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Case #23CV422376
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and Nina Minick

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

RICKEY LARTIGUE and NINA MINICK,
individually, and on behalf of other
members of the general public similarly
situated, and as aggrieved employees
pursuant to the Private Attorneys General
Act ("PAGA"),

Plaintiffs,

vs.

QUIK STOP MARKETS, INC., a
California corporation; EG RETAIL
(AMERICA), LLC, a Delaware limited
liability company; EG AMERICA, LLC, a
Delaware limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 23CV422376

**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 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 California Labor Code § 2802 (Unreimbursed Business Expenses);

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

Jury Trial Demanded

1 Plaintiffs Rickey Lartigue and Nina Minick, individually and on behalf of all other
2 members of the public similarly situated, and as aggrieved employees and on behalf of all
3 aggrieved employees, allege 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 Plaintiffs, the State of California, and
8 other 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 Plaintiffs 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. Plaintiffs’
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. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

form a significant basis for Plaintiffs' claims; and (d) no other class action has been filed within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court, because Defendants employ persons within the County of Santa Clara, and have violated the requirements of the California Labor Code and applicable IWC Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable Wage Order in at least six (6) locations within the County of Santa Clara, including Defendants' locations in San Jose (1510 Mount Pleasant Dr., San Jose, California 95127; 3695 Pearl Ave., San Jose, California 95136; 1105 Leeward Dr., San Jose, California 95122; 5 Stewart Ave., San Jose, California 95127; 1100 Lucretia Ave., San Jose, California 95122; 2704 S Bascom Ave., San Jose, California 95124). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Santa Clara County and Plaintiffs could bring this action to recover penalties in Santa Clara County, venue is proper.

THE PARTIES

4. Plaintiff Rickey Lartigue is a resident of Modesto, in Stanislaus County, California. Defendants employed Plaintiff Lartigue as an hourly paid, non-exempt Cashier from approximately June 2022 to May 2023. Plaintiff Lartigue worked at Defendants' convenience store located in Modesto, California. During his employment, Plaintiff Lartigue typically worked eight (8) hours or more per day and six (6) days per week. Plaintiff Lartigue's primary job duties included, without limitation, operating the cash register, providing customer service, maintaining store cleanliness, re-stocking items, and maintaining the gas pumping area.

5. Plaintiff Nina Minick is a resident of Modesto, in Stanislaus County, California. Defendants employed Plaintiff Minick as an hourly paid, non-exempt Retail Sales Associate from approximately November 2022 to May 2023. Plaintiff Minick worked at

1 Defendants' convenience store located in Modesto, California. During her employment,
2 Plaintiff Minick typically worked eight (8) hours or more per day and three (3) or more days
3 per week. Plaintiff Minick's primary job duties included, without limitation, operating the
4 cash register, providing customer service, maintaining store cleanliness, re-stocking items, and
5 maintaining the gas pumping area.

6 6. QUIK STOP MARKETS, INC. was and is, upon information and belief, a
7 California corporation, and at all times hereinafter mentioned, an employer whose employees
8 are engaged throughout this county and the State of California.

9 7. EG RETAIL (AMERICA), LLC was and is, upon information and belief, a
10 Delaware limited liability company, and at all times hereinafter mentioned, an employer
11 whose employees are engaged throughout this county and the State of California.

12 8. EG AMERICA, LLC was and is, upon information and belief, a Delaware
13 limited liability company, and at all times hereinafter mentioned, an employer whose
14 employees are engaged throughout this county and the State of California.

15 9. Plaintiffs are unaware of the true names or capacities of the Defendants sued
16 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
17 amend the complaint and serve such fictitiously named Defendants once their names and
18 capacities become known.

19 10. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
20 were the partners, agents, owners, or managers of QUIK STOP MARKETS, INC.; EG
21 RETAIL (AMERICA), LLC; and EG AMERICA, LLC at all relevant times.

22 11. Plaintiffs are informed and believe, and thereon allege, that each and all of the
23 acts and omissions alleged herein was performed by, or is attributable to, QUIK STOP
24 MARKETS, INC.; EG RETAIL (AMERICA), LLC; EG AMERICA, LLC; and/or DOES 1
25 through 10 (collectively, "Defendants" or "QUIK STOP"), each acting as the agent, employee,
26 alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants
27 and was acting within the course and scope of such agency, employment, joint venture, or
28 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.

12. 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.

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

14. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiffs and class members. Each Defendant had the power to hire and fire Plaintiffs and class members, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiffs and class members to work and/or “engaged” Plaintiffs and class members so as to create a common-law employment relationship. As joint employers of Plaintiffs and class members, Defendants are jointly and severally liable for the civil penalties and all other relief available to Plaintiffs and class members under the law.

