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COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

DENISE CHIARAMONTE and ANTHONY
BISHOP, on behalf of the State of
California, as a private attorneys general,

Plaintiffs,

vs.

CBOCS WEST, INC., a Corporation;
CRACKER BARREL OLD COUNTRY
STORE, INC., a Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. CIVSB2313831

FIRST AMENDED
REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 212, 213, 218, 221, 223, 224, 226(a), 226.7, 227.3, 246 *et seq.*, 248.6, 510, 512, 516, 558(a)(1)(2), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s).

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1 Plaintiffs Denise Chiaramonte and Anthony Bishop (“PLAINTIFFS”), on behalf of the
2 people of the State of California and as “aggrieved employees” acting as private attorneys
3 general under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”)
4 only, allege on information and belief, except for their own acts and knowledge which are based
5 on personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFFS bring this action against Defendants CBOCS West, Inc. and
8 Cracker Barrel Old Country Store, Inc. (referred to as “DEFENDANT”) seeking only to
9 recover PAGA civil penalties for themselves, and on behalf of all current and former aggrieved
10 employees that worked for DEFENDANT. PLAINTIFFS do **not seek to recover anything**
11 **other than penalties as permitted by California Labor Code § 2699.** To the extent that
12 statutory violations are mentioned for wage violations, PLAINTIFFS do not seek underlying
13 general and/or special damages for those violations, but simply the civil penalties permitted by
14 California Labor Code § 2699.

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

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

23 **THE PARTIES**

24 4. CBOCS West, Inc. is a corporation that at all relevant times mentioned herein
25 conducted and continues to conduct substantial business in the state of California.

26 5. Cracker Barrel Old Country Store, Inc. is a corporation that at all relevant times
27 mentioned herein conducted and continues to conduct substantial business in the state of
28

1 California.

2 6. CBOCS West, Inc. and Cracker Barrel Old Country Store, Inc. were the joint
3 employers of PLAINTIFFS as evidenced by paycheck, company handbooks and policies, and
4 by the company PLAINTIFFS performed work for respectively, and are therefore jointly
5 responsible as employers for the conduct alleged herein, and are therefore collectively referred
6 to herein as "DEFENDANT."

7 7. DEFENDANT owns and operate restaurants in California.

8 8. Plaintiff Chiaramonte was employed by DEFENDANT in California from August
9 of 2022 to February of 2023 and was at all times classified by DEFENDANT as a non-exempt
10 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
11 payment of minimum and overtime wages due for all time worked.

12 9. Plaintiff Bishop is a resident of Bakersfield, in Kern County, California.
13 DEFENDANT employed Plaintiff Bishop as an hourly paid, non exempt Line Cook from
14 approximately June 2022 to April 2023. During his employment, Plaintiff Bishop typically
15 worked eight (8) hours or more per day and six (6) days per week. Plaintiff Bishop's primary
16 job duties included, without limitation, preparing and cooking food, completing food
17 temperature logs, maintaining the kitchen area, and assisting the kitchen manager.

18 10. PLAINTIFFS, and such persons that may be added from time to time who satisfy
19 the requirements and exhaust the administrative procedures under the Private Attorney General
20 Act, bring this Representative Action on behalf of the State of California with respect to
21 themselves and all individuals who are or previously were employed by DEFENDANT in the
22 State of California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES")
23 at any time during period of February 21, 2022 through July 9, 2024 (the "PAGA PERIOD").

24 11. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
25 presently or formerly employed by DEFENDANT during the PAGA PERIOD, bring this
26 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
27 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 212,
28 213, 218, 221, 223, 224, 226(a), 226.7, 227.3, 246 *et seq.*, 248.6, 510, 512, 516,

1 558(a)(1)(2), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, California Code of
2 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations,
3 Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s).
4 Based upon the foregoing, PLAINTIFFS and all AGGRIEVED EMPLOYEES are aggrieved
5 employees within the meaning of Labor Code § 2699, *et seq.*

6 12. The true names and capacities, whether individual, corporate, subsidiary,
7 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
8 presently unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious
9 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
10 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
11 they are ascertained. PLAINTIFFS are informed and believe, and based upon that
12 information and belief allege, that the Defendants named in this Complaint, including DOES
13 1 through 50, inclusive, are responsible in some manner for one or more of the events and
14 happenings that proximately caused the injuries and damages hereinafter alleged.

15 13. The agents, servants and/or employees of the Defendants and each of them
16 acting on behalf of the Defendants acted within the course and scope of his, her or its
17 authority as the agent, servant and/or employee of the Defendants, and personally
18 participated in the conduct alleged herein on behalf of the Defendants with respect to the
19 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to
20 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFFS and
21 all the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the
22 conduct of the Defendants' agents, servants and/or employees.

23 THE CONDUCT

24
25 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
26 was required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time
27 worked, meaning the time during which an employee is subject to the control of an
28 employer, including all the time the employee is suffered or permitted to work.

1 DEFENDANT requires PLAINTIFFS and the AGGRIEVED EMPLOYEES to work
2 without paying them for all the time they are under DEFENDANT's control. Among other
3 things, DEFENDANT requires PLAINTIFFS to work while clocked out during what is
4 supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time
5 interrupted by work assignments while clocked out for what should have been
6 PLAINTIFFS' off-duty meal break. As a result, PLAINTIFFS and the AGGRIEVED
7 EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal
8 breaks by working without their time being correctly recorded and without compensation at
9 the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and the
10 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
11 records.

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

16 16. The second component of PLAINTIFFS' and the AGGRIEVED
17 EMPLOYEES' compensation is DEFENDANT's non-discretionary incentive program that
18 paid PLAINTIFFS and the AGGRIEVED EMPLOYEES incentive wages based on their
19 performance for DEFENDANT. The non-discretionary incentive program provided all
20 employees paid on an hourly basis with incentive compensation when the employees met the
21 various performance goals set by DEFENDANT. However, when calculating the regular
22 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFFS and
23 the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive
24 compensation as part of the employees' "regular rate of pay" for purposes of calculating
25 overtime pay and meal and rest break premium pay. Management and supervisors described
26 the incentive program to potential and new employees as part of the compensation package.
27 As a matter of law, the incentive compensation received by PLAINTIFFS and the
28 AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to

1 do so has resulted in a underpayment of overtime compensation and meal and rest break
2 premiums to PLAINTIFFS and the AGGRIEVED EMPLOYEES by DEFENDANT.

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

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

1 where employees may take their rest period. Employers cannot impose controls that prohibit
2 an employee from taking a brief walk - five minutes out, five minutes back. Here,
3 DEFENDANT's policy restricted PLAINTIFFS and the AGGRIEVED EMPLOYEES from
4 unconstrained walks and is unlawful based on DEFENDANT's rule which states
5 PLAINTIFFS and the AGGRIEVED EMPLOYEES cannot leave the work premises during
6 their rest period.

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

22 20. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
23 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
24 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
25 provides that every employer shall furnish each of his or her employees with an accurate
26 itemized wage statement in writing showing, among other things, gross wages earned and all
27 applicable hourly rates in effect during the pay period and the corresponding amount of time
28 worked at each hourly rate. PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid

1 on an hourly basis. As such, the wage statements should reflect all applicable hourly rates
2 during the pay period and the total hours worked, and the applicable pay period in which the
3 wages were earned pursuant to California Labor Code Section 226(a). The wage statements
4 DEFENDANT provided to PLAINTIFFS and the AGGRIEVED EMPLOYEES failed to
5 identify such information. More specifically, the wage statements failed to identify the
6 accurate total hours worked each pay period. When the hours shown on the wage statements
7 were added up, they did not equal the actual total hours worked during the pay period in
8 violation of Cal. Lab. Code 226(a)(2). DEFENDANT also violated Cal. Lab. Code 226(a)(6)
9 by not including the inclusive dates of the period for which the employee is paid. Aside,
10 from the violations listed above in this paragraph, DEFENDANT failed to issue to
11 PLAINTIFFS an itemized wage statement that lists all the requirements under California
12 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS
13 and the AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code §
14 226.

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

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

23 22. DEFENDANT from time to time failed to pay PLAINTIFFS and the
24 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
25 accordance with Cal. Lab. Code § 204(d), including but not limited to for the “Hourly”
26 regular wage payments.

27 23. DEFENDANT underpaid sick pay wages to PLAINTIFFS and the
28 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in

1 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt
2 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
3 of pay, DEFENDANT underpays sick pay to PLAINTIFFS and the AGGRIEVED
4 EMPLOYEES at their base rates of pay.

5 24. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt
6 employees be calculated by dividing the employee's total wages, not including overtime
7 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
8 days of employment.

9 25. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
10 at the regular rate of pay. PLAINTIFFS and the AGGRIEVED EMPLOYEES routinely
11 earned non-discretionary incentive wages which increased their regular rate of pay.
12 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and
13 the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as
14 required under Cal. Lab. Code Section 246.

15 26. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS
16 and the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
17 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and
18 believe and based thereon allege that such failure to pay sick pay at regular rate was willful,
19 such that the AGGRIEVED EMPLOYEES whose employment has separated are entitled to
20 waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

21 27. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
22 to collect or receive from an employee any part of wages theretofore paid by said employer
23 to said employee." DEFENDANT fails to pay all compensation due to PLAINTIFFS and
24 the AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
25 PLAINTIFFS and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the
26 deductions from compensation payable to PLAINTIFFS and the AGGRIEVED
27 EMPLOYEES, and thereby fails to pay these employees all wages due at each applicable
28 pay period and upon termination.

1 28. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
2 PLAINTIFFS and the AGGRIEVED EMPLOYEES for required business expenses incurred
3 by the PLAINTIFFS and the AGGRIEVED EMPLOYEES in direct consequence of
4 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
5 2802, employers are required to indemnify employees for all expenses incurred in the course
6 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
7 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
8 employee in direct consequence of the discharge of his or her duties, or of his or her
9 obedience to the directions of the employer, even though unlawful, unless the employee, at
10 the time of obeying the directions, believed them to be unlawful."

11 29. In the course of their employment Plaintiff Chiaramonte and other
12 AGGRIEVED EMPLOYEES as a business expense, were required by DEFENDANT to use
13 their own personal cellular phones as a result of and in furtherance of their job duties as
14 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for
15 the cost associated with the use of their personal cellular phones for DEFENDANT's
16 benefit. Also, DEFENDANT required Plaintiff Bishop and other AGGRIEVED
17 EMPLOYEES to obtain certain certifications, which were required for their continued
18 employment, as well as associated costs such as training and/or examination fees. For
19 example, Plaintiff Bishop complied with this requirement and spent approximately \$21 to
20 obtain a food handler card, but DEFENDANT did not reimburse him for the costs of
21 obtaining the certification. Thus, DEFENDANT failed to reimburse Plaintiff Bishop and
22 other AGGRIEVED EMPLOYEES for the costs of obtaining these certifications, including
23 training and/or examination fees. As a result, in the course of their employment with
24 DEFENDANT, PLAINTIFFS and the AGGRIEVED EMPLOYEES incurred unreimbursed
25 business expenses which included, but were not limited to, costs related to the use of their
26 personal cellular phones and obtaining required certifications, all on behalf of and for the
27 benefit of DEFENDANT.
28

1 30. In violation of the applicable sections of the California Labor Code and the
2 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
3 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
4 knowingly and systematically failed to provide PLAINTIFFS and the other AGGRIEVED
5 EMPLOYEES suitable seating when the nature of these employees' work reasonably
6 permitted sitting.

