MAIL

7021 0950 0001 0025 2451

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:

RED LOBSTER RESTAURANTS LLC
450 S. ORANGE AVE, STE 800
ORLANDO, FL 32801



9590 9402 6979 1225 0606 72

2. Article Number (Transfer from service label)

7021 0950 0001 0025 2451

PS Form 3811, July 2020 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

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

7021 0950 0001 0025 2451

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

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

Orlando, FL 32801

OFFICIAL USE

Certified Mail Fee \$3.75
 \$3.05
 Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$1.76

Total Postage and Fees \$8.56

0702
 14

Postmark
 Here

ALHAMBRA, CA 91802
 DEC 10 2021
 USPS

Sent To
RED LOBSTER RESTAURANTS LLC
 Street and Apt. No., or PO Box No.
450 S. ORANGE AVE, STE 800
 City, State, ZIP+4®
ORLANDO, FL 32801

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

See Reverse for Instructions

7021 0950 0001 0025 2437

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

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

Orlando, FL 32801

OFFICIAL USE

Certified Mail Fee \$3.75
 \$3.05
 Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$1.76

Total Postage and Fees \$8.56

ALHAMBRA, CA 91802
 DEC 10 2021
 USPS

Sent To
RED LOBSTER MANAGEMENT LLC
 Street and Apt. No., or PO Box No.
450 S. ORANGE AVE, STE 800
 City, State, ZIP+4®
ORLANDO, FL 32801

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

See Reverse for Instructions

7021 0950 0001 0025 2444

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

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

Orlando, FL 32801

OFFICIAL USE

Certified Mail Fee \$3.75
 \$3.05
 Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$1.76

Total Postage and Fees \$8.56

ALHAMBRA, CA 91802
 DEC 10 2021
 USPS

Sent To
RED LOBSTER HOSPITALITY LLC
 Street and Apt. No., or PO Box No.
450 S. ORANGE AVE, STE 800
 City, State, ZIP+4®
ORLANDO, FL 32801

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

See Reverse for Instructions

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:

RED LOBSTER MANAGEMENT LLC
450 S. ORANGE AVE, STE 800
ORLANDO, FL 32801



9590 9402 6979 1225 0606 89

2. Article Number (Transfer from service label)

7021 0950 0001 0025 2437

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [Signature]

☐ Agent☐ Addressee

B. Received by (Printed Name)

SC18C19

C. Date of Delivery

12/16/19

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

3. Service Type

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

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:

RED LOBSTER RESTAURANTS
LLC
450 S. ORANGE AVE, STE 800
ORLANDO, FL 32801



9590 9402 6979 1225 0606 72

2. Article Number (Transfer from service label)

7021 0950 0001 0025 2451

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [Signature]

☐ Agent☐ Addressee

B. Received by (Printed Name)

SC18C19

C. Date of Delivery

12/16/19

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

3. Service Type

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

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 **May 23, 2022**, 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:

Sabrina L. Shadi
Nicholas D. Poper
Matthew J. Goodman
BAKER & HOSTETLER LLP
11601 Wilshire Boulevard, Suite 1400
Los Angeles, California 90025
sshadi@bakerlaw.com
[npoper@bakerlaw.com](mailto:npopper@bakerlaw.com)
mgoodman@bakerlaw.com
htran@bakerlaw.com

Attorneys for Defendants
RED LOBSTER RESTAURANTS LLC;
RED LOBSTER HOSPITALITY LLC; and
RED LOBSTER MANAGEMENT LLC

- ☐ **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 **May 23, 2022**, at Los Angeles, California.

Xochitl Tapia

Type/Print Name



Signature