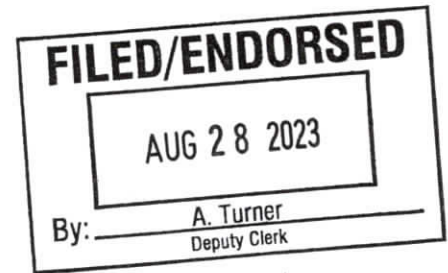


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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

ANTHONY BISHOP, individually, and on
behalf of other members of the general
public similarly situated, and as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiff,

vs.

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

Defendants.

Case No.: 23CV005724

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations, Title 8, Section 11050 Subdivision 5(A) (Failure to Provide Reporting Time Pay);

BY FAX

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- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Anthony Bishop, individually and on behalf of all other members of the
2 public similarly situated, and as an aggrieved employee and on behalf of all aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice.

23 3. Venue is proper in this Court, because Defendants employ persons within the
24 County of Sacramento, and have violated the requirements of the California Labor Code and
25 applicable Wage Order in this county which give rise to the penalties sought in this
26 action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of
27 the California Labor Code and applicable Wage Order in at least one location within the
28 County of Sacramento, including Defendants’ restaurant and store location

1 in Sacramento (1000 Howe Avenue, Sacramento, California 95825). Pursuant to California
2 Civil Code of Procedure section 393, venue is proper for the recovery of a penalty or
3 forfeiture imposed by statute in the county in which the cause, or some part of the cause,
4 arose. Because Defendants have employees in Sacramento County and Plaintiff could bring
5 this action to recover penalties in Sacramento County, venue is proper.

6 **THE PARTIES**

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

13 5. CRACKER BARREL OLD COUNTRY STORE, INC. was and is, upon
14 information and belief, a Tennessee corporation, and at all times hereinafter mentioned, an
15 employer whose employees are engaged throughout this county and the State of California.

16 6. CBOCS WEST, INC. was and is, upon information and belief, a Nevada
17 corporation, and at all times hereinafter mentioned, an employer whose employees are
18 engaged throughout this county and the State of California.

19 7. Plaintiff is unaware of the true names or capacities of the Defendants sued
20 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
21 amend the complaint and serve such fictitiously named Defendants once their names and
22 capacities become known.

23 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
24 were the partners, agents, owners, or managers of CRACKER BARREL OLD COUNTRY
25 STORE, INC. and CBOCS WEST, INC. at all relevant times.

26 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
27 acts and omissions alleged herein was performed by, or is attributable to, CRACKER
28 BARREL OLD COUNTRY STORE, INC.; CBOCS WEST, INC.; and/or DOES 1 through 10

(collectively, “Defendants” or “CRACKER BARREL”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

11. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

12. CRACKER BARREL OLD COUNTRY STORE, INC.; CBOCS WEST, INC.; and/or DOES 1 through 10 are therefore alter egos of each other.

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

14. Plaintiff further alleges, upon information and belief, that the Defendants CRACKER BARREL OLD COUNTRY STORE, INC. and CBOCS WEST, INC. are alter egos of each other for the following reasons:

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

(b) On the Tennessee Secretary of State’s website (<https://sos.tn.gov/products/business-services/business-information-search-0>) and the California Secretary of State’s website

¹ 10-K Annual Report 09/07/12, Cracker Barrel Old Country Store, Inc., <https://investor.cbirlgroup.com/financial-information/sec-filings> (last accessed July 21, 2023).

(<https://bizfileonline.sos.ca.gov/>), CRACKER BARREL OLD COUNTRY STORE, INC. and CBOCS WEST, INC. have the same mailing address, “305 S. HARTMANN DRIVE, LEBANON, CA 37075”;

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

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

GENERAL ALLEGATIONS

15. Defendants are an American chain of combined restaurant and gift stores with a Southern country theme. Defendants operates at least seven (7) restaurant locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Lebanon, Tennessee, or Las Vegas, Nevada, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

16. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee’s time of hire.

17. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Lebanon, Tennessee, or Las Vegas, Nevada, which processes payroll for all non-exempt, hourly paid employees working for Defendants at

1 their various locations in California, including Plaintiff and class members. Based upon
2 information and belief, Defendants issue the same formatted wage statements to all non-
3 exempt, hourly paid employees in California, irrespective of their work locations. Upon
4 information and belief, Defendants process payroll for departing employees in the same
5 manner throughout the State of California, regardless of the manner in which each employee's
6 employment ends.

7 18. Defendants continue to employ non-exempt or hourly paid employees in
8 California.

9 19. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
11 and advisors knowledgeable about California labor and wage law, employment and personnel
12 practices, and about the requirements of California law.

13 20. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
14 members were not paid for all hours worked because all hours worked were not recorded.

15 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to receive certain wages for
17 overtime compensation and that they were not receiving certain wages for overtime
18 compensation.

19 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive at least minimum
21 wages for compensation and that they were not receiving at least minimum wages for work
22 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
23 and class members were not paid at least minimum wages for work done off-the-clock.

24 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and/or class members were entitled to be paid at a regular
26 rate of pay, and corresponding rates of pay for overtime wages and/or meal and rest period
27 premiums that included as eligible income all remuneration required by law, including but not
28 limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other

1 forms of compensation, but failed to include all forms of remuneration in calculating the
2 regular rate of pay for Plaintiff and/or class members.

3 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to meal periods in
5 accordance with the California Labor Code and applicable Industrial Welfare Commission
6 (“IWC”) Wage Order or payment of one (1) additional hour of pay at their regular rates of pay
7 when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and
8 that Plaintiff and class members were not provided with all meal periods or payment of one
9 (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
10 uninterrupted, thirty (30) minute meal period.

11 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to rest periods in
13 accordance with the California Labor Code and applicable IWC Wage Order or payment of
14 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
15 permitted to take a compliant rest period and that Plaintiff and class members were not
16 authorized and permitted to take compliant rest periods or provided with payment of one (1)
17 additional hour of pay at their regular rates of pay when they were not authorized and
18 permitted to take a compliant rest period.

19 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive complete and
21 accurate wage statements in accordance with California law. In violation of the California
22 Labor Code, Plaintiff and class members were not provided complete and accurate wage
23 statements.

24 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that they had a duty to maintain accurate and complete payroll records in
26 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
27 knowingly, and intentionally failed to do so.

28 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to timely payment of all
2 wages earned upon termination of employment. In violation of the California Labor Code,
3 Plaintiff and class members did not receive payment of all wages due, including, but not
4 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting
5 time pay, within permissible time periods.

6 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to timely payment of wages
8 during their employment. In violation of the California Labor Code, Plaintiff and class
9 members did not receive payment of all wages, including, but not limited to, overtime wages,
10 minimum wages, meal and rest period premiums, and/or reporting time pay, within
11 permissible time periods.

12 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that they were prohibited from issuing instruments for the payment of
14 wages that were not payable in cash on demand, without discount and with authorization, but
15 did so, in violation of the California Labor Code.

16 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to the portion of wages
18 previously paid and subsequently unlawfully deducted by Defendants.

19 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to payment of wages as
21 designated by statute. In violation of the California Labor Code, Defendants secretly paid
22 Plaintiff and class members lower wages than required by statute while purporting to pay
23 them proper wages.

24 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and/or class members were entitled to suitable seating and/or
26 were entitled to sit when it did not interfere with the performance of their duties and also have
27 seats nearby to use during a lull in tasks that do require moving about or standing. In
28 violation of the California Labor Code and applicable IWC Wage Order, Defendants failed to

1 provide Plaintiff and/or class members with suitable seating.

2 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to receive all reporting time
4 pay when Plaintiff and class members were required to report to work but were put to work
5 for less than half of their usual or scheduled shift. In violation of the California Labor Code
6 and applicable IWC Wage Order, Plaintiff and class members were not paid all reporting time
7 pay.

8 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to receive full
10 reimbursement for all business-related expenses and costs they incurred during the course and
11 scope of their employment and that they did not receive full reimbursement of applicable
12 business-related expenses and costs incurred.