7 31. DEFENDANT knew or should have known that PLAINTIFFS and other
8 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit
9 when it did not interfere with the performance of their duties, and that DEFENDANT did
10 not provide suitable seating and/or did not allow them to sit when it did not interfere with
11 the performance of their duties.

12 32. By reason of this conduct applicable to PLAINTIFFS and all AGGRIEVED
13 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage
14 Order 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFFS seek penalties
15 on behalf of PLAINTIFFS and other AGGRIEVED EMPLOYEES as provided herein.
16 Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's
17 intentional disregard of the obligation to meet this burden, DEFENDANT violated the
18 California Labor Code and regulations promulgated thereunder as herein alleged.

19 33. The employment of PLAINTIFFS and some AGGRIEVED EMPLOYEES has
20 terminated and DEFENDANT has not tendered payment of all wages owed as required by
21 law. Additionally, at all times during the term of PLAINTIFFS' employment with
22 DEFENDANT, PLAINTIFFS and other AGGRIEVED EMPLOYEES earned and accrued
23 vested vacation and holiday time on the date of their termination pursuant to
24 DEFENDANT's uniform vacation policies and applicable California law. The amount of
25 vacation pay PLAINTIFFS and the other AGGRIEVED EMPLOYEES earned and
26 accumulated is evidenced by DEFENDANT's business records. Additionally,
27 DEFENDANT also underpaid accrued vested vacation wages to PLAINTIFFS and other
28 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay and

1 more specifically the final rate of pay that included all non-discretionary incentive
2 compensation. Rather than pay vacation wages at the regular rate of pay, DEFENDANT
3 underpaid vacation wages to PLAINTIFFS and other AGGRIEVED EMPLOYEES at their
4 base rates of pay, instead of including all of PLAINTIFFS' and other AGGRIEVED
5 EMPLOYEES' non-discretionary incentive compensation into the vacation wage payment
6 calculations. DEFENDANT failed to specify in DEFENDANT's written vacation policy the
7 rate at which PLAINTIFFS and other AGGRIEVED EMPLOYEES would be paid vacation
8 upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful
9 practice, policy and procedure to deny paying the PLAINTIFFS and other AGGRIEVED
10 EMPLOYEES all of their vested vacation and holiday time, DEFENDANT failed to pay the
11 PLAINTIFFS and other AGGRIEVED EMPLOYEES all vested vacation time as wages due
12 upon employment termination, in violation of the California Labor Code, Sections 201, 202,
13 203 and 227.3. Similarly, DEFENDANT underpaid waiting time penalties to PLAINTIFFS
14 and other AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of
15 PLAINTIFFS' and other AGGRIEVED EMPLOYEES' non-discretionary compensation
16 into the waiting time penalty calculations. This failure by DEFENDANT is believed to be
17 the result of DEFENDANT's unlawful, unfair and deceptive refusal to provide compensation
18 for earned, accrued and vested vacation and holiday time, as well as the corresponding
19 waiting time penalties that were paid. DEFENDANT perpetrated this unlawful, unfair and
20 deceptive practice to the detriment of PLAINTIFFS and other AGGRIEVED EMPLOYEES.
21 DEFENDANT's uniform practice and policy of failing to pay the AGGRIEVED
22 EMPLOYEES for all vested vacation and holiday time accumulated at employment
23 termination violated and continues to violate Section 227.3 of the California Labor Code.

24 34. DEFENDANT's conduct, as alleged herein, violates numerous sections of the
25 California Labor Code, including, but not limited to, the following:

26 (a) Violation of Labor Code sections 510 and 1198, and the applicable
27 IWC Wage Order for DEFENDANT's failure to compensate PLAINTIFFS and other
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1 AGGRIEVED EMPLOYEES with all required overtime pay, as alleged herein and set forth
2 below;

3 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
4 applicable IWC Wage Order for DEFENDANT's failure to include all forms of
5 remuneration in the "regular rate" of pay as required by law for purposes of paying overtime
6 wages and/or meal and rest period premiums to other AGGRIEVED EMPLOYEES, as set
7 forth below;

8 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
9 1198, and the applicable IWC Wage Order for DEFENDANT's failure to compensate
10 PLAINTIFFS and other AGGRIEVED EMPLOYEES with at least minimum wages for all
11 hours worked, as alleged herein;

12 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
13 applicable IWC Wage Order for DEFENDANT's failure to provide PLAINTIFFS and other
14 AGGRIEVED EMPLOYEES with meal periods, as alleged herein and set forth below;

15 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
16 applicable IWC Wage Order for DEFENDANT'S failure to authorize and permit
17 PLAINTIFFS and other AGGRIEVED EMPLOYEES to take rest periods, as alleged herein
18 and set forth below;

19 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
20 IWC Wage Order for failure to provide accurate and complete wage statements to
21 PLAINTIFFS and other AGGRIEVED EMPLOYEES, as alleged herein and set forth
22 below;

23 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
24 IWC Wage Order for failure to maintain payroll records, as alleged herein;

25 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
26 earned wages upon termination, as alleged herein;

27 (i) Violation of Labor Code section 204 for failure to pay all earned wages
28 during employment, as alleged herein;

1 (j) Violation of Labor Code sections 212 and 213 for issuing instruments
2 for the payment of wages that were not payable in cash on demand, without discount, and
3 with prior authorization, as set forth below;

4 (k) Violation of Labor Code sections 221 and 224 for unlawfully deducting
5 a portion of wages previously paid to other AGGRIEVED EMPLOYEES, as set forth
6 below;

7 (l) Violation of Labor Code section 223 for secretly paying other
8 AGGRIEVED EMPLOYEES lower wages than required by statute, while purporting to pay
9 the proper wages, as set forth below;

10 (m) Violation of Labor Code section 227.3 for failure to pay PLAINTIFFS
11 and/or other AGGRIEVED EMPLOYEES all vested vacation time upon termination, as set
12 forth below;

13 (n) Violation of Labor Code sections 246(l) and 248.6(b)(3)(A), for failure
14 to properly calculate the sick leave rate paid to PLAINTIFFS and other AGGRIEVED
15 EMPLOYEES, as set forth below;

16 (o) Violation of Labor Code section 1198 for failing to provide suitable
17 seating to other AGGRIEVED EMPLOYEES, as set forth below;

18 (p) Violation of Labor Code section 1198 and the applicable IWC Wage
19 Order for failing to pay reporting time pay to PLAINTIFFS and other AGGRIEVED
20 EMPLOYEES, as alleged herein; and

21 (q) Violation of Labor Code section 2802 for failure to reimburse
22 PLAINTIFFS and other AGGRIEVED EMPLOYEES for all business expenses necessarily
23 incurred, as alleged herein.

24 35. During the PAGA PERIOD, as stated, DEFENDANT had company-wide
25 policies and/or practices of requiring PLAINTIFFS and other AGGRIEVED EMPLOYEES
26 to perform various work-related tasks while off-the-clock, including watching training
27 videos, submitting to security checks, waiting to be let into the restaurant by a managerial
28 employee, and waiting to clock in for the start of their shifts because other employees were

1 using the POS system. Thus, DEFENDANT failed to track the time PLAINTIFFS and other
2 AGGRIEVED EMPLOYEES spent working off-the-clock, and PLAINTIFFS and other
3 AGGRIEVED EMPLOYEES received no compensation for this time. Additionally, as
4 stated above, DEFENDANT had a company-wide "on-call" policy, but DEFENDANT did
5 not pay PLAINTIFFS and other AGGRIEVED EMPLOYEES at least minimum wages for
6 the time they spent waiting to see if they were needed at the restaurant. Finally, as set forth
7 above, due to DEFENDANT's uniform practices of utilizing labor budgets, understaffing,
8 assignment of heavy workloads, failure to schedule or provide meal periods, and subsequent
9 lack of meal period coverage, PLAINTIFFS and other AGGRIEVED EMPLOYEES were
10 forced to forego meal periods, have their meal periods interrupted, and/or were otherwise
11 not relieved of all duties during meal periods. Further, to limit the meal penalties that
12 DEFENDANT would otherwise owe, DEFENDANT adjusted employee time records to
13 reflect compliant meal periods, but required them to continue working, time for which they
14 were not paid. Furthermore, as set forth above, DEFENDANT's company-wide
15 timekeeping system prevented PLAINTIFFS and other AGGRIEVED EMPLOYEES from
16 entering time worked during meal periods because the system locked out PLAINTIFFS and
17 other AGGRIEVED EMPLOYEES for a full 30 minutes. Thus, DEFENDANT
18 systematically failed to pay PLAINTIFFS and other AGGRIEVED EMPLOYEES for actual
19 hours worked during unpaid meal periods because these hours were not always correctly
20 recorded.

21 36. As stated, DEFENDANT knew or should have known that as a result of these
22 company-wide practices and/or policies, PLAINTIFFS and other AGGRIEVED
23 EMPLOYEES were performing their assigned duties off-the-clock before and after their
24 shifts and during meal periods, and were suffered or permitted to perform work for which
25 they were not paid. Because PLAINTIFFS and other AGGRIEVED EMPLOYEES worked
26 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this
27 off-the-clock work qualified for overtime premium pay.
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1 37. Furthermore, DEFENDANT did not pay other AGGRIEVED EMPLOYEES
2 the correct overtime rate for the recorded overtime hours that they generated. In addition to
3 an hourly wage, DEFENDANT paid other AGGRIEVED EMPLOYEES incentive pay,
4 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
5 California Labor Code, DEFENDANT failed to incorporate all compensation, including
6 incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the
7 calculation of the regular rate of pay for purposes of calculating the overtime wage rate.
8 Therefore, during times when other AGGRIEVED EMPLOYEES worked overtime and
9 received these other forms of pay, DEFENDANT failed to pay all overtime wages by paying
10 a lower overtime rate than required.

11 38. DEFENDANT's failure to compensate PLAINTIFFS and/or other
12 AGGRIEVED EMPLOYEES with all required overtime pay and DEFENDANT'S failure to
13 properly calculate the overtime rates paid to other AGGRIEVED EMPLOYEES is in
14 violation of California Labor Code sections 510 and 1198, and the applicable IWC Wage
15 Order.

16 39. As stated, during the PAGA PERIOD, DEFENDANT engaged in a
17 company-wide practice and/or policy of not paying all meal period premiums owed when
18 compliant meal periods are not provided. Because of this practice and/or policy,
19 PLAINTIFFS and other AGGRIEVED EMPLOYEES have not received premium pay for
20 missed, late, and interrupted meal periods. Alternatively, to the extent that DEFENDANT
21 did pay other AGGRIEVED EMPLOYEES for missed, late, and interrupted meal periods,
22 DEFENDANT did not pay other AGGRIEVED EMPLOYEES at the correct rate of pay for
23 premiums because DEFENDANT systematically failed to include all forms of
24 compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
25 remuneration, in the regular rate of pay.

26 40. DEFENDANT's failure to provide meal periods to PLAINTIFFS and/or other
27 AGGRIEVED EMPLOYEES and failure to properly calculate the rates of pay for meal
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1 period premiums based on all remuneration paid is in violation of California Labor Code
2 sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order.

3 41. As stated, as with meal periods, DEFENDANT also have engaged in a
4 company-wide practice and/or policy of not paying all rest period premiums owed when
5 compliant rest periods are not authorized or permitted. Because of this practice and/or
6 policy, PLAINTIFFS and other AGGRIEVED EMPLOYEES have not received premium
7 pay for all missed rest periods. Alternatively, to the extent that DEFENDANT did pay other
8 AGGRIEVED EMPLOYEES one (1) additional hour of premium pay for missed rest
9 periods, DEFENDANT did not pay other AGGRIEVED EMPLOYEES at the correct rate of
10 pay for premiums because DEFENDANT failed to include all forms of compensation, such
11 as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the
12 regular rate of pay.

