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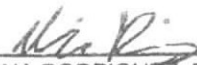
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JUN 16 2023

BY 
ABRIANNA RODRIGUEZ, DEPUTY

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

14 DENISE CHIARAMONTE, on behalf of the
15 State of California, as a private attorney
16 general,

17 Plaintiff,

18 vs.

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

23 Defendants.

Case No. **CIV SB 2313831**

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, 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 11070(14) (Failure to Provide Seating), and the applicable Wage Order(s).

1 Plaintiff Denise Chiaramonte (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendants CBOCS West, Inc. and Cracker
8 Barrel Old Country Store, Inc. (referred to as “DEFENDANT”) seeking only to recover PAGA
9 civil penalties for herself, and on behalf of all current and former aggrieved employees that
10 worked for DEFENDANT. PLAINTIFF does **not seek to recover anything other than**
11 **penalties as permitted by California Labor Code § 2699.** To the extent that statutory
12 violations are mentioned for wage violations, PLAINTIFF does not seek underlying general
13 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 an individual to bring an action on
16 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

18 3. Accordingly, PLAINTIFF seeks 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 PLAINTIFF as evidenced by paycheck, company handbooks and policies, and by
4 the company PLAINTIFF performed work for respectively, and are therefore jointly responsible
5 as employers for the conduct alleged herein, and are therefore collectively referred to herein as
6 "DEFENDANT."

7 7. DEFENDANT owns and operate restaurants in California.

8 8. PLAINTIFF was employed by DEFENDANT in California from August of 2022
9 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, and such persons that may be added from time to time who satisfy
13 the requirements and exhaust the administrative procedures under the Private Attorney General
14 Act, brings this Representative Action on behalf of the State of California with respect to herself
15 and all individuals who are or previously were employed by DEFENDANT in California,
16 including any employees staffed with DEFENDANT by a third party, and classified as non-
17 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of February 21,
18 2022 until a date as determined by the Court (the "PAGA PERIOD").

19 10. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES
20 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this
21 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
22 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,
23 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
24 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),
25 California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and
26 the applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all
27 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §
28 2699, *et seq.*

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

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

THE CONDUCT

13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal

1 break. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit minimum
2 wage, overtime wage compensation, and off-duty meal breaks by working without their time
3 being correctly recorded and without compensation at the applicable rates. DEFENDANT's
4 policy and practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time
5 worked, is evidenced by DEFENDANT's business records.

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

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

25 16. As a result of their rigorous work schedules, PLAINTIFF and the
26 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off
27 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
28 and the AGGRIEVED EMPLOYEES were required from time to time to perform work as

1 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving
2 a meal break. Further, DEFENDANT from time to time fails to provide PLAINTIFF and
3 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in
4 which these employees were required by DEFENDANT to work ten (10) hours of work.
5 PLAINTIFF and the AGGRIEVED EMPLOYEES therefore forfeit meal breaks without
6 additional compensation and in accordance with DEFENDANT's corporate policy and
7 practice.

8 17. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED
9 EMPLOYEES were also required from time to time to work in excess of four (4) hours
10 without being provided ten (10) minute rest periods. Further, these employees were denied
11 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
12 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
13 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
14 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
15 hours or more from time to time. PLAINTIFF and the AGGRIEVED EMPLOYEES were
16 also not provided with one hour wages in lieu thereof. Additionally, the applicable
17 California Wage Order requires employers to provide employees with off-duty rest periods,
18 which the California Supreme Court defined as time during which an employee is relieved
19 from all work related duties and free from employer control. In so doing, the Court held that
20 the requirement under California law that employers authorize and permit all employees to
21 take rest period means that employers must relieve employees of all duties and relinquish
22 control over how employees spend their time which includes control over the locations
23 where employees may take their rest period. Employers cannot impose controls that prohibit
24 an employee from taking a brief walk - five minutes out, five minutes back. Here,
25 DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED EMPLOYEES from
26 unconstrained walks and is unlawful based on DEFENDANT's rule which states
27 PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
28 their rest period.