15. Plaintiffs are informed and believe, and thereon allege, that at all relevant times, Defendants, and each of them, have acted as joint employers with respect to Plaintiffs and class members because Defendants have:

- (a) jointly exercised meaningful control over the work performed by Plaintiffs and class members;
- (b) jointly exercised meaningful control over Plaintiffs’ and class members’ wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiffs and class members;
- (c) jointly required that Plaintiffs and class members perform work which is

1 an integral part of Defendants' businesses; and

2 (d) jointly exercised control over Plaintiffs and class members as a matter
3 of economic reality in that Plaintiffs and class members were dependent
4 on Defendants, who shared the power to set the wages of Plaintiffs and
5 class members and determined their working conditions, and who
6 jointly reaped the benefits from the underpayment of their wages and
7 noncompliance with other statutory provisions governing their
8 employment.

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

12 17. QUIK STOP MARKETS, INC.; EG RETAIL (AMERICA), LLC; EG
13 AMERICA, LLC; and DOES 1 through 10 are therefore alter egos of each other.

14 18. Adherence to the fiction of the separate existence of Defendants would permit
15 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
16 from liability for the wrongful acts committed by them under the name QUIK STOP.

17 19. Plaintiffs further allege, upon information and belief, that Defendants QUIK
18 STOP MARKETS, INC.; EG RETAIL (AMERICA), LLC; and EG AMERICA, LLC are alter
19 egos of each other for the following reasons:

20 (a) On the California Secretary of State's website
21 (<https://bizfileonline.sos.ca.gov/>), QUIK STOP MARKETS, INC. and
22 EG RETAIL (AMERICA), LLC share the same principal address and
23 mailing address of "165 FLANDERS ROAD, WESTBOROUGH, MA
24 01581";

25 (b) On the California Secretary of State's website, QUIK STOP
26 MARKETS, INC. and EG RETAIL (AMERICA), LLC share the same
27 agent for service of process, CSC - Lawyers Incorporating Service;

28 (c) According to their most recent "Statement of Information" forms filed

1 with the California Secretary of State, QUIK STOP MARKETS, INC.
2 and EG RETAIL (AMERICA), LLC share the same officer and/or
3 director, Nicholas [M.] Unkovic;

4 (d) According to their most recent “Statement of Information” forms filed
5 with the California Secretary of State, EG AMERICA, LLC is listed as
6 the manager and/or member of EG RETAIL (AMERICA), LLC; and

7 (e) On information and belief, QUIK STOP MARKETS, INC.; EG
8 RETAIL (AMERICA), LLC; and EG AMERICA, LLC utilize the same
9 standardized employment forms and issue the same employment
10 policies.

11 **GENERAL ALLEGATIONS**

12 20. Defendants own and operate a chain of gas station convenience stores with
13 approximately 90 locations in California. Upon information and belief, Defendants maintain a
14 single, centralized Human Resources (“HR”) department at their company headquarters in
15 Westborough, Massachusetts, which is responsible for the recruiting and hiring of new
16 employees, and communicating and implementing Defendants’ company-wide policies,
17 including timekeeping policies and meal and rest period policies, to employees throughout
18 California.

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

26 22. Upon information and belief, Defendants maintain a centralized Payroll
27 department at their company headquarters in Westborough, Massachusetts, which processes
28 payroll for all non-exempt, hourly paid employees working for Defendants at their various

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

6 23. Defendants continue to employ non-exempt or hourly paid employees in
7 California.

8 24. Plaintiffs are informed and believe, and thereon allege, that at all times herein
9 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
10 and advisors knowledgeable about California labor and wage law, employment and personnel
11 practices, and about the requirements of California law.

12 25. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class
13 members were not paid for all hours worked because all hours worked were not recorded.

14 26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that Plaintiffs and class members were entitled to receive certain wages
16 for overtime compensation and that they were not receiving certain wages for overtime
17 compensation.

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

24 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that Plaintiffs and class members were entitled to meal periods in
26 accordance with the California Labor Code and applicable IWC Wage Order or payment of
27 one (1) additional hour of pay at their regular rates of pay when they were not provided with
28 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and class members

1 were not provided with all meal periods or payment of one (1) additional hour of pay at their
2 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
3 period.

4 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
5 should have known that Plaintiffs and class members were entitled to rest periods in
6 accordance with the California Labor Code and applicable IWC Wage Order or payment of
7 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
8 permitted to take a compliant rest period and that Plaintiffs and class members were not
9 authorized and permitted to take compliant rest periods or provided with payment of one (1)
10 additional hour of pay at their regular rates of pay when they were not authorized and
11 permitted to take a compliant rest period.