13 42. DEFENDANT's failure to properly calculate the rates of pay for rest period
14 premiums based on all remuneration paid is in violation of California Labor Code sections
15 226.7, 516, and 1198, and the applicable IWC Wage Order.

16 43. During the PAGA PERIOD, because DEFENDANT did not calculate other
17 AGGRIEVED EMPLOYEES' regular rate of pay correctly for purposes of paying overtime
18 wages and/or meal and rest period premiums, DEFENDANT did not list the correct amount
19 of gross wages earned by other AGGRIEVED EMPLOYEES in compliance with section
20 226(a)(1) and did not list the correct amount of net wages earned by other AGGRIEVED
21 EMPLOYEES in violation of section 226(a)(5). DEFENDANT also failed to correctly list
22 all applicable hourly rates in effect during the pay period, namely, correct rates of pay for
23 overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).
24 DEFENDANT's conduct is in violation of California Labor Code 226(a), 1174(d), and
25 1198.

26 44. At all relevant times herein set forth, California Labor Code section 212
27 prohibits employers from issuing any instruments for the payment of wages unless such
28 instruments are negotiable and payable in cash on demand and without discount. California

1 Labor Code section 213 permits employers to pay employees via direct deposit so long as
2 the employee authorizes payment via direct deposit. Under California law, employers are
3 also permitted to fulfill their wage payment obligations to employees by using payroll debit
4 cards, but only under certain circumstances. Employer use of payroll debit cards is
5 permitted only so long as the employee is given the choice as to whether to accept a payroll
6 debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No.
7 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the
8 court stated that the Division of Labor Standards Enforcement ("DLSE") decision deeming
9 payroll debit card program permissible relied heavily on:

10 . . . [T]he fact that the pay programs were optional, thereby allowing an employee to either
11 participate in the program or receive his or her pay in some other way, such as direct deposit.
12 Specifically, the DLSE opined that "[t]he success of the described procedure, in practice,
13 will of course require that . . . it is presented as an alternative method for wage payment for
14 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).

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

20 . . . (1) [T]he "wages [are] payable at some established place of business in the state and
21 there be at least 30 days of sufficient funds for payment,"; (2) the employees are "fully
22 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.

23 46. Further, the DLSE notes that the Labor Code manifests:

24
25 . . . [A] strong public policy that prohibits an employer (or its agent) from imposing
26 conditions or obstacles which interfere with or prevent an employee's (sic) from promptly
27 receiving their due wages in full. The imposition of a fee in order to readily access one's
28 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

1 reducing or discounting wages because such fee would be charged against the same account
2 in which wages are deposited. (emphases in original)

3 DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll
4 service providers "effectively act as agents of the client employers in discharging the
5 employer's wage payment obligations." *Id.* In a second opinion letter, the DLSE stated that
6 "[w]hile the Labor Code does not purport to regulate the specific arrangements between
7 employers and payroll service providers, both an employer and, under the express language
8 in Labor Code § 212- their agent, must comply with its requirements." DLSE opinion letter
9 2008.07.07-2.

10 47. During the PAGA PERIOD, DEFENDANT had an agreement with a payroll
11 service provider, Netspend, for the issuance of payroll debit cards to employees, including
12 PLAINTIFFS and other AGGRIEVED EMPLOYEES, to discharge their wage payment
13 obligations to their employees. Under DEFENDANT's payroll debit card program, on
14 information and belief, PLAINTIFFS and other AGGRIEVED EMPLOYEES did not have
15 easy access to the entirety of their wages without incurring a fee. For example,
16 PLAINTIFFS and other AGGRIEVED EMPLOYEES were unable to withdraw their entire
17 wages in at least one transaction without incurring a fee, which resulted in a discount in their
18 pay. Thus, DEFENDANT's payroll debit card program was and continues to be unlawful as
19 it did not give PLAINTIFFS and other AGGRIEVED EMPLOYEES access to their entire
20 wages without discount and without delay.

21 48. California courts recognize a policy favoring the full and prompt payment of
22 wages to employees. DEFENDANT'S payroll card program is inconsistent with this policy
23 because it presents a number of obstacles and hurdles that, together, make it difficult for
24 PLAINTIFFS and other AGGRIEVED EMPLOYEES to access their entire wages without
25 discount and without delay, in violation of California Labor Code sections 212 and 213.

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

4 50. During the PAGA PERIOD, DEFENDANT unlawfully deducted a portion of
5 wages previously paid to PLAINTIFFS and other AGGRIEVED EMPLOYEES in violation
6 of California Labor Code section 221. On information and belief, DEFENDANT
7 systematically, and on a company-wide basis, provided PLAINTIFFS and other
8 AGGRIEVED EMPLOYEES with payroll debit cards as payment of their wages. Under
9 DEFENDANT's payroll debit card program, PLAINTIFFS and other AGGRIEVED
10 EMPLOYEES were assessed various fees in connection with their use of the payroll debit
11 cards. For example, PLAINTIFFS and other AGGRIEVED EMPLOYEES were required to
12 pay per-transaction fees, ATM fees, and/or other fees to obtain and/or spend their earned and
13 due wages. The fees charged to PLAINTIFFS and other AGGRIEVED EMPLOYEES
14 resulted in a discount of their wages.

15 51. DEFENDANT'S payroll debit card program, which resulted in a discount of
16 wages to employees, are tantamount to taking deductions from PLAINTIFFS' and other
17 AGGRIEVED EMPLOYEES' paychecks without their written authorization and therefore
18 constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and
19 224.

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

23 53. During the PAGA PERIOD, DEFENDANT willfully and systematically issued
24 payroll debit cards to PLAINTIFFS and other AGGRIEVED EMPLOYEES that discounted
25 their wages by charging various fees in connection with the use of the payroll debit cards.
26 DEFENDANT's payroll debit card program resulted in the payment of less than statutorily
27 required wages to PLAINTIFFS and other AGGRIEVED EMPLOYEES. Thus,
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1 DEFENDANT paid PLAINTIFFS and other AGGRIEVED EMPLOYEES lower wages
2 than those they were entitled to while purporting that PLAINTIFFS and other AGGRIEVED
3 EMPLOYEES were properly paid.

4 54. DEFENDANT's failure to pay other AGGRIEVED EMPLOYEES the correct
5 designated wages, while purporting to pay legal wages, is a violation of California Labor
6 Code section 223.

7 55. At all relevant times herein, California Labor Code section 227.3 provides that
8 whenever a contract of employment or employer policy provides for paid vacations, and an
9 employee is terminated without having taken his or her vested vacation time, all vested
10 vacation shall be paid to him or her as wages at his or her final rate in accordance with such
11 contract of employment or employer policy respecting eligibility or time served. Vacation
12 time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata
13 share of vested vacation pay. An employer may not require an employee to forfeit earned
14 but unused vacation pay.

15 56. DEFENDANT had a company-wide policy and practice of failing to pay
16 PLAINTIFFS and/or other AGGRIEVED EMPLOYEES vested vacation wages that were
17 owed to them at the end of their employment, at their final rate of pay which included all
18 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
19 of remuneration, in violation of California Labor Code section 227.3. DEFENDANT's
20 failure to pay PLAINTIFFS and/or other AGGRIEVED EMPLOYEES all vested vacation
21 wages at the end of their employment has caused a forfeiture of vested vacation wages in
22 violation of California Labor Code section 227.3.

23 57. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
24 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or
25 more days from the commencement of employment with paid sick days, to be accrued at
26 least one hour for every 30 hours worked. Further, Labor Code section 246(l) provides that
27 an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick
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1 time for nonexempt employees shall be calculated in the same manner as the regular rate of
2 pay for the workweek in which the employee uses paid sick time, whether or not the
3 employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for
4 nonexempt employees shall be calculated by dividing the employee's total wages, not
5 including overtime premium pay, by the employee's total hours worked in the full pay
6 periods of the prior 90 days of employment."

7 58. At all relevant times herein, California Labor Code section 248.6 provides
8 covered employees with COVID-19 supplemental paid sick leave. California Labor Code
9 section 248.6(b)(3)(A) provides that each hour of COVID-19 supplemental paid sick leave
10 shall be compensated at a rate equal to the following: 1) "[c]alculated in the same manner as
11 the regular rate of pay for the workweek in which the employee uses paid sick time, whether
12 or not the employee actually works overtime in that workweek[;]" or 2) "[c]alculated by
13 dividing the employee's total wages, not including overtime premium pay, by the employee's
14 total nonovertime hours worked in the full pay periods occurring within the prior 90 days of
15 employment; provided that, for nonexempt employees paid by piece rate, commission or
16 other method that uses all hours to determine the regular rate of pay, total wages, not
17 including overtime premium pay, shall be divided by all hours, to determine the correct
18 amount of COVID-19 supplemental paid sick leave under this subdivision."

19 59. During the PAGA PERIOD, on information and belief, DEFENDANT did not
20 pay PLAINTIFFS and/or other AGGRIEVED EMPLOYEES the correct sick leave rates of
21 pay. In addition to an hourly wage, DEFENDANT paid PLAINTIFFS and/or other
22 AGGRIEVED EMPLOYEES incentive pay, nondiscretionary bonuses, and/or other forms
23 of remuneration. However, in violation of the California Labor Code, DEFENDANT failed
24 to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses,
25 into the calculation of the regular rate of pay for purposes of calculating the sick leave rate.
26 Therefore, during times when PLAINTIFFS and/or other AGGRIEVED EMPLOYEES
27 took sick leave and received these other forms of pay, DEFENDANT failed to pay all sick
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1 leave benefits by paying a lower sick leave rate than required. Specifically, DEFENDANT
2 paid PLAINTIFFS and/or other AGGRIEVED EMPLOYEES sick leave based on their
3 hourly rate of pay instead of their regular rate of pay.

4 60. DEFENDANT's failure to properly calculate the sick leave rates of pay based
5 on all remuneration paid has resulted in an underpayment of sick leave benefits to
6 PLAINTIFFS and/or other AGGRIEVED EMPLOYEES on a company-wide basis, in
7 violation of Labor Code sections 246(l) and 248.6(b)(3)(A).

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

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

17 63. PLAINTIFFS allege that DEFENDANT's California restaurants are generally
18 similar in their layout and design and there was, and continues to be, space behind host
19 stands to allow for the presence and use of a seat or stool by other AGGRIEVED
20 EMPLOYEES (with reasonable or no modification to these work areas) during the
21 performance of their work duties. DEFENDANT could have provided other AGGRIEVED
22 EMPLOYEES with a seat or stool at their host stands, but instead denied employees seating
23 and forced other AGGRIEVED EMPLOYEES to stand throughout the day.

24 64. Other AGGRIEVED EMPLOYEES spent a substantial portion of their day
25 behind or at these host stands. The nature of the work of an employee performing host
26 duties can reasonably be accomplished from a seated position. However, DEFENDANT
27 systematically, and on a company-wide basis, did not provide seats or stools at or near the
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1 host stands, forcing other AGGRIEVED EMPLOYEES to stand throughout their work
2 shifts.

3 65. During the PAGA PERIOD, DEFENDANT violated California Labor Code
4 section 1198 and California Code of Regulations, Title 8, section 11050(14)(A), because
5 other AGGRIEVED EMPLOYEES were not allowed to sit, even when the nature of the
6 work would reasonably permit the use of seats, nor were they provided with suitable seats.
7 DEFENDANT'S management did not inform other AGGRIEVED EMPLOYEES that they
8 were allowed to sit down, provide any means for them to sit down, or mention any policy
9 regarding sitting.