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

16 19. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
17 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
18 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
19 provides that every employer shall furnish each of his or her employees with an accurate
20 itemized wage statement in writing showing, among other things, gross wages earned and all
21 applicable hourly rates in effect during the pay period and the corresponding amount of time
22 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on
23 an hourly basis. As such, the wage statements should reflect all applicable hourly rates
24 during the pay period and the total hours worked, and the applicable pay period in which the
25 wages were earned pursuant to California Labor Code Section 226(a). The wage statements
26 DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to
27 identify such information. More specifically, the wage statements failed to identify the
28 accurate total hours worked each pay period. When the hours shown on the wage statements

1 were added up, they did not equal the actual total hours worked during the pay period in
2 violation of Cal. Lab. Code 226(a)(2). DEFENDANT also violated Cal. Lab. Code 226(a)(6)
3 by not including the inclusive dates of the period for which the employee is paid. Aside,
4 from the violations listed above in this paragraph, DEFENDANT failed to issue to
5 PLAINTIFF an itemized wage statement that lists all the requirements under California
6 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF
7 and the AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code §
8 226.

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

13 in [I]n addition to, and entirely independent and apart from, any other penalty provided
14 this article, every person who fails to pay the wages of each employee as provided in
15 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
16 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.

17 21. DEFENDANT from time to time failed to pay PLAINTIFF and the
18 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
19 accordance with Cal. Lab. Code § 204(d), including but not limited to for the “Hourly”
20 regular wage payments.

21 22. DEFENDANT underpaid sick pay wages to PLAINTIFF and the
22 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in
23 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
24 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
25 of pay, DEFENDANT underpays sick pay to PLAINTIFF and the AGGRIEVED
26 EMPLOYEES at their base rates of pay.

27 23. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
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1 employees be calculated by dividing the employee's total wages, not including overtime
2 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
3 days of employment.

4 24. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
5 at the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely
6 earned non-discretionary incentive wages which increased their regular rate of pay.
7 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
8 the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as
9 required under Cal. Lab. Code Section 246.

10 25. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
11 and the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
12 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
13 believes and based thereon alleges that such failure to pay sick pay at regular rate was
14 willful, such that the AGGRIEVED EMPLOYEES whose employment has separated are
15 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

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

24 27. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
25 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred
26 by the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of
27 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
28 2802, employers are required to indemnify employees for all expenses incurred in the course

1 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
2 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
3 employee in direct consequence of the discharge of his or her duties, or of his or her
4 obedience to the directions of the employer, even though unlawful, unless the employee, at
5 the time of obeying the directions, believed them to be unlawful."

6 28. In the course of their employment PLAINTIFF and the AGGRIEVED
7 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
8 personal cellular phones as a result of and in furtherance of their job duties as employees for
9 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
10 associated with the use of their personal cellular phones for DEFENDANT's benefit.
11 Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were required by
12 DEFENDANT to use their personal cellular phones. As a result, in the course of their
13 employment with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES
14 incurred unreimbursed business expenses which included, but were not limited to, costs
15 related to the use of their personal cellular phones all on behalf of and for the benefit of
16 DEFENDANT.

17 29. In violation of the applicable sections of the California Labor Code and the
18 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
19 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
20 knowingly and systematically failed to provide PLAINTIFF and the other AGGRIEVED
21 EMPLOYEES suitable seating when the nature of these employees' work reasonably
22 permitted sitting.

23 30. DEFENDANT knew or should have known that PLAINTIFF and other
24 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit
25 when it did not interfere with the performance of their duties, and that DEFENDANT did
26 not provide suitable seating and/or did not allow them to sit when it did not interfere with
27 the performance of their duties.
28

1 31. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
2 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage
3 Order 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties
4 on behalf of PLAINTIFF and other AGGRIEVED EMPLOYEES as provided herein.
5 Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's
6 intentional disregard of the obligation to meet this burden, DEFENDANT violated the
7 California Labor Code and regulations promulgated thereunder as herein alleged.