12 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that Plaintiffs and class members were entitled to be paid at a regular rate
14 of pay, and corresponding rates of pay for meal and rest period premiums that included as
15 eligible income all remuneration required by law, including, but not limited to, all income
16 derived from shift differential pay, incentive pay, nondiscretionary bonuses, and/or other
17 forms of compensation, but failed to include all forms of remuneration in calculating the
18 regular rate of pay for Plaintiffs and class members.

19 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
20 should have known that Plaintiffs 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, Plaintiffs and class members were not provided complete and accurate wage
23 statements.

24 32. Plaintiffs are informed and believe, and thereon allege, 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 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or

1 should have known that Plaintiffs 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 Plaintiffs 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 sick
5 leave pay, within permissible time periods.

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

12 35. Plaintiffs are informed and believe, and thereon allege, 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 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that Plaintiff Lartigue and class members were entitled to the portion of
18 wages previously paid and subsequently unlawfully deducted by Defendants.

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

24 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that Plaintiffs and/or class members were entitled to receive sick leave
26 benefits to be paid at a regular rate of pay, that included, as eligible income, all income
27 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation,
28 and to receive itemized wage statements or separate written statements showing the amount of

1 paid sick leave. In violation of the California Labor Code, Defendants failed to include all
2 forms of remuneration in calculating the regular rate of pay for sick leave pay and failed to
3 provide Plaintiffs and/or class members with written itemized wage statements showing this
4 information.

5 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and class members were entitled to suitable resting facilities
7 to cease work and recover during meal or rest periods, but failed to provide suitable resting
8 facilities.

9 40. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
10 should have known that Plaintiffs and class members were entitled to suitable seating and/or
11 were entitled to sit when it did not interfere with the performance of their duties and also have
12 seats nearby to use during a lull in tasks that do require moving about or standing. In
13 violation of the California Labor Code and applicable IWC Wage Order, Defendants failed to
14 provide Plaintiffs and class members with suitable seating.

15 41. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known that Plaintiffs and class members were entitled to receive full
17 reimbursement for all business-related expenses and costs they incurred during the course and
18 scope of their employment and that they did not receive full reimbursement of applicable
19 business-related expenses and costs incurred.

20 42. Plaintiffs are informed and believe, and thereon allege, that at all times herein
21 mentioned, Defendants knew or should have known that Defendants had a duty to provide
22 Plaintiffs and class members with written notice of the material terms of their employment
23 with Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

24 43. Plaintiffs are informed and believe, and thereon allege, that at all times herein
25 mentioned, Defendants knew or should have known that they had a duty to compensate
26 Plaintiffs and class members for all hours worked, and that Defendants had the financial
27 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,
28 and falsely represented to Plaintiffs and class members that they were properly denied wages,

all in order to increase Defendants' profits.

PAGA REPRESENTATIVE ALLEGATIONS

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

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

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

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

(a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.

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

(c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the

1 alleged violation (“LWDA Notice”) within sixty (60) calendar days of
2 the postmark date of the aggrieved employee’s notice. Upon receipt of
3 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
4 (65) calendar days of the postmark date of the aggrieved employee’s
5 notice, the aggrieved employee may commence a civil action pursuant
6 to California Labor Code section 2699 to recover civil penalties.

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

- 11 (a) The aggrieved employee or representative shall give written notice by
12 online filing with the LWDA and by certified mail to the employer of
13 the specific provisions of the California Labor Code alleged to have
14 been violated (other than those listed in Section 2699.5), including the
15 facts and theories to support the alleged violation.
- 16 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
17 2699.3(c) and any employer response to that notice shall be
18 accompanied by a filing fee of seventy-five dollars (\$75).
- 19 (c) The employer may cure the alleged violation within thirty-three (33)
20 calendar days of the postmark date of the notice sent by the aggrieved
21 employee or representative. The employer shall give written notice
22 within that period of time by certified mail to the aggrieved employee or
23 representative and by online filing with the LWDA if the alleged
24 violation is cured, including a description of actions taken, and no civil
25 action pursuant to Section 2699 may commence. If the alleged violation
26 is not cured within the 33-day period, the aggrieved employee may
27 commence a civil action pursuant to Section 2699.

28 49. On October 12, 2023, Plaintiff Lartigue provided written notice by online filing

1 to the LWDA and by Certified Mail to Defendants of the specific provisions of the California
2 Labor Code alleged to have been violated, including facts and theories to support the alleged
3 violations, in accordance with California Labor Code section 2699.3. Plaintiff Lartigue's
4 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
5 The LWDA PAGA Administrator confirmed receipt of Plaintiff Lartigue's written notice and
6 assigned Plaintiff Lartigue PAGA Case Number LWDA-CM-987460-23. A true and correct
7 copy of Plaintiff Lartigue's written notice to the LWDA and Defendants is attached hereto as
8 "Exhibit 1."