13 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants knew or should have known that they had a duty to compensate
15 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
16 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
17 falsely represented to Plaintiff and class members that they were properly denied wages, all in
18 order to increase Defendants' profits.

19 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

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

- 7 (a) The aggrieved employee or representative shall give written notice by
8 online filing with the LWDA and by certified mail to the employer of
9 the specific provisions of the California Labor Code alleged to have
10 been violated, including the facts and theories to support the alleged
11 violation.
- 12 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
13 2699.3(a) and any employer response to that notice shall be
14 accompanied by a filing fee of seventy-five dollars (\$75).
- 15 (c) The LWDA shall notify the employer and the aggrieved employee or
16 representative by certified mail that it does not intend to investigate the
17 alleged violation (“LWDA Notice”) within sixty (60) calendar days of
18 the postmark date of the aggrieved employee’s notice. Upon receipt of
19 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
20 (65) calendar days of the postmark date of the aggrieved employee’s
21 notice, the aggrieved employee may commence a civil action pursuant
22 to California Labor Code section 2699 to recover civil penalties.

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

- 27 (a) The aggrieved employee or representative shall give written notice by
28 online filing with the LWDA and by certified mail to the employer of

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

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

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

16 42. On June 23, 2023, Plaintiff provided written notice by online filing to the
17 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
18 Code alleged to have been violated, including facts and theories to support the alleged
19 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
20 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
21 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
22 Plaintiff PAGA Case Number LWDA-CM-964107-23. A true and correct copy of Plaintiff's
23 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

24 43. As of the filing date of this complaint, over 65 days have passed since Plaintiff
25 sent the notice described above to the LWDA, and the LWDA has not responded that it
26 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

27 44. Thus, Plaintiff has satisfied the administrative prerequisites under California
28 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants 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, and 2802.

45. 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 “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

46. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’ rights by violating various sections of the California Labor Code as set forth above.

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

48. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants 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, and 2802.

CLASS ACTION ALLEGATIONS

49. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

50. All claims alleged herein arise under California law for which Plaintiff seeks

1 relief authorized by California law.

2 51. Plaintiff's proposed class consists of and is defined as follows:

3 All persons who worked for Defendants as non-exempt, hourly
4 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

5 52. Plaintiff's proposed subclass consists of and is defined as follows:

6 All persons who worked for Defendants as non-exempt, hourly
7 paid employees in California and who received at least one wage
8 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

9 53. Members of the Class and Subclass are referred to herein as "class members."

10 54. Plaintiff reserves the right to redefine the Class and Subclass and to add
11 additional subclasses as appropriate based on further investigation, discovery, and specific
12 theories of liability.

13 55. There are common questions of law and fact as to class members that
14 predominate over questions affecting only individual members, including, but not limited to:

- 15 (a) Whether Defendants required Plaintiff and class members to work over
16 eight (8) hours per day, over twelve (12) hours per day, or over forty
17 (40) hours per week and failed to pay all legally required overtime
18 compensation to Plaintiff and class members;
- 19 (b) Whether Defendants failed to include all forms of remuneration in the
20 "regular rate" of pay as required by law for purposes of paying overtime
21 wages and/or meal and rest period premiums to Plaintiff and/or class
22 members;
- 23 (c) Whether Defendants failed to pay Plaintiff and class members at least
24 minimum wages for all hours worked;
- 25 (d) Whether Defendants failed to provide Plaintiff and class members with
26 meal periods;
- 27 (e) Whether Defendants failed to authorize and permit Plaintiff and class
28 members to take rest periods;

- (f) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (h) Whether Defendants failed to pay earned overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay due to Plaintiff and class members upon their discharge;
- (i) Whether Defendants failed to timely pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay due to Plaintiff and class members during their employment;
- (j) Whether Defendants issued instruments for the payment of wages that were not payable in cash on demand and without discount, in violation of Labor Code sections 212 and 213;
- (k) Whether Defendants unlawfully deducted a portion of wages previously paid to Plaintiff and class members, in violation of California Labor Code sections 221 and 224;
- (l) Whether Defendants secretly paid Plaintiff and class members lower wages than required by statute while purporting to pay the proper wages, in violation of California Labor Code section 223;
- (m) Whether Defendants failed to provide Plaintiff and/or class members with suitable seating;
- (n) Whether Defendants required Plaintiff and class members to report to work, but failed to provide them with work or provided them with less than half their usual or scheduled day's work, without properly compensating them as required by California Code of Regulations, Title 8, section 11050, subsection 5;
- (o) Whether Defendants failed to reimburse Plaintiff and class members for

necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;

(p) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and

(q) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

56. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

(a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will

1 be necessarily expended for the prosecution of this action for the
2 substantial benefit of each class member.

3 (d) Superiority: The nature of this action makes the use of class action
4 adjudication superior to other methods. A class action will achieve
5 economies of time, effort, and expense as compared with separate
6 lawsuits, and will avoid inconsistent outcomes because the same issues
7 can be adjudicated in the same manner and at the same time for the
8 entire class.

9 (e) Public Policy Considerations: Employers in the State of California
10 violate employment and labor laws every day. Current employees are
11 often afraid to assert their rights out of fear of direct or indirect
12 retaliation. Former employees are fearful of bringing actions because
13 they believe their former employers might damage their future
14 endeavors through negative references and/or other means. Class
15 actions provide the class members who are not named in the complaint
16 with a type of anonymity that allows for the vindication of their rights
17 while simultaneously protecting their privacy.

18 **FIRST CAUSE OF ACTION**

19 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

20 **(Against all Defendants)**

21 57. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 58. Labor Code section 1198 makes it illegal to employ an employee under
24 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
25 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
26 shall be the . . . standard conditions of labor for employees. The employment of any employee
27 . . . under conditions of labor prohibited by the order is unlawful.”

28 59. California Labor Code section 1198 and the applicable IWC Wage Order

1 provide that it is unlawful to employ persons without compensating them at a rate of pay
2 either time-and-one-half or two-times that person's regular rate of pay, depending on the
3 number of hours worked by the person on a daily or weekly basis.

4 60. Specifically, the applicable IWC Wage Order provides that Defendants are and
5 were required to pay Plaintiff and class members working more than eight (8) hours in a day
6 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
7 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
8 workweek.

9 61. The applicable IWC Wage Order further provides that Defendants are and were
10 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
11 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
12 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
13 employee, including nondiscretionary bonuses and incentive pay.

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

20 63. During the relevant time period, Defendants willfully failed to pay all overtime
21 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
22 class members were not paid overtime premiums for all of the hours they worked in excess of
23 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
24 hours in a week, because all hours worked were not recorded.

25 64. During the relevant time period, Defendants had, and continue to have, several
26 company-wide practices and/or policies that led Plaintiff and class members to work off-the-
27 clock before and after their shifts and during meal periods.

28 65. First, Defendants required Plaintiff and class members to watch training videos

1 on their days off and while off-the-clock. For example, Plaintiff spent approximately ten (10)
2 hours throughout his employment watching these training videos and answering quizzes and
3 questions afterwards. Thus, Defendants failed to track this time employees spent working
4 outside of scheduled shifts and on their days off, and Plaintiff and class members received no
5 compensation for this time.

6 66. Second, during the relevant time period, Defendants had a company-wide loss
7 prevention policy requiring employees to undergo mandatory security checks by a managerial
8 employee before leaving the restaurant premises, after clocking out at the end of a shift and
9 after clocking out for the start of a meal period. Although Defendants' requirement that
10 Plaintiff and class members undergo security checks was mandatory, Defendants did not
11 compensate them for the time it took them to wait and undergo these checks. For example,
12 Plaintiff spent up to five (5) minutes locating a manager and submitting to these security
13 checks when he clocked out from his shifts and for his meal periods. As a result of these loss
14 prevention and security policies and/or practices, Plaintiff and class members were subject to
15 Defendants' control after they had clocked out from their shifts and for meal periods, but were
16 not compensated for this time.