10 66. As a result of DEFENDANT's company-wide policy and/or practice of
11 prohibiting employees from sitting during their shifts and failure to provide suitable seating,
12 other AGGRIEVED EMPLOYEES were forced to stand during shifts and denied seats.
13 DEFENDANT's failure to provide suitable seating to other AGGRIEVED EMPLOYEES
14 violated and continues to violate California Labor Code section 1198 and IWC Wage Order
15 No. 5-2001, subdivision 14(A).

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

21 68. During the PAGA PERIOD, DEFENDANT violated California Labor Code
22 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because
23 other AGGRIEVED EMPLOYEES were not allowed to sit, even during lulls in their work
24 duties, nor were they provided with suitable seats in reasonable proximity to their work
25 areas.

26 69. As stated, PLAINTIFFS allege that DEFENDANT's California restaurants are
27 generally similar in their layout and design and there was, and continues to be, space near
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1 their work areas (with reasonable or no modification to these work areas) to allow for the
2 presence and use of a seat or stool by other AGGRIEVED EMPLOYEES during lulls in
3 operation. DEFENDANT could have provided other AGGRIEVED EMPLOYEES with a
4 seat or stool in their work areas, but instead denied other AGGRIEVED EMPLOYEES
5 suitable seating altogether and effectively forced other AGGRIEVED EMPLOYEES to
6 stand throughout the day.

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

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

22 72. During the PAGA PERIOD, as stated, DEFENDANT had company-wide
23 policies and/or practices of passing off their cost of doing business and operating expenses
24 onto PLAINTIFFS and/or other AGGRIEVED EMPLOYEES. DEFENDANT had a
25 company-wide policy of requiring other AGGRIEVED EMPLOYEES to utilize their own
26 personal mobile devices, including cellular phones, and/or mobile data to carry out their job
27 duties, but DEFENDANT failed to reimburse them for the costs of their work-related mobile
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1 device expenses. Although DEFENDANT required other AGGRIEVED EMPLOYEES to
2 utilize their personal mobile devices and/or mobile data to carry out their work-related
3 responsibilities, DEFENDANT failed to reimburse them for this cost. DEFENDANT could
4 have provided other AGGRIEVED EMPLOYEES with the actual equipment for use on the
5 job, such as company mobile devices, or DEFENDANT could have reimbursed employees
6 for their mobile device usage. Instead, DEFENDANT passed these operating costs off onto
7 other AGGRIEVED EMPLOYEES.

8 73. DEFENDANT's company-wide policy and/or practice of not reimbursing
9 employees for expenses necessarily incurred and passing on their operating costs to
10 PLAINTIFFS and/or other AGGRIEVED EMPLOYEES violates California Labor Code
11 section 2802.

12 74. Thus, PLAINTIFFS and/or other AGGRIEVED EMPLOYEES are entitled to
13 recover civil penalties pursuant to Labor Code sections 225.5, 226.3, 248.5, 558, 1174.5,
14 and/or 2699(a), (f), and (g).

15 75. All of the conduct and violations alleged herein occurred during the PAGA
16 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
17 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations
18 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
19 2018 AJDAR 12157 (Certified for Publication 12/19/18).

20 21 **JURISDICTION AND VENUE**

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

24 77. Venue is proper in this Court pursuant to California Code of Civil Procedure,
25 Sections 395 and 395.5, because Plaintiff Chiaramonte worked in this County for
26 DEFENDANT and DEFENDANT (i) currently maintains and at all relevant times
27 maintained offices and facilities in this County and/or conducts substantial business in this
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County, and (ii) committed the wrongful conduct herein alleged in this County against Plaintiff Chiaramonte and other AGGRIEVED EMPLOYEES.

FIRST CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFFS and Against All Defendants)

78. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

80. PLAINTIFFS, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by DEFENDANT in the State of California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") at any time during period of February 21, 2022 through July 9, 2024 (the "PAGA PERIOD").

1 81. On February 21, 2023, Plaintiff Chiaramonte gave written notice by electronic
2 mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail
3 to the employer of the specific provisions of this code alleged to have been violated as
4 required by Labor Code § 2699.3. *See Exhibit #1*, attached hereto and incorporated by this
5 reference herein (*PAGA Notice only without draft complaint*). On June 23, 2023, Plaintiff
6 Bishop gave written notice by electronic mail to the Labor and Workforce Development
7 Agency (the "Agency") and by certified mail to the employer of the specific provisions of
8 this code alleged to have been violated as required by Labor Code § 2699.3. On August 4,
9 2023, Plaintiff Bishop sent an amended written notice by online filing to the LWDA and by
10 certified mail to DEFENDANT of the specific provisions of the California Labor Code
11 alleged to have been violated, supplementing and clarifying the facts and theories to support
12 the alleged violations set forth in his original LWDA notice, in accordance with California
13 Labor Code section 2699.3. True and correct copies of Plaintiff Bishop's written notices to
14 the LWDA and DEFENDANT are attached hereto as **Exhibit #2**, and incorporated by this
15 reference herein. The statutory waiting period for PLAINTIFFS to add these allegations to
16 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now
17 commence a representative civil action under PAGA pursuant to Section 2699 as the proxies
18 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

19 82. The policies, acts and practices heretofore described were and are an unlawful
20 business act or practice because DEFENDANT, *inter alia*, (a) failed to provide
21 PLAINTIFFS and the AGGRIEVED EMPLOYEES accurate itemized wage statements, (b)
22 failed to properly record and provide legally required meal and rest periods, (c) failed to pay
23 minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to
24 reimburse employees for required expenses, (f) failed to provide wages when due, and (g)
25 failed to provide suitable seating, all in violation of the applicable Labor Code sections listed
26 in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 212, 213, 218, 221, 223, 224, 226(a),
27 226.7, 227.3, 246 *et seq.*, 248.6, 510, 512, 516, 558(a)(1)(2), 1174(d), 1182.12, 1194, 1197,
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1 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision
2 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide
3 Seating), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a
4 result of such conduct.¹ PLAINTIFFS hereby seek recovery of only civil penalties as
5 prescribed by the Labor Code Private Attorney General Act of 2004 as the representatives of
6 the State of California for the illegal conduct perpetrated on PLAINTIFFS and the
7 AGGRIEVED EMPLOYEES.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
10 severally, as follows:

11 1. On behalf of the State of California and with respect to all AGGRIEVED
12 EMPLOYEES:

13 A) Recovery of civil penalties as prescribed by the Labor Code Private
14 Attorneys General Act of 2004; and,

15 B) An award of attorneys' fees and cost of suit, as allowable under the
16 law, including, but not limited to, pursuant to Labor Code §2699.

17 Dated: September 10, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE
18 BLOUW LLP

19
20 By: /s/ Nicholas De Blouw
21 Norman B. Blumenthal
Nicholas J. De Blouw

22 **CAPSTONE LAW APC**
23 Orlando Villalba
24 Helga Hakimi
25 Joseph D. Parsons
1875 Century Park East, Suite 1000
Los Angeles, California 90067

26 *Attorneys for Plaintiffs*

27 _____
28 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
Code §558(a)(3).

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

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WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

February 21, 2023

CA2891

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Cracker Barrel Old Country Store, Inc.
Certified Mail #70222410000247761021
CT Corporation System
AMANDA GARCIA
330 N. BRAND BLVD., Suite 700
GLENDALE, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by CBOCS West, Inc. and/or Cracker Barrel Old Country Store, Inc. in California including any employees staffed with CBOCS West, Inc. and/or Cracker Barrel Old Country Store, Inc. by a third party, during the time period of February 21, 2022 until a date as determined by the Court. Our offices represent Plaintiff Denise Chiramonte (“Plaintiff”) and other Aggrieved Employees in a lawsuit against CBOCS West, Inc. and/or Cracker Barrel Old Country Store, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from August of 2022 to February of 2022. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs.,

tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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February 21, 2023

CA2891

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Cracker Barrel Old Country Store, Inc.
Certified Mail #702241000247761045
CT Corporation System
300 Montvue Road
Knoxville, TN 37919-5546

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by CBOCS West, Inc. and/or Cracker Barrel Old Country Store, Inc. in California including any employees staffed with CBOCS West, Inc. and/or Cracker Barrel Old Country Store, Inc. by a third party, during the time period of February 21, 2022 until a date as determined by the Court. Our offices represent Plaintiff Denise Chiramonte (“Plaintiff”) and other Aggrieved Employees in a lawsuit against CBOCS West, Inc. and/or Cracker Barrel Old Country Store, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from August of 2022 to February of 2022. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved

Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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1004

February 21, 2023

CA2891

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

CBOCS WEST, Inc.
Certified Mail #70222410000247761038
CT Corporation System
AMANDA GARCIA
330 N. BRAND BLVD., Suite 700
GLENDALE, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

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“Aggrieved Employees” refers to all individuals who are or previously were employed by CBOCS West, Inc. and/or Cracker Barrel Old Country Store, Inc. in California including any employees staffed with CBOCS West, Inc. and/or Cracker Barrel Old Country Store, Inc. by a third party, during the time period of February 21, 2022 until a date as determined by the Court. Our offices represent Plaintiff Denise Chiramonte (“Plaintiff”) and other Aggrieved Employees in a lawsuit against CBOCS West, Inc. and/or Cracker Barrel Old Country Store, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from August of 2022 to February of 2022. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs.,

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This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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EXHIBIT 2



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

June 23, 2023

VIA ONLINE SUBMISSION

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

Subject: *Anthony Bishop v. Cracker Barrel Old Country Store, Inc., et al.*

Dear PAGA Administrator:

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

The employers may be contacted directly at the addresses below:

CRACKER BARREL OLD COUNTRY STORE, INC.	CBOCS WEST, INC.
305 S. HARTMANN DRIVE	305 S. HARTMANN DRIVE
LEBANON, TN 37075	LEBANON, TN 37075

CBOCS WEST, INC.
3993 HOWARD HUGHES PKWY
LAS VEGAS, NV 89109

Mr. Bishop 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. Bishop seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CRACKER BARREL 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.

CRACKER BARREL employed Mr. Bishop as an hourly paid, non-exempt employee from approximately June 2022 to April 2023. Mr. Bishop worked for CRACKER BARREL as a Cook and Kitchen Trainer at its restaurant location in Bakersfield, California. During his employment, Mr. Bishop typically worked eight (8) or more hours per day, six (6) days per week. Mr. Bishop was compensated approximately \$17.50 per hour at the time his employment ended with CRACKER BARREL. Mr. Bishop's job duties included, without limitation, preparing and cooking food, completing food temperature logs, maintaining the kitchen area, and assisting the kitchen manager.

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

CRACKER BARREL’s Company-Wide and Uniform Payroll and HR Practices

CRACKER BARREL OLD COUNTRY STORE, INC. is a Tennessee corporation while CBOCS WEST, INC. is a Nevada corporation. Together, they operate seven (7) Cracker Barrel Old Country Store restaurant locations throughout California. Upon information and belief, CRACKER BARREL maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Lebanon, Tennessee, or Las Vegas, Nevada, for all non-exempt, hourly paid employees working for CRACKER BARREL in California, including Mr. Bishop and other aggrieved employees. At all relevant times, CRACKER BARREL issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Bishop and other aggrieved employees, regardless of their location or position.