9 50. On October 12, 2023, Plaintiff Minick provided written notice by online filing
10 to the LWDA and by Certified Mail to Defendants of the specific provisions of the California
11 Labor Code alleged to have been violated, including facts and theories to support the alleged
12 violations, in accordance with California Labor Code section 2699.3. Plaintiff Minick's
13 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
14 The LWDA PAGA Administrator confirmed receipt of Plaintiff Minick's written notice and
15 assigned Plaintiff Minick PAGA Case Number LWDA-CM-987464-23. A true and correct
16 copy of Plaintiff Minick's written notice to the LWDA and Defendants is attached hereto as
17 "Exhibit 2."

18 51. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
19 sent the notices described above to the LWDA, and the LWDA has not responded that it
20 intends to investigate Plaintiffs' claims and Defendants have not cured the violations.

21 52. Thus, Plaintiffs have satisfied the administrative prerequisites under California
22 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
23 violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a),
24 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and
25 2810.5.

26 53. Labor Code section 558(a) provides "[a]ny employer or other person acting on
27 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
28 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.”

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

55. 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.

56. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiffs, acting in the public interest as private attorneys general, seek assessment and collection of civil penalties for themselves, 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, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

CLASS ACTION ALLEGATIONS

57. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other persons similarly situated, and thus seek class certification under California Code of Civil Procedure section 382.

58. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized by California law.

59. Plaintiffs’ proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, at any time from August 18, 2021, until the date of trial (“Class”).

60. Plaintiffs’ proposed subclass consists of and is defined as follows:

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

4 61. Members of the Class and Subclass are referred to herein as "class members."

5 62. Plaintiffs reserve the right to redefine the Class and Subclass and to add
6 additional subclasses as appropriate based on further investigation, discovery, and specific
7 theories of liability.

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

- 10 (a) Whether Defendants required Plaintiffs and class members to work over
11 eight (8) hours per day, over twelve (12) hours per day, or over forty
12 (40) hours per week and failed to pay all legally required overtime
13 compensation to Plaintiffs and class members;
- 14 (b) Whether Defendants failed to pay Plaintiffs and class members at least
15 minimum wages for all hours worked;
- 16 (c) Whether Defendants failed to provide Plaintiffs and class members with
17 meal periods;
- 18 (d) Whether Defendants failed to authorize and permit Plaintiffs and class
19 members to take rest periods;
- 20 (e) Whether Defendants failed to include all forms of remuneration in the
21 "regular rate" of pay as required by law for purposes of paying meal and
22 rest period premiums to Plaintiffs and class members;
- 23 (f) Whether Defendants provided Plaintiffs and class members with
24 complete and accurate wage statements as required by California Labor
25 Code section 226(a);
- 26 (g) Whether Defendants maintained accurate payroll records as required by
27 California Labor Code section 1174(d);
- 28 (h) Whether Defendants failed to pay earned overtime wages, minimum

1 wages, meal and rest period premiums, and/or sick leave pay due to
2 Plaintiffs and class members upon their discharge;

- 3 (i) Whether Defendants failed to timely pay overtime wages, minimum
4 wages, meal and rest period premiums, and/or sick leave pay due to
5 Plaintiffs and class members during their employment;
- 6 (j) Whether Defendants issued instruments for the payment of wages that
7 were not payable in cash, on demand, and without discount, in violation
8 of Labor Code sections 212 and 213;
- 9 (k) Whether Defendants unlawfully deducted a portion of wages previously
10 paid to Plaintiff Lartigue and class members, in violation of California
11 Labor Code sections 221 and 224;
- 12 (l) Whether Defendants secretly paid Plaintiff Lartigue and class members
13 lower wages than required by statute while purporting to pay the proper
14 wages, in violation of California Labor Code section 223;
- 15 (m) Whether Defendants failed to properly calculate the regular rate of pay
16 upon which Plaintiffs' and/or class members' sick leave rate of pay was
17 based, and failed to provide Plaintiffs and/or class members with written
18 notice of paid sick leave;
- 19 (n) Whether Defendants failed to reimburse Plaintiffs and class members
20 for necessary and required business-related expenditures and/or losses
21 incurred by them in the scope of their employment;
- 22 (o) Whether Defendants failed to provide written notice of information
23 material to Plaintiffs' and class members' employment with Defendants;
- 24 (p) Whether Defendants engaged in unlawful and unfair business practices
25 in violation of California Business & Professions Code sections 17200,
26 *et seq.*; and
- 27 (q) The appropriate amount of damages, restitution, or monetary penalties
28 resulting from Defendants' violations of California law.