17 67. Third, Defendants had, and continue to have, a company-wide security policy
18 of allowing only certain employees to carry keys to Defendants' restaurants. Specifically,
19 only managerial employees were issued keys to access the restaurant at any given time. In
20 adherence with this policy, Plaintiff and class members sometimes reported for their
21 scheduled shifts but had to wait up to two (2) hours for a managerial employee to arrive at
22 Defendants' premises and unlock the restaurant in the mornings before they could clock in for
23 their shifts. For example, Plaintiff would be scheduled to report to work at 5:00 a.m.;
24 however, Defendants' managers did not report to work until 7:00 a.m., causing Plaintiff to
25 wait off-the-clock for two (2) hours. As a result, Plaintiff and class members were subject to
26 Defendants' control before they had clocked in for their shifts, but were not compensated for
27 this time.

28 68. Fourth, Defendants had a company-wide policy of discouraging and impeding

1 Plaintiff and class members from recording hours worked that were outside of their scheduled
2 shifts in order to limit the amount of overtime employees could accrue. Specifically, because
3 Defendants' timekeeping system was integrated with the company's point-of-sale ("POS")
4 system, Plaintiff and class members would often have to wait to clock in because the POS
5 systems were already in use for customer transactions and food orders. For example, Plaintiff
6 was required to wait up to 10 minutes under Defendants' control until a POS system became
7 available to use to clock-in, time for which he was not paid. This issue was further
8 exacerbated by the fact that Defendants only made three (3) POS systems available for
9 employees to use to clock in and out. With numerous employees staffed at the restaurant,
10 three (3) POS systems was insufficient to allow employees prompt access to clock in or out,
11 causing Plaintiff and class members to wait even longer. Additionally, Defendants'
12 timekeeping system prevented Plaintiff and class members from clocking in before their
13 scheduled shift start time, so they could not record time worked or the time they spent waiting
14 to be let in to the restaurant (*see supra*) or to gain access to a POS system.

15 69. Fifth, during the relevant time period, Defendants had a company-wide "on-
16 call" policy, whereby Defendants scheduled Plaintiff and class members to work "on-call," or
17 on standby. These "on-call" shifts worked to Defendants' benefit and to the detriment of
18 Plaintiff and class members. By utilizing "on-call" shifts, Defendants received the benefit of
19 being able to maximize revenue by having a standby workforce they could choose to utilize or
20 not, depending on restaurant traffic, without incurring the cost of compensating employees
21 who show up to work and work a full or partial scheduled day's work.

22 70. When scheduled for an "on-call" or standby shift, Plaintiff and class members
23 were required to wait for the restaurant to call them prior to their scheduled standby shift.
24 Plaintiff and class members were engaged to wait and could not engage in personal activities
25 as they had to be ready to travel to their respective restaurant locations on short notice and
26 work their standby shift. When scheduled to be "on-call" for a standby shift, Plaintiff and
27 class members were controlled by Defendants because they were forced to put their lives on
28 hold and could not use that time freely for their own purposes. For example, Plaintiff

1 refrained from making plans altogether while “on-call” for a standby shift because he knew
2 that he had to drop whatever he was doing at a moment’s notice if he was instructed to work
3 his standby shift. Defendants did not pay Plaintiff and/or class members for the time they
4 spent waiting to hear whether they needed to report for work at their restaurant locations on
5 days they ultimately were not called in.

6 71. Sixth, during the relevant time period, Defendants had, and continue to have, a
7 company-wide policy of strictly staffing their restaurant locations based on labor hours set at
8 the corporate level which, combined with heavy workloads, resulted in chronic understaffing
9 and a lack of adequate meal period coverage. Defendants also had a systemic practice of
10 failing to schedule meal periods at all, which further caused Plaintiff and class members to not
11 be relieved of their duties for compliant meal periods. As a result of Defendants’ lack of meal
12 period coverage and failure to schedule meal periods, Plaintiff and class members were not
13 always afforded uninterrupted 30-minute meal periods during shifts when they were entitled
14 to receive a meal period. For example, Plaintiff and class members were required to work
15 through meal periods due to the heavy workload and understaffing. However, because
16 Defendants frowned upon employees accruing meal period penalties, Defendants’
17 management would adjust employees’ time records to reflect compliant meal periods even
18 when meal periods were missed, short, and/or interrupted. Thus, Defendants failed to record
19 all hours worked during meal periods, and Plaintiff and class members performed work during
20 meal periods for which they were not paid.

21 72. Moreover, Defendants’ timekeeping system prevented Plaintiff and class
22 members from recording all hours worked when their meal periods were shortened or
23 interrupted, because the system locked out Plaintiff and class members once they clocked out
24 for a meal period, and would not permit them to clock back in from a meal period until 30
25 minutes had elapsed. Thus, Defendants’ timekeeping system further prevented Plaintiff and
26 class members from recording all hours worked when their meal periods were shortened or
27 interrupted.

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

1 practices and/or policies, Plaintiff and class members were performing assigned duties off-the-
2 clock before and after their shifts and during meal periods, and were suffered or permitted to
3 perform work for which they were not paid. Because Plaintiff and class members regularly
4 worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of
5 this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class
6 members were not paid overtime wages for all of the overtime hours they actually worked.

7 74. Defendants' failure to pay Plaintiff and class members the balance of overtime
8 compensation, as required by California law, violates the provisions of California Labor Code
9 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
10 members are entitled to recover from Defendants their unpaid overtime compensation, as well
11 as interest, costs, and attorneys' fees.

12 **SECOND CAUSE OF ACTION**

13 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 14 **Minimum Wages** 15 **(Against all Defendants)**

16 75. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 76. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
19 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
20 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
21 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the
22 time during which an employee is subject to the control of an employer, and includes all the
23 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
24 Code Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

25 77. First, as stated above, Defendants had company-wide policies and/or practices
26 of requiring Plaintiff and class members to perform various work-related tasks while off-the-
27 clock, including watching training videos, submitting to security checks, waiting to be let into
28 the restaurant by a managerial employee, and waiting to clock in for the start of their shifts

1 because other employees were using the POS system. Thus, Defendants failed to track the
2 time Plaintiff and class members spent working off-the-clock, and Plaintiff and class members
3 received no compensation for this time.

4 78. Second, as stated above, Defendants had a company-wide “on-call” policy,
5 whereby they required Plaintiff and class members to wait to be called by Defendants when
6 scheduled for “on-call” or standby shifts. However, Defendants did not pay Plaintiff and/or
7 class members at least minimum wages for the time they spent waiting to see if they were
8 needed at the restaurant.

9 79. Third, as set forth above, due to Defendants’ uniform practices of utilizing
10 labor budgets, understaffing, assignment of heavy workloads, failure to schedule or provide
11 meal periods, and subsequent lack of meal period coverage, Plaintiff and class members were
12 forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not
13 relieved of all duties during meal periods. Further, to limit the meal penalties that Defendants
14 would otherwise owe, Defendants adjusted employee time records to reflect compliant meal
15 periods, but required them to continue working, time for which they were not paid.
16 Furthermore, as set forth above, Defendants’ company-wide timekeeping system prevented
17 Plaintiff and class members from entering time worked during meal periods because the
18 system locked out Plaintiff and class members for a full 30 minutes. Thus, Defendants
19 systematically failed to pay Plaintiff and class members for actual hours worked during unpaid
20 meal periods because these hours were not always correctly recorded.

21 80. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
22 and class members. To the extent that these off-the-clock hours did not qualify for overtime
23 premium payment, Defendants did not pay at least minimum wages for those hours worked
24 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
25 1198.

26 81. As a result, Defendants regularly failed to pay at least minimum wages to
27 Plaintiff and class members for all of the hours they worked in violation of California Labor
28 Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code

1 section 1194.2, Plaintiff and class members are entitled to recover from Defendants liquidated
2 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

3 **THIRD CAUSE OF ACTION**

4 **Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period** 5 **Violations** 6 **(Against all Defendants)**

7 82. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
8 and every allegation set forth above.