Upon information and belief, CRACKER BARREL maintains a centralized Payroll department at its corporate headquarters in Lebanon, Tennessee, or Las Vegas, Nevada, which processes payroll for all non-exempt, hourly paid employees working for CRACKER BARREL in California, including Mr. Bishop and other aggrieved employees. Further, CRACKER BARREL issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Bishop and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. And, on a company-wide basis, CRACKER BARREL utilized the same methods and formulas when calculating wages due to Mr. Bishop 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.

CRACKER BARREL willfully failed to pay all overtime wages owed to Mr. Bishop and other aggrieved employees. During the relevant time period, Mr. Bishop 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.

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

During the relevant period, CRACKER BARREL had, and continues to have, several company-wide practices and/or policies that led Mr. Bishop and other aggrieved employees to work off-the-clock before and after their shifts and during meal periods.

First, CRACKER BARREL required Mr. Bishop and other aggrieved employees to watch training videos on their days off and while off-the-clock. For example, Mr. Bishop spent approximately ten (10) hours throughout his employment watching these training videos and answering quizzes and questions afterwards. Thus, CRACKER BARREL failed to track this time employees spent working outside of scheduled shifts and on their days off, and Mr. Bishop and other aggrieved employees received no compensation for this time.

Second, during the relevant period, CRACKER BARREL had a company-wide loss prevention policy requiring employees to undergo mandatory security checks by a managerial employee before leaving the restaurant premises, after clocking out at the end of a shift and after clocking out for the start of a meal period. Although CRACKER BARREL's requirement that Mr. Bishop and other aggrieved employees undergo security checks was mandatory, CRACKER BARREL did not compensate them for the time it took them to wait and undergo these checks. For example, Mr. Bishop spent up to five (5) minutes locating a manager and submitting to these security checks when he clocked out from his shifts and for his meal periods. As a result of these loss prevention and security policies and/or practices, Mr. Bishop and other aggrieved employees were subject to CRACKER BARREL's control after they had clocked out from their shifts and for meal periods, but were not compensated for this time.

Third, CRACKER BARREL had, and continues to have, a company-wide security policy of allowing only certain employees to carry keys to CRACKER BARREL's restaurants. Specifically, only managerial employees were issued keys to access the restaurant at any given time. In adherence with this policy, Mr. Bishop and other aggrieved employees sometimes reported for their scheduled shifts but had to wait up to two (2) hours for a managerial employee to arrive at CRACKER BARREL's premises and unlock the restaurant in the mornings before they could clock in for their shifts. For example, on at least three (3) occasions, Mr. Bishop was scheduled to report to work at 5:00 a.m.; however, CRACKER BARREL's managers did not report to work until 7:00 a.m., causing Mr. Bishop to wait off-the-clock for two (2) hours. As a result, Mr. Bishop and other aggrieved employees were subject to CRACKER BARREL's control before they had clocked in for their shifts, but were not compensated for this time.

Fourth, CRACKER BARREL had a company-wide policy of discouraging and impeding Mr. Bishop 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. Specifically, because CRACKER BARREL's timekeeping system was integrated with the company's point-of-sale ("POS") system, Mr. Bishop and other aggrieved employees would often have to wait to clock in because the POS systems were already in use for customer transactions and food orders. For example, Mr. Bishop was required to wait up to 10 minutes under CRACKER BARREL's control until a POS system became available for use to clock-in, time for which he was not paid. This issue was further exacerbated by the fact that CRACKER BARREL only made three (3) POS systems available for employees to use to clock in and out. With numerous employees staffed at the restaurant, three (3) POS systems was insufficient to allow employees prompt access to clock in or out, causing Mr. Bishop and other aggrieved employees to wait even longer. Additionally, CRACKER BARREL's timekeeping system prevented Mr. Bishop and/or other aggrieved employees from clocking in before their scheduled shift start time, so they could not record time worked or the time they spent waiting to be let in to the restaurant (*see supra*) or to gain access to a POS system.

Fifth, during the relevant period, CRACKER BARREL had a company-wide “on-call” policy, whereby it scheduled Mr. Bishop and other aggrieved employees to work “on-call,” or on standby. These “on-call” shifts worked to CRACKER BARREL’s benefit and to the detriment of Mr. Bishop and other aggrieved employees. By utilizing “on-call” shifts, CRACKER BARREL received the benefit of being able to maximize revenue by having a standby workforce it could choose to utilize or not, depending on restaurant traffic, without incurring the cost of compensating employees who show up to work and work a full or partial scheduled day’s work.

When scheduled for an “on-call” or standby shift, Mr. Bishop and other aggrieved employees were required to wait for the restaurant to call them prior to their scheduled standby shift. Mr. Bishop and other aggrieved employees were engaged to wait and could not engage in personal activities as they had to be ready to travel to their respective restaurant locations on short notice and work their standby shift. When scheduled to be “on-call” for a standby shift, Mr. Bishop and other aggrieved employees were controlled by CRACKER BARREL because they were forced to put their lives on hold and could not use that time freely for their own purposes. For example, Mr. Bishop refrained from making plans altogether while “on-call” for a standby shift because he knew that he had to drop whatever he was doing at a moment’s notice if he was instructed to work his standby shift. CRACKER BARREL did not pay Mr. Bishop and/or other aggrieved employees for the time they spent waiting to hear whether they needed to report for work at their restaurant locations on days they ultimately were not called in.

Sixth, during the relevant time period, CRACKER BARREL had, and continues to have, a company-wide policy of strictly staffing its restaurant locations based on labor hours set at the corporate-level which, combined with heavy workloads, resulted in chronic understaffing and a lack of adequate meal period coverage. CRACKER BARREL also had a systemic practice of failing to schedule meal periods at all, which further caused Mr. Bishop and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of CRACKER BARREL’s lack of meal period coverage and failure to schedule meal periods, Mr. Bishop and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Bishop and other aggrieved employees were required to work through meal periods due to the heavy workload and understaffing. However, because CRACKER BARREL frowned upon employees accruing meal period penalties, CRACKER BARREL’s management would adjust employees’ time records to reflect compliant meal periods even when meal periods were missed, short, and/or interrupted. Thus, CRACKER BARREL failed to record all hours worked during meal periods, and Mr. Bishop and other aggrieved employees performed work during meal periods for which they were not paid.

Moreover, CRACKER BARREL’s timekeeping system prevented Mr. Bishop and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Bishop and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, CRACKER BARREL’s timekeeping system further prevented Mr. Bishop and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

CRACKER BARREL knew or should have known that as a result of these company-wide practices and/or policies, Mr. Bishop and other aggrieved employees were performing 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. Bishop 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. Therefore, Mr. Bishop and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, CRACKER BARREL did not pay other aggrieved employees the correct overtime rate for

the recorded overtime hours that they generated. In addition to an hourly wage, CRACKER BARREL paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, CRACKER BARREL 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, CRACKER BARREL failed to pay all overtime wages by paying a lower overtime rate than required.

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

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

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

First, as stated above, CRACKER BARREL had company-wide policies and/or practices of requiring Mr. Bishop and other aggrieved employees to perform various work-related tasks while off-the-clock, including watching training videos, submitting to security checks, waiting to be let in to the restaurant by a managerial employee, and waiting to clock in for the start of their shifts because other employees were using the POS system. Thus, CRACKER BARREL failed to track the time Mr. Bishop and other aggrieved employees spent working off-the-clock, and Mr. Bishop and other aggrieved employees received no compensation for this time.

Second, as stated above, CRACKER BARREL had a company-wide "on-call" policy, whereby it required Mr. Bishop and other aggrieved employees to wait to be called by CRACKER BARREL when scheduled for "on-call" or standby shifts. However, CRACKER BARREL did not pay Mr. Bishop and/or other aggrieved employees at least minimum wages for the time they spent waiting to see if they were needed at the restaurant.

Third, as set forth above, due to CRACKER BARREL's uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule or provide meal periods, and subsequent lack of meal period coverage, Mr. Bishop 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. Further, to limit the meal penalties that CRACKER BARREL would otherwise owe, CRACKER BARREL adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Furthermore, as set forth above, CRACKER BARREL's company-wide timekeeping system prevented Mr. Bishop and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Bishop and other aggrieved employees for a full 30 minutes. Thus, CRACKER BARREL systematically failed to pay Mr. Bishop and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, CRACKER BARREL did not pay at least minimum wages for all hours worked by Mr. Bishop and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, CRACKER BARREL 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, CRACKER BARREL regularly failed to pay at least minimum wages to Mr. Bishop 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. Bishop 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.

During the relevant time period, as stated, CRACKER BARREL had, and continues to have, a company-wide policy and/or practice of understaffing locations due to the usage of labor budgets and/or limited payroll allocation, which, combined with the assignment of heavy workloads, resulted in a lack of meal period coverage and prevented Mr. Bishop and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, CRACKER BARREL's management erroneously informed Mr. Bishop and other aggrieved employees that they were not entitled to a meal period until the sixth hour of work. CRACKER BARREL also wholly failed to schedule meal periods, which, coupled with CRACKER BARREL's failure to provide adequate meal period coverage, further led to Mr. Bishop and other aggrieved employees not being able to take compliant meal periods. Additionally, as stated, pursuant to CRACKER BARREL's loss prevention policy, Mr. Bishop and other aggrieved employees were required to submit to off-the-clock security checks after clocking out for their meal periods, resulting in shortened meal periods.

As a result, Mr. Bishop and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Bishop could never take his meal periods until the sixth or seventh hour of his shift and missed at least one meal period per week due to the heavy workload and lack of meal period coverage.

Further, as stated, because CRACKER BARREL frowned upon employees accruing meal period penalties, CRACKER BARREL's management adjusted employee 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 CRACKER BARREL. Also, as stated, CRACKER BARREL's company-wide timekeeping system prevented Mr. Bishop and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked Mr. Bishop and other aggrieved employees out once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Mr. Bishop's meal periods were sometimes interrupted or cut short by management asking him to return to work early and continue preparing food because the kitchen was backed up with orders. Thus, CRACKER BARREL systematically failed to correctly record meal periods.

Additionally, CRACKER BARREL did not provide Mr. Bishop and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, during the relevant time period, Mr. Bishop worked shifts in excess of 10 hours in one day approximately twice per week and never took a second meal period. Mr. Bishop 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.

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

Furthermore, CRACKER BARREL 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. Bishop and other aggrieved employees have not received premium pay for missed, interrupted, shortened, or late meal periods. Alternatively, to the extent that CRACKER BARREL did pay other aggrieved employees premium pay for missed, late, interrupted and shortened meal periods, CRACKER BARREL did not pay other aggrieved employees at the correct rate of pay for premiums because CRACKER BARREL 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, CRACKER BARREL failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Bishop 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 §§ 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, 273 (2016).

During the relevant time period, CRACKER BARREL regularly failed to authorize and permit Mr. Bishop 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, CRACKER BARREL’s company-wide policies and/or practices of utilizing labor budgets, understaffing, and assigning heavy workloads, resulted in a lack of rest period coverage and prevented Mr. Bishop and other aggrieved employees from being relieved of all duty to take compliant rest periods. CRACKER BARREL also failed to schedule rest periods, which, coupled with CRACKER BARREL’s failure to provide adequate rest period coverage, further led to Mr. Bishop and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, CRACKER BARREL maintained a company-wide on-premises rest period policy, which mandated that Mr. Bishop and other aggrieved employees remain on CRACKER BARREL’s premises during their rest periods. Because Mr. Bishop and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, CRACKER BARREL effectively maintained control over Mr. Bishop and other aggrieved employees during rest periods.