8 32. The employment of PLAINTIFF and some AGGRIEVED EMPLOYEES has
9 terminated and DEFENDANT has not tendered payment of all wages owed as required by
10 law. Additionally, at all times during the term of PLAINTIFF's employment with
11 DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES earned and accrued
12 vested vacation and holiday time on the date of their termination pursuant to
13 DEFENDANT's uniform vacation policies and applicable California law. The amount of
14 vacation pay PLAINTIFF and the other AGGRIEVED EMPLOYEES earned and
15 accumulated is evidenced by DEFENDANT's business records. Additionally,
16 DEFENDANT also underpaid accrued vested vacation wages to PLAINTIFF and other
17 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay and
18 more specifically the final rate of pay that included all non-discretionary incentive
19 compensation. Rather than pay vacation wages at the regular rate of pay, DEFENDANT
20 underpaid vacation wages to PLAINTIFF and other AGGRIEVED EMPLOYEES at their
21 base rates of pay, instead of including all of PLAINTIFF's and other AGGRIEVED
22 EMPLOYEES' non-discretionary incentive compensation into the vacation wage payment
23 calculations. DEFENDANT failed to specify in DEFENDANT's written vacation policy the
24 rate at which PLAINTIFF and other AGGRIEVED EMPLOYEES would be paid vacation
25 upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful
26 practice, policy and procedure to deny paying the PLAINTIFF and other AGGRIEVED
27 EMPLOYEES all of their vested vacation and holiday time, DEFENDANT failed to pay the
28 PLAINTIFF and other AGGRIEVED EMPLOYEES all vested vacation time as wages due

1 upon employment termination, in violation of the California Labor Code, Sections 201, 202,
2 203 and 227.3. Similarly, DEFENDANT underpaid waiting time penalties to PLAINTIFF
3 and other AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of
4 PLAINTIFF's and other AGGRIEVED EMPLOYEES' non-discretionary compensation into
5 the waiting time penalty calculations. This failure by DEFENDANT is believed to be the
6 result of DEFENDANT's unlawful, unfair and deceptive refusal to provide compensation for
7 earned, accrued and vested vacation and holiday time, as well as the corresponding waiting
8 time penalties that were paid. DEFENDANT perpetrated this unlawful, unfair and deceptive
9 practice to the detriment of PLAINTIFF and other AGGRIEVED EMPLOYEES.

10 DEFENDANT's uniform practice and policy of failing to pay the AGGRIEVED
11 EMPLOYEES for all vested vacation and holiday time accumulated at employment
12 termination violated and continues to violate Section 227.3 of the California Labor Code.

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

18 19 **JURISDICTION AND VENUE**

20 34. This Court has jurisdiction over this Action pursuant to California Code of
21 Civil Procedure, Section 410.10.

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

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1 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
2 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
3 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
4 pursuant to Section 2699 as the proxy of the State of California with respect to all
5 AGGRIEVED EMPLOYEES as herein defined.

6 40. The policies, acts and practices heretofore described were and are an unlawful
7 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
8 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
9 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
10 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
11 required expenses, (f) failed to provide wages when due, and (g) failed to provide suitable
12 seating, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
13 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512,
14 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
15 Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1
16 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s), and thereby gives
17 rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of
18 only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as
19 the representative of the State of California for the illegal conduct perpetrated on
20 PLAINTIFF and the AGGRIEVED EMPLOYEES.

21
22 **PRAYER FOR RELIEF**

23 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
24 severally, as follows:
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26

27 _____
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

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

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

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

7 Dated: June 15, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
8 LLP

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11 By: 
12 Norman B. Blumenthal
13 Nicholas J. De Blouw
14 Attorneys for Plaintiff
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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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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

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.

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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LA JOLLA, CALIFORNIA 92037

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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 #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.

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February 21, 2023

CA2891

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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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