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

16 84. At all relevant times herein set forth, California Labor Code sections 226.7,
17 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
18 meal period mandated by an applicable order of the IWC.

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

25 86. During the relevant time period, as stated, Defendants had, and continue to have,
26 a company-wide policy and/or practice of understaffing locations due to the usage of labor
27 budgets and/or limited payroll allocation, which, combined with the assignment of heavy
28 workloads, resulted in a lack of meal period coverage and prevented Plaintiff and class

1 members from taking all timely, uninterrupted meal periods to which they were entitled.
2 Additionally, Defendants' management erroneously informed Plaintiff and class members that
3 they were not entitled to a meal period until the sixth hour of work. Defendants also wholly
4 failed to schedule meal periods, which, coupled with Defendants' failure to provide adequate
5 meal period coverage, further led to Plaintiff and class members not being able to take
6 compliant meal periods. Additionally, as stated, pursuant to Defendants' loss prevention
7 policy, Plaintiff and class members were required to submit to off-the-clock security checks
8 after clocking out for their meal periods, resulting in shortened meal periods.

9 87. As a result, Plaintiff and class members had to work through all or part of their
10 meal periods, had their meal periods interrupted, and/or had to wait extended periods of time
11 before taking meal periods. For example, Plaintiff could not take his meal periods until the
12 sixth or seventh hour of his shift and missed his meal periods due to the heavy workload and
13 lack of meal period coverage.

14 88. Further, as stated, because Defendants frowned upon employees accruing meal
15 period penalties, Defendants' management adjusted employee time records to reflect
16 compliant meal periods, regardless of whether they had received a compliant meal period or
17 not, in order to strictly limit meal penalties that would need to be paid by Defendants. Also,
18 as stated, Defendants' company-wide timekeeping system prevented Plaintiff and class
19 members from recording when their meal periods were shortened or interrupted, because the
20 system locked Plaintiff and class members out once they clocked out for a meal period, and
21 would not permit them to clock back in from a meal period before 30 minutes had elapsed.
22 For example, Plaintiff's meal periods were sometimes interrupted or cut short by management
23 asking him to return to work early and continue preparing food because the kitchen was
24 backed up with orders. Thus, Defendants systematically failed to correctly record meal
25 periods.

26 89. Additionally, Defendants did not provide Plaintiff and class members with
27 second 30-minute meal periods on days that they worked in excess of 10 hours in one day.
28 For example, during the relevant time period, Plaintiff worked shifts in excess of 10 hours in

1 one day approximately twice per week and never took a second meal period. Plaintiff and
2 class members did not sign valid meal period waivers on days that they were entitled to meal
3 periods and were not relieved of all duties.

4 90. At all times mentioned herein, Defendants knew or should have known that as a
5 result of their company-wide policies and/or practices, Plaintiff and class members were not
6 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
7 knew or should have known that they did not pay Plaintiff and class members meal period
8 premiums when meal periods were missed, late, shortened, and/or interrupted.

9 91. Furthermore, Defendants engaged in a company-wide practice and/or policy of
10 not paying all meal period premiums owed when compliant meal periods are not provided.
11 Because of this practice and/or policy, Plaintiff and class members have not received premium
12 pay for all missed, late, and interrupted meal periods. As a result, Defendants failed to
13 provide Plaintiff and class members compliant meal periods in violation of California Labor
14 Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

15 92. Defendants' conduct violates the applicable IWC Wage Order, and California
16 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
17 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
18 rate of compensation for each work day that the meal period was not provided.

19 **FOURTH CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 21 **(Against all Defendants)**

22 93. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
23 and every allegation set forth above.

24 94. At all relevant times herein set forth, the applicable IWC Wage Order and
25 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
26 members' employment by Defendants.

27 95. At all relevant times, the applicable IWC Wage Order provides that "[e]very
28 employer shall authorize and permit all employees to take rest periods, which insofar as

1 practicable shall be in the middle of each work period” and that the “rest period time shall be
2 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
3 hours or major fraction thereof” unless the total daily work time is less than three and one-half
4 (3 ½) hours.

5 96. At all relevant times, California Labor Code section 226.7 provides that no
6 employer shall require an employee to work during any rest period mandated by an applicable
7 order of the California IWC. To comply with its obligation to authorize and permit rest
8 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
9 employer must “relinquish any control over how employees spend their break time, and
10 relieve their employees of all duties—including the obligation that an employee remain on
11 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
12 *Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California
13 Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from
14 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
15 required rest period was not authorized and permitted.

16 97. During the relevant time period, Defendants regularly failed to authorize and
17 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
18 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
19 policies and/or practices of utilizing labor budgets, understaffing, and assigning heavy
20 workloads, resulted in a lack of rest period coverage and prevented Plaintiff and class
21 members from being relieved of all duty to take compliant rest periods. Defendants also
22 failed to schedule rest periods, which, coupled with Defendants’ failure to provide adequate
23 rest period coverage, further led to Plaintiff and class members not being authorized and
24 permitted to take rest periods.

25 98. Furthermore, upon information and belief, Defendants maintained a company-
26 wide on-premises rest period policy, which mandated that Plaintiff and class members remain
27 on Defendants’ premises during their rest periods. Because Plaintiff and class members were
28 restricted from leaving the premises during rest periods, they were denied the ability to use

1 their rest periods freely for their own purposes, such as running personal errands. Thus,
2 Defendants effectively maintained control over Plaintiff and class members during rest
3 periods.

4 99. As a result of Defendants' practices and policies, Plaintiff and class members
5 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
6 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
7 Plaintiff had to forego his rest periods entirely during each shift because the restaurant was
8 busy and he did not have rest period coverage.

9 100. Defendants have also engaged in a systematic, company-wide practice and/or
10 policy of not paying rest period premiums owed when rest periods are not authorized and
11 permitted. Because of this practice and/or policy, Plaintiff and class members have not
12 received premium pay for all missed rest periods. As a result, Defendants denied Plaintiff and
13 class members rest periods and failed to pay them rest period premiums due, in violation of
14 Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

15 101. Defendants' conduct violates the applicable IWC Wage Order and California
16 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
17 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
18 compensation for each work day that a compliant rest period was not authorized and
19 permitted.

20 **FIFTH CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 22 **Statements and Failure to Maintain Accurate Payroll Records** 23 **(Against all Defendants)**

24 102. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 103. At all relevant times herein set forth, California Labor Code section 226(a)
27 provides that every employer shall furnish each of his or her employees an accurate and
28 complete itemized wage statement in writing, including, but not limited to, the name and

1 address of the legal entity that is the employer, the inclusive dates of the pay period, total
2 hours worked, and all applicable rates of pay.

3 104. At all relevant times, Defendants have knowingly and intentionally provided
4 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
5 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
6 that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name
7 and address of the legal entity that is the employer; and all applicable hourly rates in effect
8 during the pay period, including rates of pay for overtime wages and/or meal and rest period
9 premiums, and the corresponding number of hours worked at each hourly rate. Specifically,
10 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

20 106. Second, and separate from these violations, on information and belief,
21 Defendants issued uniform wage statements to Plaintiff and Subclass members that failed to
22 correctly list the name and address of the legal entity of the actual employer in violation of
23 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with
24 transparency as to the true identity of their employer, to allow the employee to contact their
25 employer during employment or in the future for various reasons, including filing an
26 administrative claim, judicial claim, or other action to seek relief against their employer, to
27 obtain unemployment benefits, etc. This includes providing employees with a physical
28 address of the employer and not a Post Office Box. On information and belief, Plaintiff's and

1 Subclass members' wage statements incorrectly list the employer as "Cracker Barrel Old
2 Country Store, Inc.," with an improper Post Office Box address of "P.O. Box 787 Hartmann
3 Drive, Lebanon, TN 37088," but, according to the California Secretary of State's website,
4 there is no such entity by this name or address.