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

- 3 (a) Numerosity: The class members are so numerous that joinder of all
4 members would be unfeasible and impractical. The membership of the
5 entire class is unknown to Plaintiffs at this time; however, the class is
6 estimated to be greater than one hundred (100) individuals and the
7 identity of such membership is readily ascertainable by inspection of
8 Defendants' employment records.
- 9 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately
10 protect the interests of each class member with whom they have a well-
11 defined community of interest, and Plaintiffs' claims (or defenses, if
12 any) are typical of all class members as demonstrated herein.
- 13 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately
14 protect the interests of each class member with whom they have a well-
15 defined community of interest and typicality of claims, as demonstrated
16 herein. Plaintiffs acknowledge that they have an obligation to make
17 known to the Court any relationship, conflicts or differences with any
18 class member. Plaintiffs' attorneys, the proposed class counsel, are
19 versed in the rules governing class action discovery, certification, and
20 settlement. Plaintiffs have incurred, and throughout the duration of this
21 action, will continue to incur costs and attorneys' fees that have been,
22 are, and will be necessarily expended for the prosecution of this action
23 for the substantial benefit of each class member.
- 24 (d) Superiority: The nature of this action makes the use of class action
25 adjudication superior to other methods. A class action will achieve
26 economies of time, effort, and expense as compared with separate
27 lawsuits, and will avoid inconsistent outcomes because the same issues
28 can be adjudicated in the same manner and at the same time for the

entire class.

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

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against all Defendants)

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

66. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC 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.”

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

68. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and class members 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) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a

1 workweek.

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

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

13 71. During the relevant time period, Defendants willfully failed to pay all overtime
14 wages owed to Plaintiffs and class members. During the relevant time period, Plaintiffs and
15 class members were not paid overtime premiums for all of the hours they worked in excess of
16 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
17 hours in a week, because all hours worked were not recorded.

18 72. During the relevant time period, Defendants had, and continue to have, a
19 company-wide policy and/or practice of requiring Plaintiff Lartigue and class members to
20 perform tasks off-the-clock after their scheduled shifts and on their days off. For example,
21 approximately twice per week, after clocking out at the end of his shift, Defendants required
22 Plaintiff Lartigue to continue to perform tasks such as wiping down the counter, cleaning the
23 restroom, restocking items, and refilling the drink machine(s). Moreover, Defendants'
24 managers and coworkers contacted Plaintiff Lartigue on his personal cellular phone, for 10 to
25 15 minutes per instance, about work-related matters when he was not scheduled to work.
26 Thus, Defendants failed to track the time Plaintiff Lartigue and class members spent working
27 after their scheduled shifts and on their days off, and Plaintiff Lartigue and class members
28 received no compensation for this time.

1 73. Moreover, Defendants had, and continue to have, a company-wide policy
2 and/or practice of understaffing their locations, including adopting a single-staffing model for
3 some of their positions, which, combined with heavy workloads, has resulted in a failure to
4 provide Plaintiff Minick and class members with adequate meal period coverage. In addition,
5 Defendants required employees to keep the store open to customers and did not allow them to
6 close or lock the store when they were working alone, in order to facilitate taking compliant
7 meal periods. As a result of Defendants' policy of understaffing and/or single-staffing,
8 combined with a failure to schedule and/or adhere to a schedule for meal periods, Plaintiff
9 Minick and class members were prevented from taking all uninterrupted meal periods to
10 which they were entitled.

11 74. In addition, on information and belief, because Defendants frowned upon
12 employees accruing meal period penalties, Defendants' management pressured employees to
13 clock out to reflect compliant meal periods, regardless of whether they had received a
14 compliant meal period or not, in order to strictly limit meal penalties that would need to be
15 paid by Defendants. Thus, Defendants did not record all hours worked during meal periods,
16 and Plaintiff Minick and class members performed work during meal periods for which they
17 were not paid.

18 75. Further, during the relevant time period, Defendants maintained and
19 implemented a company-wide on-premises meal period policy, which required that Plaintiff
20 Minick and class members remain on Defendants' premises during their meal periods.
21 Because Plaintiff Minick and class members were restricted from leaving the premises during
22 meal periods, they were denied the ability to use their meal periods freely for their own
23 purposes, such as running personal errands. Thus, Defendants effectively maintained control
24 over Plaintiff Minick and class members during meal periods.

25 76. Defendants knew or should have known that, as a result of these company-wide
26 practices and/or policies, Plaintiffs and class members were performing their assigned duties
27 off-the-clock and were suffered or permitted to perform work for which they were not paid.
28 Because Plaintiffs and class members 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, Plaintiffs and class members were not paid overtime wages for all of the overtime hours they actually worked.

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

SECOND CAUSE OF ACTION

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

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

79. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 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, § 11070(2)(G) (defining "Hours Worked").

80. As stated, Defendants had a company-wide policy and/or practice of requiring Plaintiff Lartigue and class members to perform various work-related tasks while off-the-clock, including cleaning, restocking, and responding to phone calls from coworkers or managers. Thus, Defendants failed to track the time Plaintiff Lartigue and class members spent working off-the-clock, and Plaintiff Lartigue and class members received no compensation for this time.