As a result of CRACKER BARREL’s practices and policies, Mr. Bishop 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, Mr. Bishop had to forego his rest periods entirely during each shift because the restaurant was busy and did not have rest period coverage.

CRACKER BARREL also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Bishop and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that CRACKER BARREL did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, CRACKER BARREL did not pay other aggrieved employees at the correct rate of pay for premiums because CRACKER BARREL 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, CRACKER BARREL failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Bishop 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 §§ 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. CRACKER BARREL has not provided Mr. Bishop 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, CRACKER BARREL has knowingly and intentionally provided Mr. Bishop and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CRACKER BARREL issued uniform wage statements to Mr. Bishop and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address 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, CRACKER BARREL violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because CRACKER BARREL did not record the time Mr. Bishop 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), CRACKER BARREL did not list the correct amount of gross wages and net wages earned by Mr. Bishop and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, CRACKER BARREL failed to accurately list the total number of hours worked by Mr. Bishop 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 CRACKER BARREL did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, CRACKER BARREL 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). CRACKER BARREL 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).

Third, and separate from these violations, on information and belief, CRACKER BARREL issued uniform wage statements to Mr. Bishop and other aggrieved employees that failed to correctly list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or 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. This includes providing employees with a physical address of the employer and not a Post Office Box. On information and belief, Mr. Bishop's and other aggrieved employees' wage statements incorrectly list the employer as "Cracker Barrel Old Country Store, Inc.," with an improper Post Office Box address of "P.O. Box 787 Hartmann Drive, Lebanon, TN 37088," but, according to the California Secretary of State's website, there is no such entity by this name or address.

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 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; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock. In addition, CRACKER BARREL failed to provide Mr. Bishop and other aggrieved employees the option to elect to receive hard copies of their wage statements at any time and/or failed to provide them with the ability to easily access the information and convert the electronic wage statements into hard copies at no expense to them.

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), CRACKER BARREL willfully failed to maintain accurate payroll records for Mr. Bishop 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, CRACKER BARREL failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Bishop and other aggrieved employees, in violation of section 1198. As stated, CRACKER BARREL engaged in a company-wide practice and/or policy of falsifying Mr. Bishop’s and other aggrieved employees’ 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 meal start and end times for Mr. Bishop and other aggrieved employees. Furthermore, in light of CRACKER BARREL’s failure to provide Mr. Bishop and other aggrieved employees with second 30-minute meal periods to which they were entitled, CRACKER BARREL kept no records of meal start and end times for second meal periods.

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

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

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

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

On information and belief, CRACKER BARREL had, and continues to have, a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Bishop was terminated in person on April 7, 2023. However, CRACKER BARREL refused to pay him on his final day, even when Mr. Bishop requested his final wages. CRACKER BARREL's management called Mr. Bishop approximately four (4) days after his termination and instructed him to report to the restaurant to pick up his final paycheck. Thus, CRACKER BARREL failed to pay Mr. Bishop his final wages within the requisite time limit in violation of California Labor Code section 201.

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

Mr. Bishop 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, CRACKER BARREL had an agreement with a payroll service provider, Netspend, for the issuance of payroll cards to employees, including Mr. Bishop and other aggrieved employees, to discharge its wage payment obligations to its employees. Under CRACKER BARREL's payroll debit card program, on information and belief, Mr. Bishop and other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee. For example, Mr. Bishop and other aggrieved employees were unable to withdraw their entire wages in at least one transaction without incurring a fee, which resulted in a discount in their pay. Thus, CRACKER BARREL's payroll debit card program was and continues to be unlawful as it did not give Mr. Bishop and other aggrieved employees access to their entire wages without discount and without delay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. CRACKER BARREL's payroll card program is inconsistent with this policy because it presents a number of obstacles and hurdles that, together, make it difficult for Mr. Bishop and other aggrieved employees to access their entire wages without discount and without delay, in violation of California Labor Code sections 212 and 213. Mr. Bishop 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 only if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, CRACKER BARREL unlawfully deducted a portion of wages previously paid to Mr. Bishop and other aggrieved employees in violation of California Labor Code section 221. On information and belief, CRACKER BARREL systematically, and on a company-wide basis, provided Mr. Bishop and other aggrieved employees with payroll debit cards as payment of their wages. Under CRACKER BARREL's payroll debit card program, Mr. Bishop and other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, Mr. Bishop and 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. Bishop and other aggrieved employees resulted in a discount of their wages.

CRACKER BARREL's payroll debit card program, which resulted in a discount of wages to employees, are tantamount to taking deductions from Mr. Bishop'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. Bishop 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, CRACKER BARREL willfully and systematically issued payroll debit cards to Mr. Bishop and other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. CRACKER BARREL's payroll debit card program resulted in the payment of less than statutorily required wages to Mr. Bishop and other aggrieved employees. Thus, CRACKER BARREL paid Mr. Bishop and other aggrieved employees lower wages

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

CRACKER BARREL's failure to pay Mr. Bishop and other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Mr. Bishop 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.*

CRACKER BARREL'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. CRACKER BARREL 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, CRACKER BARREL 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.

CRACKER BARREL 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 the nature of the work would reasonably permit the use of seats, nor were they provided with suitable seats. CRACKER BARREL'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 CRACKER BARREL'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. CRACKER BARREL's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 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 CRACKER BARREL 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.*

CRACKER BARREL'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 Mr. Bishop and other aggrieved employees during lulls in operation. CRACKER BARREL could have provided Mr. Bishop and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

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

As a result of CRACKER BARREL'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. Bishop and other

aggrieved employees were forced to stand during shifts and denied seats. CRACKER BARREL's failure to provide suitable seating to Mr. Bishop and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Mr. Bishop and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring CRACKER BARREL 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 5(A) – Failure to Pay Reporting Time Pay

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

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

During the relevant time period, CRACKER BARREL violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because CRACKER BARREL failed to pay Mr. Bishop and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day's work.

As stated, CRACKER BARREL had a company-wide "on-call" policy, whereby it scheduled Mr. Bishop and other aggrieved employees to work "on-call," or on standby. When scheduled for a "on-call" or standby shift, Mr. Bishop and other aggrieved employees regularly presented themselves as ready for work by waiting for the restaurant to call them before their scheduled standby shift and would await instructions on whether to report to the restaurant. When this occurred, CRACKER BARREL did not pay Mr. Bishop and/or other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay when they were subject to CRACKER BARREL's "on-call" policy and were ultimately not called.

Also, CRACKER BARREL had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay other aggrieved employees for half of their usual or scheduled shift. For example, on information and belief, other aggrieved employees were sent home before they had worked half of their usual or scheduled shift, because business was slow and pursuant to labor budget limitations, but were only paid for the time that they had worked. Although other aggrieved employees would report to work based on the schedule that CRACKER BARREL provided to them, CRACKER BARREL would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, Mr. Bishop and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A).

Mr. Bishop 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 § 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." IWC Wage Order No. 5-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

During the relevant time period, CRACKER BARREL, on a company-wide basis, required Mr. Bishop and other aggrieved employees to obtain and pay for certain certifications, which were required for their continued employment, as well as associated costs such as training and/or examination fees. For example, Mr. Bishop complied with this requirement and spent approximately \$21 to obtain a food handler card, but CRACKER BARREL did not reimburse him for the costs of obtaining the certification. Thus, CRACKER BARREL failed to reimburse Mr. Bishop and other aggrieved employees for the costs of obtaining these certifications, including training and/or examination fees.

Additionally, during the relevant time period, CRACKER BARREL required other aggrieved employees to wear uniforms bearing the company logo, including an apron. Due to the nature of restaurant work, other aggrieved employees' uniform items would become stained with grease, oil, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from their regular clothing, thus incurring additional utility and laundry expenses for the upkeep of their uniforms. Thus, CRACKER BARREL failed to maintain uniforms they required other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

CRACKER BARREL could have provided Mr. Bishop and other aggrieved employees with access to laundering services. Or, CRACKER BARREL could have reimbursed employees for the certification fees and laundering expenses or provided a uniform maintenance allowance. Instead, CRACKER BARREL passed these operating costs off onto Mr. Bishop and other aggrieved employees. At all relevant times, Mr. Bishop did not earn at least two (2) times the minimum wage.

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

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

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

At all relevant times, on information and belief, CRACKER BARREL failed, on a company-wide basis, to provide written notice to Mr. Bishop and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). CRACKER BARREL’s failure to provide Mr. Bishop and other aggrieved employees with written notice of basic information regarding their employment with CRACKER BARREL is in violation of Labor Code section 2810.5.

Mr. Bishop 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).

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

Accordingly, Mr. Bishop 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. Bishop, 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 CRACKER BARREL 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. Bishop 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. Bishop's reasonable attempt to settle his dispute with CRACKER BARREL prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform CRACKER BARREL of Mr. Bishop's aforementioned grievances and the proposed remedies as detailed below, while affording CRACKER BARREL a reasonable opportunity to satisfy Mr. Bishop's demands.

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

1. CRACKER BARREL shall pay Mr. Bishop and all other aggrieved employees employed by CRACKER BARREL at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. CRACKER BARREL shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid reporting time pay.
3. CRACKER BARREL shall conduct a survey or interview all current and former aggrieved employees in California who worked for CRACKER BARREL in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for supply and equipment expenses, uniform maintenance costs, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. CRACKER BARREL shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. CRACKER BARREL 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. CRACKER BARREL shall reimburse Mr. Bishop and all aggrieved employees who were required to pay for any business expenses incurred for CRACKER BARREL's benefit, including, but not limited to, costs of certifications and uniform maintenance costs, as required by Labor Code section 2802.
6. CRACKER BARREL shall pay accrued legal interest to Mr. Bishop and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. CRACKER BARREL shall provide Mr. Bishop and all aggrieved employees employed by CRACKER BARREL 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. CRACKER BARREL 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), and secret payment of lower wages (Labor Code section 223).

9. CRACKER BARREL shall implement and provide suitable seating to all aggrieved employees.
10. CRACKER BARREL shall provide all aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
11. CRACKER BARREL shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
12. CRACKER BARREL shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
13. CRACKER BARREL 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, 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:

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

Best Regards,



Ninel Kocharyan

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



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August 4, 2023

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/310>)

Subject: *Anthony Bishop v. Cracker Barrel Old Country Store, Inc., et al.*
LWDA Case No. LWDA-CM-964107-23 – AMENDED NOTICE

Dear PAGA Administrator:

This office represents Anthony Bishop in connection with his claims under the California Labor Code. Mr. Bishop was an employee of CRACKER BARREL OLD COUNTRY STORE, INC. and/or CBOCS WEST, INC. For the purpose of this letter, Mr. Bishop collectively refers to these entities as “CRACKER BARREL.” We previously provided notice of Mr. Bishop’s claims to the California Labor and Workforce Development Agency (“LWDA”) on June 23, 2023, and submitted the applicable filing fee pursuant to Labor Code section 2699.3(a)(1)(B). This amended notice supplements Mr. Bishop’s prior LWDA notice and is intended to clarify the facts and theories supporting his claims.

The employers may be contacted directly at the addresses below:

CRACKER BARREL OLD COUNTRY STORE, INC.	CBOCS WEST, INC.
305 S. HARTMANN DRIVE	305 S. HARTMANN DRIVE
LEBANON, TN 37087	LEBANON, TN 37087

CBOCS WEST, INC.
3993 HOWARD HUGHES PKWY
LAS VEGAS, NV 89109

Mr. Bishop 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. Bishop seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CRACKER BARREL 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.