5 107. The wage statement deficiencies also include, among other things, failing to list
6 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
7 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
8 for which employees were paid; failing to list the name of the employee and only the last four
9 digits of his or her social security number or an employee identification number other than a
10 social security number; and/or failing to state all hours worked as a result of not recording or
11 stating hours worked off-the-clock. In addition, Defendants failed to provide Plaintiff and
12 Subclass members the option to elect to receive hard copies of their wage statements at any
13 time and/or failed to provide them with the ability to easily access the information and convert
14 the electronic wage statements into hard copies at no expense to them.

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

25 109. California Labor Code section 1198 provides that the maximum hours of work
26 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
27 set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he
28 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. During the relevant time period, Defendants failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Plaintiff and Subclass members, in violation of section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiff’s and Subclass members’ 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 Plaintiff and Subclass members. Furthermore, in light of Defendants’ failure to provide Plaintiff and Subclass members with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

110. Plaintiff and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)

111. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

112. At all times relevant herein set forth, 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

1 time of quitting.

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

11 114. In addition, Defendants willfully failed to pay Plaintiff and class members who
12 are no longer employed by Defendants the earned and unpaid wages set forth above, including
13 but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or
14 reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their
15 leaving Defendants' employ.

16 115. Defendants' failure to pay Plaintiff and class members who are no longer
17 employed by Defendants their wages earned and unpaid at the time of discharge, or within
18 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
19 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
20 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
21 thirty (30) day maximum pursuant to California Labor Code section 203.

22 SEVENTH CAUSE OF ACTION

23 Violation of California Labor Code § 204—Failure to Timely Pay Wages During 24 Employment 25 (Against all Defendants)

26 116. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 117. This cause of action is dependent upon, and wholly derivative of, the overtime

1 wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were
2 not timely paid to Plaintiff and class members during their employment.

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

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

18 120. During the relevant time period, Defendants willfully failed to pay Plaintiff and
19 class members all wages due including, but not limited to, overtime wages, minimum wages,
20 and/or meal and rest period premiums, within the time periods specified by California Labor
21 Code section 204.

22 121. Defendants' failure to timely pay Plaintiff and class members all wages due
23 violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover
24 from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

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1 **EIGHTH CAUSE OF ACTION**

2 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section**
3 **11050 Subdivision 5(A)—Failure to Provide Reporting Time Pay**
4 **(Against all Defendants)**

5 122. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

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

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

23 125. During the relevant time period, Defendants violated California Labor Code
24 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
25 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
26 work for their scheduled shift but were put to work for less than half of the usual or scheduled
27 day’s work.

28 126. As stated, Defendants had a company-wide “on-call” policy, whereby they

1 scheduled Plaintiff and class members to work “on-call,” or on standby. When scheduled for
2 a “on-call” or standby shift, Plaintiff and class members regularly presented themselves as
3 ready for work by waiting for the restaurant to call them before their scheduled standby shift
4 and would await instructions on whether to report to the restaurant. When this occurred,
5 Defendants did not pay Plaintiff and/or class members for at least half of their scheduled day’s
6 work or the minimum reporting time pay when they were subject to Defendants’ “on-call”
7 policy and were ultimately not called.

8 127. Accordingly, Plaintiff and class members were not properly compensated with
9 reporting time pay in violation of California Labor Code section 1198 and California Code of
10 Regulations, Title 8, section 11050(5)(A). Plaintiff and class members are therefore entitled
11 to recover from Defendants unpaid wages and interest.

12 NINTH CAUSE OF ACTION

13 Violation of California Labor Code § 2802—Unpaid Business-Related Expenses 14 (Against all Defendants)

15 128. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 129. At all times herein set forth, California Labor Code section 2802 provides that
18 an employer must reimburse employees for all necessary expenditures and losses incurred by
19 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
20 to prevent employers from passing off their cost of doing business and operating expenses on
21 to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
22 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen
23 uniforms are required by the employer to be worn by the employee as a condition of
24 employment, such uniforms shall be provided and maintained by the employer.”

25 130. During the relevant time period, Defendants, on a company-wide basis,
26 required Plaintiff and class members to obtain and pay for certain certifications, which were
27 required for their continued employment, as well as associated costs such as training and/or
28 examination fees. For example, Plaintiff complied with this requirement and spent

1 approximately \$21 to obtain a food handler card, but Defendants did not reimburse him for the
2 costs of obtaining the certification. Thus, Defendants failed to reimburse Plaintiff and class
3 members for the costs of obtaining these certifications, including training and/or examination
4 fees.

5 131. Defendants could have reimbursed employees for the certification fees.
6 Instead, Defendants passed these operating costs off onto Plaintiff and class members.

7 132. Defendants' company-wide policy and/or practice of passing on their operating
8 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
9 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
10 business-related expenses and costs.

11 133. Plaintiff and class members are entitled to recover from Defendants their
12 business-related expenses incurred during the course and scope of their employment, plus
13 interest.

14 **TENTH CAUSE OF ACTION**

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

16 **(Against all Defendants)**

17 134. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
18 and every allegation set forth above.

19 135. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
20 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
21 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 212, 213, 221,
22 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor
23 Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil
24 penalties for violations of those Labor Code sections not found in section 2699.5, including
25 sections 516 and 1182.12.

26 136. Defendants' conduct, as alleged herein, violates numerous sections of the
27 California Labor Code, including, but not limited to, the following:

28 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC

1 Wage Order for Defendants' failure to compensate Plaintiff and other
2 aggrieved employees with all required overtime pay, as alleged herein
3 and set forth below;

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

9 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
10 1198, and the applicable IWC Wage Order for Defendants' failure to
11 compensate Plaintiff and other aggrieved employees with at least
12 minimum wages for all hours worked, as alleged herein;

13 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
14 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
15 and other aggrieved employees with meal periods, as alleged herein and
16 set forth below;

17 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
18 applicable IWC Wage Order for Defendants' failure to authorize and
19 permit Plaintiff and other aggrieved employees to take rest periods, as
20 alleged herein and set forth below;

21 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
22 IWC Wage Order for failure to provide accurate and complete wage
23 statements to Plaintiff and other aggrieved employees, as alleged herein
24 and set forth below;

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

28 (h) Violation of Labor Code sections 201 and 202 for failure to pay all

1 earned wages upon termination, as alleged herein;

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

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

7 (k) Violation of Labor Code sections 221 and 224 for unlawfully deducting
8 a portion of wages previously paid to other aggrieved employees, as set
9 forth below;

10 (l) Violation of Labor Code section 223 for secretly paying other aggrieved
11 employees lower wages than required by statute, while purporting to
12 pay the proper wages, as set forth below;

13 (m) Violation of Labor Code section 1198 for failing to provide suitable
14 seating to other aggrieved employees, as set forth below;

15 (n) Violation of Labor Code section 1198 and the applicable IWC Wage
16 Order for failing to pay reporting time pay to Plaintiff and other
17 aggrieved employees, as alleged herein; and

18 (o) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
19 and other aggrieved employees for all business expenses necessarily
20 incurred, as alleged herein.

21 137. During the relevant time period, as stated, Defendants had company-wide
22 policies and/or practices of requiring Plaintiff and other aggrieved employees to perform
23 various work-related tasks while off-the-clock, including watching training videos, submitting
24 to security checks, waiting to be let into the restaurant by a managerial employee, and waiting
25 to clock in for the start of their shifts because other employees were using the POS system.
26 Thus, Defendants failed to track the time Plaintiff and other aggrieved employees spent
27 working off-the-clock, and Plaintiff and other aggrieved employees received no compensation
28 for this time. Additionally, as stated above, Defendants had a company-wide “on-call” policy,

1 but Defendants did not pay Plaintiff and other aggrieved employees at least minimum wages
2 for the time they spent waiting to see if they were needed at the restaurant. Finally, as set
3 forth above, due to Defendants' uniform practices of utilizing labor budgets, understaffing,
4 assignment of heavy workloads, failure to schedule or provide meal periods, and subsequent
5 lack of meal period coverage, Plaintiff and other aggrieved employees were forced to forego
6 meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all
7 duties during meal periods. Further, to limit the meal penalties that Defendants would
8 otherwise owe, Defendants adjusted employee time records to reflect compliant meal periods,
9 but required them to continue working, time for which they were not paid. Furthermore, as set
10 forth above, Defendants' company-wide timekeeping system prevented Plaintiff and other
11 aggrieved employees from entering time worked during meal periods because the system
12 locked out Plaintiff and other aggrieved employees for a full 30 minutes. Thus, Defendants
13 systematically failed to pay Plaintiff and other aggrieved employees for actual hours worked
14 during unpaid meal periods because these hours were not always correctly recorded.