81. In addition, as set forth above, during the relevant time period, due to

Defendants' uniform policies and/or practices of understaffing and/or single-staffing, failing to schedule and/or adhere to a schedule for meal periods, requiring employees to stay on the work premises during meal periods, and resultant lack of meal period coverage, Plaintiff Minick and class members were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods. As a result, Plaintiff Minick and class members were not relieved of all duties during unpaid meal periods. Moreover, as also stated, in order to prevent employees from accruing meal period penalties, Defendants' management pressured employees to record compliant meal periods when meal periods were missed, short, and/or interrupted. Thus, Defendants systematically failed to pay Plaintiff Minick and class members for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

82. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiffs and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants 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.

83. As result, Defendants regularly failed to pay at least minimum wages to Plaintiffs and class members for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiffs and class members are entitled to recover from Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

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

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

85. At all relevant times herein set forth, California Labor Code section 512(a)

1 provides that an employer may not require, cause, or permit an employee to work for a period
2 of more than five (5) hours per day without providing the employee with a meal period of not
3 less than thirty (30) minutes, except that if the total work period per day of the employee is
4 not more than six (6) hours, the meal period may be waived by mutual consent of both the
5 employer and the employee. Under California law, first meal periods must start after no more
6 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

7 86. At all relevant times herein set forth, California Labor Code sections 226.7,
8 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
9 meal period mandated by an applicable order of the IWC.

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

16 88. Under California law, an employer cannot evade meal period requirements via
17 the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S.*
18 *Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be
19 provided with the opportunity to eat his or her meal while performing the duties required and
20 any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long.
21 *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141
22 (2019).

23 89. During the relevant period, as stated, Defendants had, and continue to have, a
24 company-wide policy and/or practice of understaffing their locations, including adopting a
25 single-staffing model for some of their positions, which, combined with heavy workloads, has
26 resulted in a failure to provide Plaintiffs and class members with adequate meal period
27 coverage. For example, Plaintiffs regularly worked alone at their respective locations and
28 Defendants' management failed to provide adequate meal period coverage for them. In

1 addition, Defendants required Plaintiffs to keep their stores open to customers during their
2 shifts and did not allow Plaintiffs to close or lock the store when they were working alone, in
3 order to facilitate taking timely, compliant meal periods. As a result of Defendants' policy of
4 understaffing and/or single-staffing, combined with a failure to schedule and/or adhere to a
5 schedule for meal periods, Plaintiffs and class members were prevented from taking all timely,
6 uninterrupted meal periods to which they were entitled.

7 90. As a result, Plaintiffs and class members have had to work through all or part of
8 their meal periods, had their meal periods interrupted, and/or had to wait extended periods of
9 time before taking meal periods. For example, Plaintiffs regularly worked through their meal
10 periods due to the lack of coverage. As a further example, Plaintiffs took their meal periods
11 late, after having worked in excess of five (5) hours into their shifts, and their meal periods
12 were interrupted or cut short in order for them to attend to customers because they were
13 working alone and there was no one available to provide meal period coverage.

14 91. Also, as stated, because Defendants frowned upon employees accruing meal
15 period penalties, Defendants' management pressured Plaintiff Minick and class members to
16 clock out for meal periods to reflect compliant meal periods, regardless of whether they had
17 received a compliant meal period or not, in order to strictly limit meal penalties that would
18 need to be paid by Defendants.

19 92. To the extent Defendants required Plaintiffs and class members to sign written
20 "on-duty" meal period agreements, such agreements are invalid as the nature of the work
21 performed by Plaintiffs and class members and do not necessitate an "on-duty" meal period
22 under California law. As a result of these policies, Plaintiffs and class members were not
23 provided timely, uninterrupted 30-minute meal periods during their shifts in which they were
24 entitled to receive a meal period.

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

1 sign valid meal period waivers on days that they were entitled to meal periods and were not
2 relieved of all duties.

3 94. Further, during the relevant time period, Defendants maintained and
4 implemented a company-wide on-premises meal period policy, which required Plaintiffs and
5 class members remain on Defendants' premises during their meal periods. Because Plaintiffs
6 and class members were restricted from leaving the premises during meal periods, they were
7 denied the ability to use their meal periods freely for their own purposes, such as running
8 personal errands. Thus, Defendants effectively maintained control over Plaintiffs and class
9 members during meal periods.

10 95. At all times mentioned herein, Defendants knew or should have known that as a
11 result of their policies, Plaintiffs and class members were prevented from being relieved of all
12 duties and required to perform some of their assigned duties during meal periods. Defendants
13 further knew or should have known that they did not pay Plaintiffs and class members all meal
14 period premiums when meal periods were late, interrupted, shortened, and/or missed.