CRACKER BARREL employed Mr. Bishop as an hourly paid, non-exempt employee from approximately June 2022 to April 2023. Mr. Bishop worked for CRACKER BARREL as a Line Cook and Kitchen Trainer at its restaurant location in Bakersfield, California. During his employment, Mr.

Bishop typically worked eight (8) or more hours per day, six (6) days per week. Mr. Bishop was compensated approximately \$17.50 per hour at the time his employment ended with CRACKER BARREL. Mr. Bishop's job duties included, without limitation, preparing and cooking food, completing food temperature logs, maintaining the kitchen area, and assisting the kitchen manager.

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

CRACKER BARREL's Company-Wide and Uniform Payroll and HR Practices

CRACKER BARREL OLD COUNTRY STORE, INC. is a Tennessee corporation while CBOCS WEST, INC. is a Nevada corporation. Together, they operate seven (7) Cracker Barrel Old Country Store restaurant locations throughout California. Upon information and belief, CRACKER BARREL maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Lebanon, Tennessee, or Las Vegas, Nevada, for all non-exempt, hourly paid employees working for CRACKER BARREL in California, including Mr. Bishop and other aggrieved employees. At all relevant times, CRACKER BARREL issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Bishop and other aggrieved employees, regardless of their location or position.

Upon information and belief, CRACKER BARREL maintains a centralized Payroll department at its corporate headquarters in Lebanon, Tennessee, or Las Vegas, Nevada, which processes payroll for all non-exempt, hourly paid employees working for CRACKER BARREL in California, including Mr. Bishop and other aggrieved employees. Further, CRACKER BARREL issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Bishop and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. And, on a company-wide basis, CRACKER BARREL utilized the same methods and formulas when calculating wages due to Mr. Bishop 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.

CRACKER BARREL willfully failed to pay all overtime wages owed to Mr. Bishop and other aggrieved

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

employees. During the relevant time period, Mr. Bishop 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.

During the relevant time period, CRACKER BARREL had, and continues to have, several company-wide practices and/or policies that led Mr. Bishop and other aggrieved employees to work off-the-clock before and after their shifts and during meal periods.

First, CRACKER BARREL required Mr. Bishop and other aggrieved employees to watch training videos on their days off and while off-the-clock. For example, Mr. Bishop spent approximately ten (10) hours throughout his employment watching these training videos and answering quizzes and questions afterwards. Thus, CRACKER BARREL failed to track this time employees spent working outside of scheduled shifts and on their days off, and Mr. Bishop and other aggrieved employees received no compensation for this time.

Second, during the relevant time period, CRACKER BARREL had a company-wide loss prevention policy requiring employees to undergo mandatory security checks by a managerial employee before leaving the restaurant premises, after clocking out at the end of a shift and after clocking out for the start of a meal period. Although CRACKER BARREL's requirement that Mr. Bishop and other aggrieved employees undergo security checks was mandatory, CRACKER BARREL did not compensate them for the time it took them to wait and undergo these checks. For example, Mr. Bishop spent up to five (5) minutes locating a manager and submitting to these security checks when he clocked out from his shifts and for his meal periods. As a result of these loss prevention and security policies and/or practices, Mr. Bishop and other aggrieved employees were subject to CRACKER BARREL's control after they had clocked out from their shifts and for meal periods, but were not compensated for this time.

Third, CRACKER BARREL had, and continues to have, a company-wide security policy of allowing only certain employees to carry keys to CRACKER BARREL's restaurants. Specifically, only managerial employees were issued keys to access the restaurant at any given time. In adherence with this policy, Mr. Bishop and other aggrieved employees sometimes reported for their scheduled shifts but had to wait up to two (2) hours for a managerial employee to arrive at CRACKER BARREL's premises and unlock the restaurant in the mornings before they could clock in for their shifts. For example, on at least three (3) occasions, Mr. Bishop was scheduled to report to work at 5:00 a.m.; however, CRACKER BARREL's managers did not report to work until 7:00 a.m., causing Mr. Bishop to wait off-the-clock for two (2) hours. As a result, Mr. Bishop and other aggrieved employees were subject to CRACKER BARREL's control before they had clocked in for their shifts, but were not compensated for this time.

Fourth, CRACKER BARREL had a company-wide policy of discouraging and impeding Mr. Bishop 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. Specifically, because CRACKER BARREL's timekeeping system was integrated with the company's point-of-sale ("POS") system, Mr. Bishop and other aggrieved employees would often have to wait to clock in because the POS systems were already in use for customer transactions and food orders. For example, Mr. Bishop was required to wait up to 10 minutes under CRACKER BARREL's control until a POS system became available to use to clock-in, time for which he was not paid. This issue was further exacerbated by the fact that CRACKER BARREL only made three (3) POS systems available for employees to use to clock in and out. With numerous employees staffed at the restaurant, three (3) POS systems was insufficient to allow employees prompt access to clock in or out, causing Mr. Bishop and other aggrieved employees to wait even longer. Additionally, CRACKER BARREL's timekeeping system prevented Mr. Bishop and other aggrieved employees from clocking in before their scheduled shift start time, so they could not record

time worked or the time they spent waiting to be let into the restaurant (*see supra*) or to gain access to a POS system.

Fifth, during the relevant time period, CRACKER BARREL had a company-wide “on-call” policy, whereby it scheduled Mr. Bishop and other aggrieved employees to work “on-call,” or on standby. These “on-call” shifts worked to CRACKER BARREL’s benefit and to the detriment of Mr. Bishop and other aggrieved employees. By utilizing “on-call” shifts, CRACKER BARREL received the benefit of being able to maximize revenue by having a standby workforce it could choose to utilize or not, depending on restaurant traffic, without incurring the cost of compensating employees who show up to work and work a full or partial scheduled day’s work.

When scheduled for an “on-call” or standby shift, Mr. Bishop and other aggrieved employees were required to wait for the restaurant to call them prior to their scheduled standby shift. Mr. Bishop and other aggrieved employees were engaged to wait and could not engage in personal activities as they had to be ready to travel to their respective restaurant locations on short notice and work their standby shift. When scheduled to be “on-call” for a standby shift, Mr. Bishop and other aggrieved employees were controlled by CRACKER BARREL because they were forced to put their lives on hold and could not use that time freely for their own purposes. For example, Mr. Bishop refrained from making plans altogether while “on-call” for a standby shift because he knew that he had to drop whatever he was doing at a moment’s notice if he was instructed to work his standby shift. CRACKER BARREL did not pay Mr. Bishop and/or other aggrieved employees for the time they spent waiting to hear whether they needed to report for work at their restaurant locations on days they ultimately were not called in.

Sixth, during the relevant time period, CRACKER BARREL had, and continues to have, a company-wide policy of strictly staffing its restaurant locations based on labor hours set at the corporate-level which, combined with heavy workloads, resulted in chronic understaffing and a lack of adequate meal period coverage. CRACKER BARREL also had a systemic practice of failing to schedule meal periods at all, which further caused Mr. Bishop and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of CRACKER BARREL’s lack of meal period coverage and failure to schedule meal periods, Mr. Bishop and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Bishop and other aggrieved employees were required to work through meal periods due to the heavy workload and understaffing. However, because CRACKER BARREL frowned upon employees accruing meal period penalties, CRACKER BARREL’s management would adjust employees’ time records to reflect compliant meal periods even when meal periods were missed, short, and/or interrupted. Thus, CRACKER BARREL failed to record all hours worked during meal periods, and Mr. Bishop and other aggrieved employees performed work during meal periods for which they were not paid.

Moreover, CRACKER BARREL’s timekeeping system prevented Mr. Bishop and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Bishop and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, CRACKER BARREL’s timekeeping system further prevented Mr. Bishop and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

CRACKER BARREL knew or should have known that as a result of these company-wide practices and/or policies, Mr. Bishop and other aggrieved employees were performing 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. Bishop 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. Therefore, Mr. Bishop and other aggrieved employees were not paid

overtime wages for all of the overtime hours they actually worked.

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

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

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

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

First, as stated above, CRACKER BARREL had company-wide policies and/or practices of requiring Mr. Bishop and other aggrieved employees to perform various work-related tasks while off-the-clock, including watching training videos, submitting to security checks, waiting to be let into the restaurant by a managerial employee, and waiting to clock in for the start of their shifts because other employees were using the POS system. Thus, CRACKER BARREL failed to track the time Mr. Bishop and other aggrieved employees spent working off-the-clock, and Mr. Bishop and other aggrieved employees received no compensation for this time.

Second, as stated above, CRACKER BARREL had a company-wide "on-call" policy, whereby it required Mr. Bishop and other aggrieved employees to wait to be called by CRACKER BARREL when scheduled for "on-call" or standby shifts. However, CRACKER BARREL did not pay Mr. Bishop and/or other aggrieved employees at least minimum wages for the time they spent waiting to see if they were needed at the restaurant.

Third, as set forth above, due to CRACKER BARREL's uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule or provide meal periods, and subsequent lack of meal period coverage, Mr. Bishop 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. Further, to limit the meal penalties that CRACKER BARREL would otherwise owe, CRACKER BARREL adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Furthermore, as set forth above, CRACKER BARREL's company-wide timekeeping system prevented Mr. Bishop and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Bishop and other aggrieved employees for a full 30 minutes. Thus, CRACKER BARREL systematically failed to

pay Mr. Bishop and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, CRACKER BARREL did not pay at least minimum wages for all hours worked by Mr. Bishop and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, CRACKER BARREL 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, CRACKER BARREL regularly failed to pay at least minimum wages to Mr. Bishop 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. Bishop 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.

During the relevant time period, as stated, CRACKER BARREL had, and continues to have, a company-wide policy and/or practice of understaffing locations due to the usage of labor budgets and/or limited payroll allocation, which, combined with the assignment of heavy workloads, resulted in a lack of meal period coverage and prevented Mr. Bishop and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, CRACKER BARREL's management erroneously informed Mr. Bishop and other aggrieved employees that they were not entitled to a meal period until the sixth hour of work. CRACKER BARREL also wholly failed to schedule meal periods, which, coupled with CRACKER BARREL's failure to provide adequate meal period coverage, further led to Mr. Bishop and other aggrieved employees not being able to take compliant meal periods. Additionally, as stated, pursuant to CRACKER BARREL's loss prevention policy, Mr. Bishop and other aggrieved employees were required to submit to off-the-clock security checks after clocking out for their meal periods, resulting in shortened meal periods.

As a result, Mr. Bishop and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Bishop could never take his meal periods until the sixth or seventh hour of his shift and missed at least one meal period per week due to the heavy workload and lack of meal period coverage.

Further, as stated, because CRACKER BARREL frowned upon employees accruing meal period penalties, CRACKER BARREL's management adjusted employee 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 CRACKER BARREL. Also, as stated, CRACKER BARREL's company-wide timekeeping system prevented Mr. Bishop and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked Mr. Bishop and other aggrieved employees out once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Mr. Bishop's meal periods were sometimes interrupted or cut short by management asking him to return to work early and continue preparing food because the kitchen was backed up with orders. Thus, CRACKER BARREL systematically failed to correctly record meal periods.

Additionally, CRACKER BARREL did not provide Mr. Bishop and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, during the relevant time period, Mr. Bishop worked shifts in excess of 10 hours in one day approximately twice per week and never took a second meal period. Mr. Bishop 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.

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

Furthermore, CRACKER BARREL 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. Bishop and other aggrieved employees have not received premium pay for missed, interrupted, shortened, or late meal periods. Alternatively, to the extent that CRACKER BARREL did pay other aggrieved employees premium pay for missed, late, interrupted and shortened meal periods, CRACKER BARREL did not pay other aggrieved employees at the correct rate of pay for premiums because CRACKER BARREL 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, CRACKER BARREL failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Bishop 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 §§ 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, 273 (2016).