15 138. As stated, Defendants knew or should have known that as a result of these
16 company-wide practices and/or policies, Plaintiff and other aggrieved employees were
17 performing their assigned duties off-the-clock before and after their shifts and during meal
18 periods, and were suffered or permitted to perform work for which they were not paid.
19 Because Plaintiff and other aggrieved employees worked shifts of eight (8) hours a day or
20 more or forty (40) hours a week or more, some of this off-the-clock work qualified for
21 overtime premium pay.

22 139. Furthermore, Defendants did not pay other aggrieved employees the correct
23 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
24 wage, Defendants paid other aggrieved employees incentive pay, nondiscretionary bonuses,
25 and/or other forms of remuneration. However, in violation of the California Labor Code,
26 Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary
27 bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for
28 purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved

1 employees worked overtime and received these other forms of pay, Defendants failed to pay
2 all overtime wages by paying a lower overtime rate than required.

3 140. Defendants' failure to compensate Plaintiff and/or other aggrieved employees
4 with all required overtime pay and Defendants' failure to properly calculate the overtime rates
5 paid to other aggrieved employees is in violation of California Labor Code sections 510 and
6 1198, and the applicable IWC Wage Order.

7 141. As stated, during the relevant time period, Defendants engaged in a company-
8 wide practice and/or policy of not paying all meal period premiums owed when compliant
9 meal periods are not provided. Because of this practice and/or policy, Plaintiff and other
10 aggrieved employees have not received premium pay for missed, late, and interrupted meal
11 periods. Alternatively, to the extent that Defendants did pay other aggrieved employees for
12 missed, late, and interrupted meal periods, Defendants did not pay other aggrieved employees
13 at the correct rate of pay for premiums because Defendants systematically failed to include all
14 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
15 of remuneration, in the regular rate of pay.

16 142. Defendants' failure to provide meal periods to Plaintiff and/or other aggrieved
17 employees and failure to properly calculate the rates of pay for meal period premiums based
18 on all remuneration paid is in violation of California Labor Code sections 226.7, 512(a), 516,
19 and 1198, and the applicable IWC Wage Order.

20 143. As stated, as with meal periods, Defendants also have engaged in a company-
21 wide practice and/or policy of not paying all rest period premiums owed when compliant rest
22 periods are not authorized or permitted. Because of this practice and/or policy, Plaintiff and
23 other aggrieved employees have not received premium pay for all missed rest periods.
24 Alternatively, to the extent that Defendants did pay other aggrieved employees one (1)
25 additional hour of premium pay for missed rest periods, Defendants did not pay other
26 aggrieved employees at the correct rate of pay for premiums because Defendants failed to
27 include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or
28 other forms of remuneration, in the regular rate of pay.

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

145. During the relevant time period, because Defendants did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, Defendants 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). Defendants 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). Defendants' conduct is in violation of California Labor Code 226(a), 1174(d), and 1198.

146. At all relevant times herein set forth, 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

1 stated, “[i]t is significant that the program does not mandate employee
2 participation in the Money Network Service and that it is designed to
3 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).

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

8 . . . (1) [T]he “wages [are] payable at some established place of business
9 in the state and there be at least 30 days of sufficient funds for payment,”;
10 (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
11 their participation is optional,”; (3) the employees receive “an itemized
wage statement,”; and (4) “at least one transaction per pay period [is]
without fee.”

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

13 148. Further, the DLSE notes that the Labor Code manifests:

14 . . . [A] strong public policy that prohibits an employer (or its agent) from
15 imposing conditions or obstacles which interfere with or prevent an
employee’s (sic) from promptly receiving their due wages in *full*. The
16 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
17 employer’s wage payment obligations could impermissibly interfere with
an employee’s receipt of paid wages by creating a financial condition
18 which would have the *effect* of reducing or discounting wages because
such fee would be charged against the same account in which wages are
19 deposited. (emphases in original)

20 *DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll service
21 providers “effectively act as agents of the client employers in discharging the employer’s
22 wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the
23 Labor Code does not purport to regulate the specific arrangements between employers and
24 payroll service providers, both an employer and, under the express language in Labor Code
25 § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter* 2008.07.07-2.

26 149. During the relevant time period, Defendants had an agreement with a payroll
27 service provider, Netspend, for the issuance of payroll debit cards to employees, including
28 Plaintiff and other aggrieved employees, to discharge their wage payment obligations to their

1 employees. Under Defendants' payroll debit card program, on information and belief,
2 Plaintiff and other aggrieved employees did not have easy access to the entirety of their wages
3 without incurring a fee. For example, Plaintiff and other aggrieved employees were unable to
4 withdraw their entire wages in at least one transaction without incurring a fee, which resulted
5 in a discount in their pay. Thus, Defendants' payroll debit card program was and continues to
6 be unlawful as it did not give Plaintiff and other aggrieved employees access to their entire
7 wages without discount and without delay.

8 150. California courts recognize a policy favoring the full and prompt payment of
9 wages to employees. Defendants' payroll card program is inconsistent with this policy
10 because it presents a number of obstacles and hurdles that, together, make it difficult for
11 Plaintiff and other aggrieved employees to access their entire wages without discount and
12 without delay, in violation of California Labor Code sections 212 and 213. Plaintiff and other
13 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
14 sections 225.5 and/or 2699(a), (f), and (g).

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

20 152. During the relevant time period, Defendants unlawfully deducted a portion of
21 wages previously paid to Plaintiff and other aggrieved employees in violation of California
22 Labor Code section 221. On information and belief, Defendants systematically, and on a
23 company-wide basis, provided Plaintiff and other aggrieved employees with payroll debit
24 cards as payment of their wages. Under Defendants' payroll debit card program, Plaintiff and
25 other aggrieved employees were assessed various fees in connection with their use of the
26 payroll debit cards. For example, Plaintiff and other aggrieved employees were required to
27 pay per-transaction fees, ATM fees, and/or other fees to obtain and/or spend their earned and
28 due wages. The fees charged to Plaintiff and other aggrieved employees resulted in a discount

1 of their wages.

2 153. Defendants' payroll debit card program, which resulted in a discount of wages
3 to employees, are tantamount to taking deductions from Plaintiff's and other aggrieved
4 employees' paychecks without their written authorization and therefore constitutes an
5 unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Plaintiff and
6 other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
7 Code sections 225.5 and/or 2699(a), (f), and (g).

8 154. At all relevant times herein, California Labor Code section 223 makes it
9 unlawful for an employer to secretly pay wages lower than required by statute while
10 purporting to pay legal wages.

11 155. During the relevant time period, Defendants willfully and systematically issued
12 payroll debit cards to Plaintiff and other aggrieved employees that discounted their wages by
13 charging various fees in connection with the use of the payroll debit cards. Defendants'
14 payroll debit card program resulted in the payment of less than statutorily required wages to
15 Plaintiff and other aggrieved employees. Thus, Defendants paid Plaintiff and other aggrieved
16 employees lower wages than those they were entitled to while purporting that Plaintiff and
17 other aggrieved employees were properly paid.

18 156. Defendants' failure to pay other aggrieved employees the correct designated
19 wages, while purporting to pay legal wages, is a violation of California Labor Code section
20 223. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties
21 pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

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

25 158. Plaintiff alleges that Defendants' California restaurants are generally similar in
26 their layout and design and there was, and continues to be space behind host stands to allow
27 for the presence and use of a seat or stool by other aggrieved employees (with reasonable or
28 no modification to these work areas) during the performance of their work duties. Defendants

1 could have provided other aggrieved employees with a seat or stool at their host stands, but
2 instead denied employees seating and forced other aggrieved employees to stand throughout
3 the day.