15 96. Furthermore, Defendants engaged in a company-wide practice and/or policy of
16 not paying all meal period premiums owed when compliant meal periods are not provided.
17 Because of this practice and/or policy, Plaintiffs and class members have not received
18 premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent
19 that Defendants did pay Plaintiffs and class members premium pay for missed, late, and
20 interrupted meal periods, Defendants did so at the incorrect rates. In addition to an hourly
21 wage, Defendants paid Plaintiffs and class members shift differential pay, incentive pay,
22 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
23 California Labor Code, Defendants failed to include all forms of compensation, such as shift
24 differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration,
25 in the regular rate of pay. For example, Defendants paid Plaintiffs and class members shift
26 differential pay which was listed on Plaintiffs' and class members' wage statements as
27 "NIGHT DIFF." Therefore, during times when Plaintiffs and class members received meal
28 period premiums and these other forms of pay, Defendants failed to pay full meal period

1 premiums by paying a lower rate than required. Specifically, Defendants paid Plaintiffs and
2 class members meal period premiums at their straight hourly rate of pay instead of at their
3 regular rate of pay. As a result, Defendants failed to provide Plaintiffs and class members
4 compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516
5 and failed to pay the full meal period premiums due.

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

10 **FOURTH CAUSE OF ACTION**

11 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 12 **(Against all Defendants)**

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

15 99. At all relevant times herein set forth, the applicable IWC Wage Order and
16 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and class
17 members' employment by Defendants.

18 100. At all relevant times, the applicable IWC Wage Order provides that "[e]very
19 employer shall authorize and permit all employees to take rest periods, which insofar as
20 practicable shall be in the middle of each work period" and that the "rest period time shall be
21 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
22 hours or major fraction thereof" unless the total daily work time is less than three and one-half
23 (3 ½) hours.

24 101. At all relevant times, California Labor Code section 226.7 provides that no
25 employer shall require an employee to work during any rest period mandated by an applicable
26 order of the California IWC. To comply with its obligation to authorize and permit rest
27 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
28 employer must "relinquish any control over how employees spend their break time, and

1 relieve their employees of all duties—including the obligation that an employee remain on
2 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
3 *Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California
4 Labor Code section 226.7(c), Plaintiffs and class members are entitled to recover from
5 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
6 required rest period was not authorized and permitted.

7 102. During the relevant time period, Defendants regularly failed to authorize and
8 permit Plaintiffs and class members to take a ten (10) minute rest period per each four (4)
9 hour period worked or major fraction thereof. As with meal periods, Defendants’ policies
10 and/or practices of understaffing and/or single-staffing, and assignment of heavy workloads
11 prevented Plaintiffs and class members from being relieved of all duty in order to take their
12 rest periods. Defendants also failed to schedule rest periods and/or adhere to a schedule for
13 rest periods, which, coupled with Defendants’ failure to provide adequate rest period
14 coverage, further led to Plaintiffs and class members not being authorized and permitted to
15 take compliant rest periods.

16 103. Moreover, Defendants maintained a company-wide on-premises rest period
17 policy, which required that Plaintiffs and class members remain on Defendants’ premises
18 during their rest periods. Because Plaintiffs and class members were restricted from leaving
19 the premises during rest periods, they were denied the ability to use their rest periods freely
20 for their own purposes, such as running personal errands. Thus, Defendants effectively
21 maintained control over Plaintiffs and class members during rest periods.

22 104. As a result of Defendants’ practices and policies, Plaintiffs and class members
23 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
24 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
25 Plaintiffs had to forego all or most of their rest periods due to a lack of rest period coverage
26 and in order attend to customers. When Plaintiff Minick was able to take rest periods, she
27 would be interrupted by customers.

28 105. Defendants have also engaged in a systematic, company-wide practice and/or

1 policy of not paying rest period premiums owed when rest periods are not authorized and
2 permitted. Because of this practice and/or policy, Plaintiffs and class members have not
3 received premium pay for all missed rest periods. Alternatively, to the extent that Defendants
4 did pay Plaintiffs and class members one (1) additional hour of premium pay for missed rest
5 periods, Defendants did not pay Plaintiffs and class members at the correct rate of pay for
6 premiums because Defendants failed to include all forms of compensation, such as shift
7 differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
8 As a result, Defendants denied Plaintiffs and class members rest periods and failed to pay
9 them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the
10 applicable IWC Wage Order.

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

16 **FIFTH CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 18 **Statements and Failure to Maintain Accurate Payroll Records** 19 **(Against all Defendants)**

20 107. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
21 and every allegation set forth above.