During the relevant time period, CRACKER BARREL regularly failed to authorize and permit Mr. Bishop 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, CRACKER BARREL’s company-wide policies and/or practices of utilizing labor budgets, understaffing, and assigning heavy workloads, resulted in a lack of rest period coverage and prevented Mr. Bishop and other aggrieved employees from being relieved of all duty to take compliant rest periods. CRACKER BARREL also failed to schedule rest periods, which, coupled with CRACKER BARREL’s failure to provide adequate rest period coverage, further led to Mr. Bishop and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, CRACKER BARREL maintained a company-wide on-premises rest period policy, which mandated that Mr. Bishop and other aggrieved employees remain on CRACKER BARREL’s premises during their rest periods. Because Mr. Bishop and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, CRACKER BARREL effectively maintained control over Mr. Bishop and other aggrieved employees during rest periods.

As a result of CRACKER BARREL’s practices and policies, Mr. Bishop 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, Mr. Bishop had to forego his rest periods entirely during each shift because the restaurant was busy and did not have rest period coverage.

CRACKER BARREL also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Bishop and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that CRACKER BARREL did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, CRACKER BARREL did not pay other aggrieved employees at the correct rate of pay for premiums because CRACKER BARREL 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, CRACKER BARREL failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Bishop 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 §§ 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. CRACKER BARREL has not provided Mr. Bishop 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, CRACKER BARREL has knowingly and intentionally provided Mr. Bishop and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CRACKER BARREL issued uniform wage statements to Mr. Bishop and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address 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, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, CRACKER BARREL violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because CRACKER BARREL did not record the time Mr. Bishop 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), CRACKER BARREL did not list the correct amount of gross wages and net wages earned by Mr. Bishop and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, CRACKER BARREL failed to accurately list the total number of hours worked by Mr. Bishop 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 CRACKER BARREL did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, CRACKER BARREL 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). CRACKER BARREL also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

Third, and separate from these violations, on information and belief, CRACKER BARREL issued uniform wage statements to Mr. Bishop and other aggrieved employees that failed to correctly list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or 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. This includes providing employees with a physical address of the employer and not a Post Office Box. On information and belief, Mr. Bishop's and other aggrieved employees' wage statements incorrectly list the employer as "Cracker Barrel Old Country Store, Inc.," with an improper Post Office Box address of "P.O. Box 787 Hartmann Drive, Lebanon, TN 37088," but, according to the California Secretary of State's website, there is no such entity by this name or address.

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 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; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock. In addition, CRACKER BARREL failed to provide Mr. Bishop and other aggrieved employees the option to elect to receive hard copies of their wage statements at any time and/or failed to provide them with the ability to easily access the information and convert the electronic wage statements into hard copies at no expense to them.

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), CRACKER BARREL willfully failed to maintain accurate payroll records for Mr. Bishop 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, CRACKER BARREL failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Bishop and other aggrieved employees, in violation of section 1198. As stated, CRACKER BARREL engaged in a company-wide practice and/or policy of falsifying Mr. Bishop’s and other aggrieved employees’ 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 meal start and end times for Mr. Bishop and other aggrieved employees. Furthermore, in light of CRACKER BARREL’s failure to provide Mr. Bishop and other aggrieved employees with second 30-minute meal periods to which they were entitled, CRACKER BARREL kept no records of meal start and end times for second meal periods.

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

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

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

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

On information and belief, CRACKER BARREL had, and continues to have, a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Bishop was terminated in person on April 7, 2023. However, CRACKER BARREL refused to pay him on his final day, even when Mr. Bishop requested his final wages. CRACKER BARREL's management called Mr. Bishop approximately four (4) days after his termination and instructed him to report to the restaurant to pick up his final paycheck. Thus, CRACKER BARREL failed to pay Mr. Bishop his final wages within the requisite time limit in violation of California Labor Code section 201.

Additionally, CRACKER BARREL willfully failed to pay Mr. Bishop and other aggrieved employees who are no longer employed by CRACKER BARREL the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, vested vacation pay, meal and rest period premiums, sick leave pay, and/or reporting time either at the time of discharge, or within seventy-two (72) hours of their leaving CRACKER BARREL's employ.

Mr. Bishop 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, CRACKER BARREL had an agreement with a payroll service provider, Netspend, for the issuance of payroll debit cards to employees, including Mr. Bishop and other aggrieved employees, to discharge its wage payment obligations to its employees. Under CRACKER BARREL's payroll debit card program, on information and belief, Mr. Bishop and other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee. For example, Mr. Bishop and other aggrieved employees were unable to withdraw their entire wages in at least one transaction without incurring a fee, which resulted in a discount in their pay. Thus, CRACKER BARREL's payroll debit card program was and continues to be unlawful as it did not give Mr. Bishop and other aggrieved employees access to their entire wages without discount and without delay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. CRACKER BARREL's payroll card program is inconsistent with this policy because it presents a number of obstacles and hurdles that, together, make it difficult for Mr. Bishop and other aggrieved employees to access their entire wages without discount and without delay, in violation of California Labor Code sections 212 and 213. Mr. Bishop 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 only if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, CRACKER BARREL unlawfully deducted a portion of wages previously paid to Mr. Bishop and other aggrieved employees in violation of California Labor Code section 221. On information and belief, CRACKER BARREL systematically, and on a company-wide basis, provided Mr. Bishop and other aggrieved employees with payroll debit cards as payment of their wages. Under CRACKER BARREL's payroll debit card program, Mr. Bishop and other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, Mr. Bishop and 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. Bishop and other aggrieved employees resulted in a discount of their wages.

CRACKER BARREL's payroll debit card program, which resulted in a discount of wages to employees, are tantamount to taking deductions from Mr. Bishop'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. Bishop 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, CRACKER BARREL willfully and systematically issued payroll debit cards to Mr. Bishop and other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. CRACKER BARREL's payroll debit card program resulted in the payment of less than statutorily required wages to Mr. Bishop and other aggrieved employees. Thus, CRACKER BARREL paid Mr. Bishop and other aggrieved employees lower wages

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

CRACKER BARREL's failure to pay Mr. Bishop and other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Mr. Bishop 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 § 227.3 – Failure to Pay Vested Vacation Wages

California Labor Code section 227.3 provides that if a contract of employment or employer policy provides for paid vacations and an employer terminates an employee, all vested vacation shall be paid to the employee at the employee's final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

CRACKER BARREL had a company-wide policy and practice of failing to pay Mr. Bishop and/or other aggrieved employees vested vacation wages that were owed to them at the end of their employment, at their final rate of pay which included all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in violation of California Labor Code section 227.3. CRACKER BARREL's failure to pay Mr. Bishop and/or other aggrieved employees all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3.

Mr. Bishop and/or 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 § 246 and 248.6 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

At all relevant times herein, California Labor Code section 248.6 provides covered employees with COVID-19 supplemental paid sick leave. California Labor Code section 248.6(b)(3)(A) provides that each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following: 1) "[c]alculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[c]alculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total nonovertime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay,

shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision.”

During the relevant time period, on information and belief, CRACKER BARREL did not pay Mr. Bishop and/or other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, CRACKER BARREL paid Mr. Bishop and/or other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, CRACKER BARREL 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 sick leave rate. Therefore, during times when Mr. Bishop and/or other aggrieved employees took sick leave and received these other forms of pay, CRACKER BARREL failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, CRACKER BARREL paid Mr. Bishop and/or other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

CRACKER BARREL’s failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Bishop and/or other aggrieved employees on a company-wide basis, in violation of Labor Code 246(l) and/or 248.6(b)(3)(A). Mr. Bishop and/or other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 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.*

CRACKER BARREL’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. CRACKER BARREL 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, CRACKER BARREL 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.

CRACKER BARREL 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 the nature of the work would reasonably permit the use of seats, nor were they provided with suitable seats. CRACKER BARREL'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 CRACKER BARREL'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. CRACKER BARREL's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 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 CRACKER BARREL 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.*

CRACKER BARREL'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 Mr. Bishop and other aggrieved employees during lulls in operation. CRACKER BARREL could have provided Mr. Bishop and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

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

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

Mr. Bishop and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring CRACKER BARREL 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 5(A) – Failure to Pay Reporting Time Pay

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

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

During the relevant time period, CRACKER BARREL violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because CRACKER BARREL failed to pay Mr. Bishop and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day's work.

As stated, CRACKER BARREL had a company-wide “on-call” policy, whereby it scheduled Mr. Bishop and other aggrieved employees to work “on-call,” or on standby. When scheduled for a “on-call” or standby shift, Mr. Bishop and other aggrieved employees regularly presented themselves as ready for work by waiting for the restaurant to call them before their scheduled standby shift and would await instructions on whether to report to the restaurant. When this occurred, CRACKER BARREL did not pay Mr. Bishop and/or other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay when they were subject to CRACKER BARREL's “on-call” policy and were ultimately not called.

Also, CRACKER BARREL had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay other aggrieved employees for half of their usual or scheduled shift. For example, on information and belief, other aggrieved employees were sent home before they had worked half of their usual or scheduled shift, because business was slow and pursuant to labor budget limitations, but were only paid for the time that they had worked. Although other aggrieved employees would report to work based on the schedule that CRACKER BARREL provided to them, CRACKER BARREL would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, Mr. Bishop and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A).

Mr. Bishop 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 § 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." IWC Wage Order No. 5-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

First, during the relevant time period, CRACKER BARREL, on a company-wide basis, required Mr. Bishop and other aggrieved employees to obtain and pay for certain certifications, which were required for their continued employment, as well as associated costs such as training and/or examination fees. For example, Mr. Bishop complied with this requirement and spent approximately \$21 to obtain a food handler card, but CRACKER BARREL did not reimburse him for the costs of obtaining the certification. Thus, CRACKER BARREL failed to reimburse Mr. Bishop and other aggrieved employees for the costs of obtaining these certifications, including training and/or examination fees.

Second, during the relevant time period, CRACKER BARREL required other aggrieved employees to wear uniforms bearing the company logo, including an apron. Due to the nature of restaurant work, other aggrieved employees' uniform items would become stained with grease, oil, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from their regular clothing, thus incurring additional utility and laundry expenses for the upkeep of their uniforms. Thus, CRACKER BARREL failed to maintain uniforms they required other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Third, during the relevant time period, CRACKER BARREL had a company-wide policy of requiring other aggrieved employees to utilize their own personal mobile devices, including cellular phones, and/or mobile data to carry out their job duties, but CRACKER BARREL failed to reimburse them for the costs

of their work-related mobile device expenses. Although CRACKER BARREL required other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, CRACKER BARREL failed to reimburse them for this cost.

CRACKER BARREL could have provided Mr. Bishop and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and access to laundering services. Or, CRACKER BARREL could have reimbursed employees for the mobile device usage, certification fees, and laundering expenses or provided a uniform maintenance allowance. Instead, CRACKER BARREL passed these operating costs off onto Mr. Bishop and other aggrieved employees. At all relevant times, Mr. Bishop did not earn at least two (2) times the minimum wage.

Thus, CRACKER BARREL 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. Bishop 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).

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.” CRACKER BARREL, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Bishop's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Bishop 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. Bishop, 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 CRACKER BARREL for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 227.3, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

Best Regards,

A handwritten signature in cursive script, appearing to read "Ninel", is shown within a light gray rectangular box.

Ninel Kocharyan

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