4 159. Other aggrieved employees spent a substantial portion of their day behind or at
5 these host stands. The nature of the work of an employee performing host duties can
6 reasonably be accomplished from a seated position. However, Defendants systematically, and
7 on a company-wide basis, did not provide seats or stools at or near the host stands, forcing
8 other aggrieved employees to stand throughout their work shifts.

9 160. During the relevant time period, Defendants violated California Labor Code
10 section 1198 and California Code of Regulations, Title 8, section 11050(14)(A), because other
11 aggrieved employees were not allowed to sit, even when the nature of the work would
12 reasonably permit the use of seats, nor were they provided with suitable seats. Defendants'
13 management did not inform other aggrieved employees that they were allowed to sit down,
14 provide any means for them to sit down, or mention any policy regarding sitting.

15 161. As a result of Defendants' company-wide policy and/or practice of prohibiting
16 employees from sitting during their shifts and failure to provide suitable seating, other
17 aggrieved employees were forced to stand during shifts and denied seats. Defendants' failure
18 to provide suitable seating to other aggrieved employees violated and continues to violate
19 California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).
20 Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
21 Code sections 2699(a), (f), and (g).

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

27 163. During the relevant time period, Defendants violated California Labor Code
28 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because other

aggrieved employees were not allowed to sit, even during lulls in their work duties, nor were they provided with suitable seats in reasonable proximity to their work areas.

164. As stated, Plaintiff alleges that Defendants' California restaurants are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by other aggrieved employees during lulls in operation. Defendants could have provided other aggrieved employees with a seat or stool in their work areas, but instead denied other aggrieved employees suitable seating altogether and effectively forced other aggrieved employees to stand throughout the day.

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

166. As a result of Defendants' company-wide policy and/or practice prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, other aggrieved employees were forced to stand during shifts and denied seats. Defendants' failure to provide suitable seating to other aggrieved employees violated and continues to violate California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B). Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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1 **ELEVENTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

5 167. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 168. Defendants are “persons” as defined by California Business & Professions
8 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

10 169. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
12 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
13 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
14 meaning of Code of Civil Procedure section 1021.5.

15 170. Defendants’ activities, as alleged herein, are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business &
17 Professions Code sections 17200, *et seq.*

18 171. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
20 policies and practices have violated state law in at least the following respects:

- 21 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
22 class members, to work overtime without paying them proper
23 compensation in violation of California Labor Code sections 510 and
24 1198, and the applicable IWC Wage Order, as alleged herein;
- 25 (b) Failing to pay at least minimum wage to Plaintiff and class members in
26 violation of California Labor Code sections 1182.12, 1194, 1197,
27 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
28 herein;

- 1 (c) Failing to provide all meal periods to Plaintiff and class members in
2 violation of California Labor Code sections 226.7, 512(a), 516, and
3 1198, and the applicable IWC Wage Order, as alleged herein;
- 4 (d) Failing to authorize and permit Plaintiff and class members to take all
5 rest periods in violation of California Labor Code sections 226.7, 516,
6 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 7 (e) Failing to provide Plaintiff and class members with accurate wage
8 statements and failing to maintain accurate payroll records in violation
9 of California Labor Code sections 226(a), 1174(d), and 1198, and the
10 applicable IWC Wage Order, as alleged herein;
- 11 (f) Failing to timely pay all earned wages to Plaintiff and class members in
12 violation of California Labor Code section 204, as alleged herein;
- 13 (g) Issuing instruments to Plaintiff and class members for the payment of
14 wages that were not payable in cash on demand and without discount, in
15 violation of California Labor Code sections 212 and 213, as set forth
16 below;
- 17 (h) Collecting or receiving wages already paid from Plaintiff and class
18 members in violation of California Labor Code sections 221 and 224, as
19 set forth below;
- 20 (i) Failing to pay the statutorily designated wage scale in violation of
21 California Labor Code section 223, as set forth below;
- 22 (j) Failing to pay reporting time pay in violation of California Labor Code
23 section 1198 and the applicable IWC Wage Order, as alleged herein;
24 and
- 25 (k) Failing to reimburse Plaintiff and class members for all business
26 expenses necessarily incurred in violation of California Labor Code
27 section 2802, as alleged herein.

28 172. At all times relevant herein, California Labor Code section 212 prohibits

1 employers from issuing any instruments for the payment of wages unless such instruments are
2 negotiable and payable in cash on demand and without discount. California Labor Code
3 section 213 permits employers to pay employees via direct deposit so long as the employee
4 authorizes payment via direct deposit.

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

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

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

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

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

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

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

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

176. During the relevant time period, Defendants had an agreement with a payroll service provider, Netspend, for the issuance of payroll debit cards to employees, including Plaintiff and class members, to discharge their wage payment obligations to their employees. Under Defendants' payroll debit card program, on information and belief, Plaintiff and class members did not have easy access to the entirety of their wages without incurring a fee. For example, Plaintiff and class members 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, Defendants' payroll debit card program was and continues to be unlawful as it did not give Plaintiff and class members access to their entire wages without discount and without delay.

177. California courts recognize a policy favoring the full and prompt payment of wages to employees. Defendants' payroll card program is inconsistent with this policy because it presents a number of obstacles and hurdles that, together, make it difficult for Plaintiff and class members to access their entire wages without discount and without delay, in violation of California Labor Code sections 212 and 213.

178. At all times relevant herein, California Labor Code section 221 provides that it

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

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

14 180. Defendants' practice, which resulted in a discount of wages to employees, is
15 tantamount to taking deductions from Plaintiff's and class members' paychecks without their
16 written authorization and therefore constitutes an unlawful deduction of wages, in violation of
17 California Labor Code sections 221 and 224.

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

21 182. During the relevant time period, Defendants willfully and systematically issued
22 payroll debit cards to Plaintiff and class members that discounted their wages by charging
23 various fees in connection with the use of the payroll debit cards. Defendants' payroll debit
24 card program resulted in the payment of less than statutorily required wages to Plaintiff and
25 class members. Thus, Defendants paid Plaintiff and class members lower wages than those
26 they were entitled to while purporting that Plaintiff and class members were properly paid.

27 183. Defendants' failure to pay Plaintiff and class members the correct designated
28 wage, while purporting to pay legal wages, is a violation of California Labor Code section

1 223.

2 184. As a result of the violations of California law herein described, Defendants
3 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
4 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
5 herein.

6 185. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
7 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
8 Defendants during a period that commences four years prior to the filing of this complaint; a
9 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
10 class members; and an award of attorneys' fees pursuant to California Code of Civil
11 Procedure section 1021.5 and other applicable laws; and an award of costs.

12 **TWELFTH CAUSE OF ACTION**

13 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

14 **Unfair Business Practices**

15 **(Against all Defendants)**

16 186. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 187. Defendants are "persons" as defined by California Business & Professions
19 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
20 and/or associations.

21 188. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
22 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
23 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
24 seeks to enforce important rights affecting the public interest within the meaning of Code of
25 Civil Procedure section 1021.5.

26 189. Defendants' activities, namely Defendants' company-wide practice and/or
27 policy of not paying Plaintiff and class members all meal and rest period premiums due to
28 them under California Labor Code section 226.7, deprived Plaintiff and class members of the

1 compensation guarantee and enhanced enforcement implemented by section 226.7. The
2 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
3 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*
4 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
5 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
6 and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
7 unfair business practice in violation of California Business & Professions Code sections
8 17200, *et seq.* (*Id.*)

9 190. A violation of California Business & Professions Code sections 17200, *et seq.*
10 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
11 and practices have violated the spirit of California’s meal and rest period laws and constitute
12 acts against the public policy behind these laws.

13 191. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
14 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
15 benefits implemented by section 226.7 withheld and retained by Defendants during a period
16 that commences four years prior to the filing of this complaint; a permanent injunction
17 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
18 Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil
19 Procedure section 1021.5 and other applicable laws; and an award of costs.

20 **REQUEST FOR JURY TRIAL**

21 Plaintiff requests a trial by jury.

22 **PRAYER FOR RELIEF**

23 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
24 against Defendants, jointly and severally, as follows:

25 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in
26 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
27 reserves the right to amend his prayer for relief to seek a different amount.

28 //

1 **Class Certification**

- 2 2. That this case be certified as a class action;
- 3 3. That Plaintiff be appointed as the representative of the Class and Subclass;
- 4 4. That counsel for Plaintiff be appointed as class counsel.

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

- 6 5. That the Court declare, adjudge, and decree that Defendants violated California
- 7 Labor Code sections 510 and 1198 and the applicable IWC Wage Order by willfully failing to
- 8 pay all overtime wages due to Plaintiff and class members;
- 9 6. For general unpaid wages at overtime wage rates and such general and special
- 10 damages as may be appropriate;
- 11 7. For pre-judgment interest on any unpaid overtime compensation commencing
- 12 from the date such amounts were due, or as otherwise provided by law;
- 13 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
- 14 California Labor Code section 1194(a); and
- 15 9. For such other and further relief as the Court may deem equitable and
- 16 appropriate.

17 **As to the Second Cause of Action**

- 18 10. That the Court declare, adjudge and decree that Defendants violated California
- 19 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage
- 20 Order by willfully failing to pay minimum wages to Plaintiff and class members;
- 21 11. For general unpaid wages and such general and special damages as may be
- 22 appropriate;
- 23 12. For pre-judgment interest on any unpaid compensation from the date such
- 24 amounts were due, or as otherwise provided by law;
- 25 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
- 26 California Labor Code section 1194(a);
- 27 14. For liquidated damages pursuant to California Labor Code section 1194.2; and
- 28 15. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date

such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts

1 were due, or as otherwise provided by law;

2 40. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 41. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Seventh Cause of Action**

7 42. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
9 overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay
10 during their employment;

11 43. For all actual, consequential and incidental losses and damages, according to
12 proof;

13 44. For statutory penalties according to proof pursuant to California Labor Code
14 section 210;

15 45. For pre-judgment interest on any unpaid wages from the date such amounts
16 were due, or as otherwise provided by law;

17 46. For attorneys' fees pursuant to California Code of Civil Procedure section
18 1021.5, or as otherwise provided by law; and

19 47. For such other and further relief as the Court may deem equitable and
20 appropriate.

21 **As to the Eighth Cause of Action**

22 48. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A) by
24 failing to provide Plaintiff and class members with reporting time pay;

25 49. For all actual, consequential and incidental losses and damages, according to
26 proof;

27 50. For pre-judgment interest on any unpaid wages from the date such amounts
28 were due, or as otherwise provided by law; and

1 51. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 **As to the Ninth Cause of Action**

4 52. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
6 related expenses and costs incurred by Plaintiff and class members;

7 53. For unpaid business-related expenses and such general and special damages as
8 may be appropriate;

9 54. For pre-judgment interest on any unpaid business-related expenses from the
10 date such amounts were due, or as otherwise provided by law;

11 55. For all actual, consequential, and incidental losses and damages, according to
12 proof;

13 56. For attorneys' fees and costs pursuant to California Labor Code section
14 2802(c), or as otherwise provided by law; and

15 57. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 **As to the Tenth Cause of Action**

18 58. That the Court declare, adjudge and decree that Defendants violated the
19 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
20 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing
21 to include all forms of remuneration in the "regular rate" of pay for purposes of paying
22 overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and
23 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
24 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
25 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
26 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
27 earned wages upon termination); 204 (by failing to timely pay all earned wages during
28 employment); 212 and 213 (by failing to make earned wages accessible without discount);

221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying wages lower than required by statute); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); 1198 and the applicable IWC Wage Order (by failing to provide reporting time pay); and 2802 (by failing to reimburse business expenses);

59. For civil penalties pursuant to the California Labor Code, including sections 210, 225.5, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), 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, and 2802;

60. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

62. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

63. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, failing to provide access to wages upon demand and without discount, unlawfully deducting a portion of wages previously paid, secretly paying a lower wage, failing to pay Plaintiff and class members reporting time pay, and failing to reimburse Plaintiff and class members for business-related expenses, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

1 64. For restitution of unpaid wages to Plaintiff and all class members and
2 prejudgment interest from the day such amounts were due and payable;

3 65. For the appointment of a receiver to receive, manage and distribute any and all
4 funds disgorged from Defendants and determined to have been wrongfully acquired by
5 Defendants as a result of violations of California Business & Professions Code sections
6 17200, *et seq.*;

7 66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
8 California Code of Civil Procedure section 1021.5; and

9 67. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 **As to the Twelfth Cause of Action**

12 68. That the Court declare, adjudge and decree that Defendants' conduct of denying
13 Plaintiff and class members the statutory benefits guaranteed under California Labor Code
14 section 226.7 constitutes an unfair business practice in violation of California Business and
15 Professions Code sections 17200, *et seq.*;

16 69. For restitution of the statutory benefits under California Labor Code section
17 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the
18 day such amounts were due and payable;

19 70. For the appointment of a receiver to receive, manage and distribute any and all
20 funds disgorged from Defendants and determined to have been wrongfully acquired by
21 Defendants as a result of violations of California Business & Professions Code sections
22 17200, *et seq.*;

23 71. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
24 California Code of Civil Procedure section 1021.5;

25 72. For pre-judgment and post-judgment interest as provided by law; and

26 //

27 //

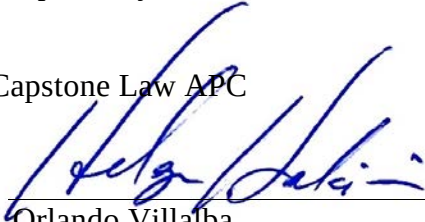
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1 73. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: August 28, 2023

Respectfully submitted,

5
6 Capstone Law APC

7 By: 

8 Orlando Villalba

Helga Hakimi

9 Joseph D. Parsons

10 Attorneys for Plaintiff Anthony Bishop
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EXHIBIT “1”



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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)

Capstone Law, APC
1875 Century Park East, Suite 1000
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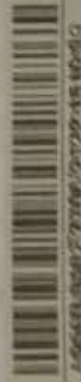
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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece,

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



2. Address Only (Transfer from service label)

7022 2410 0000 2405 8689

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
☒ Addressee

B. Received by (Printed Name) C. Date of Delivery
 Carmel Viado 6/26/23

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

- | | |
|--|---|
| Service Type | ☐ Priority Mail Express® |
| Adult Signature | ☐ Registered Mail™ |
| Adult Signature Restricted Delivery | ☐ Registered Mail Restricted Delivery |
| Certified Mail® | ☐ Signature Confirmation™ |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery | |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Insured Mail | |
| ☐ Restricted Delivery | |

SENDER: COMPLETE THIS SECTION

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

CBOCS WEST, INC.
305 S. HARTMANN DRIVE
LEBANON, TN 37075



2. Article Number (Transfer from service label)
9590 9402 7706 2122 1310 46

7022 2410 0000 2405 8672

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Trey Harris

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Trey Harris

C. Date of Delivery

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Restricted Delivery

SENDER: COMPLETE THIS SECTION

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

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



2. Article Number (transfers from Service 100)

7022 2410 0000 2405 8665

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

Tracy Harris

C. Date of Delivery

6-28-2003

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

Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Mail | |
| ☐ Mail Restricted Delivery | |

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

Domestic Return Receipt

PROOF OF SERVICE

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

On **August 28, 2023**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

CT Corp
300 Montvue Rd.
Knoxville, TN 37919

Registered Agent for Defendant:
CRACKER BARREL OLD COUNTRY
STORE, INC.

CT Corp
701 S Carson St., Suite 200
Carson City, NV 89701

Registered Agent for Defendant:
CBOCS WEST, INC.

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

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

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

☐ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **August 28, 2023**, at Los Angeles, California.

Riley McIntire
Type/Print Name

Signature