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

27 109. At all relevant times, Defendants have knowingly and intentionally provided
28 Plaintiffs and Subclass members with uniform, incomplete, and inaccurate wage statements.

1 For example, Defendants issued uniform wage statements to Plaintiffs and Subclass members
2 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
3 applicable hourly rates in effect during the pay period, including rates of pay for overtime
4 wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number
5 of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
6 226(a)(2), 226(a)(5), and 226(a)(9).

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

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

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

1 worked off-the-clock.

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

12 114. California Labor Code section 1198 provides that the maximum hours of work
13 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
14 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
15 employment of any employees for longer hours than those fixed by the order or under
16 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
17 Wage Order, employers are required to keep accurate time records showing when the
18 employee begins and ends each work period. During the relevant time period, Defendants
19 engaged in company-wide practices and/or policies of failing to record actual hours worked,
20 and thereby failed to keep accurate records of work period start and end times for Plaintiffs
21 and Subclass members, in violation of section 1198. Furthermore, in light of Defendants’
22 failure to provide Plaintiffs and Subclass members with second 30-minute meal periods to
23 which they were entitled, Defendants kept no records of meal start and end times for second
24 meal periods.

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

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

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

117. 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 time of quitting.

118. On information and belief, Defendants have a company-wide practice and/or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Defendants terminated Plaintiff Lartigue's employment on or about May 24, 2023; however, Defendants did not provide Plaintiff Lartigue with his final paycheck until about May 30, 2023. Thus, Defendants failed to pay Plaintiff Lartigue his final wages immediately, in violation of California Labor Code section 201.

119. Additionally, Defendants willfully failed to pay Plaintiffs and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

120. Defendants' failure to pay Plaintiffs and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201

1 and 202. Plaintiffs and class members are therefore entitled to recover from Defendants the
2 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
3 thirty (30) day maximum pursuant to California Labor Code section 203.

4 **SEVENTH CAUSE OF ACTION**

5 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 6 **Employment**

7 **(Against all Defendants)**

8 121. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
9 and every allegation set forth above.

10 122. This cause of action is dependent upon, and wholly derivative of, the overtime
11 wages, minimum wages, meal and rest period premiums, and/or sick leave pay that were not
12 timely paid to Plaintiffs and class members during their employment.

13 123. At all times relevant herein set forth, Labor Code section 204 provides that all
14 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
15 days, inclusive, of any calendar month, other than those wages due upon termination of an
16 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
17 the month during which the labor was performed.

18 124. At all times relevant herein, Labor Code section 204 provides that all wages
19 earned by any person in any employment between the sixteenth (16th) and the last day,
20 inclusive, of any calendar month, other than those wages due upon termination of an
21 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
22 month.

23 125. At all times relevant herein, Labor Code section 204 provides that all wages
24 earned for labor in excess of the normal work period shall be paid no later than the payday for
25 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
26 204 provides that the requirements of this section are deemed satisfied by the payment of
27 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
28 seven (7) calendar days following the close of the payroll period.

126. During the relevant time period, Defendants willfully failed to pay Plaintiffs and class members all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within the time periods specified by California Labor Code section 204.

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

EIGHTH CAUSE OF ACTION

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

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

129. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees 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. 7-2001, provides that: “[w]hen the employer requires the use of tools or equipment or they 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 may provide and maintain hand tools and equipment customarily required by the particular trade or craft.”

130. First, during the relevant time period, Defendants, on a company-wide basis, required Plaintiffs and class members to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Defendants' management contacted Plaintiff Lartigue on his personal cellular

1 phone regarding work-related matters, such as issues with store equipment and machinery, on
2 his days off. As a further example, Plaintiff Minick was required to communicate with
3 Defendants' management via her personal cellular phone regarding equipment maintenance,
4 supplies, and incident reports. Although Defendants required Plaintiffs and class members to
5 use their personal mobile devices and/or mobile data to carry out their work-related duties,
6 Defendants failed to reimburse them for their costs incurred.

7 131. Second, during the relevant time period, Defendants had a company-wide
8 policy of requiring Plaintiff Lartigue and class members to utilize their own personal vehicles
9 to carry out company business, but failed to reimburse them for all costs of travel, including
10 mileage. For example, on about five (5) instances, Plaintiff Lartigue was required to drive to
11 a grocery store located approximately 10-12 miles away to pick up cups and lids for his store
12 location. Although Defendants required Plaintiff Lartigue and class members to utilize their
13 own vehicles to carry out their work-related responsibilities, Defendants did not reimburse
14 them for their travel expenses.

15 132. Third, during the relevant time period, Defendants required Plaintiff Lartigue
16 and class members to purchase supplies necessary for the performance of their duties, but
17 failed to reimburse them for their out-of-pocket costs. For example, Plaintiff Lartigue was
18 required to spend approximately \$50 on cleaning supplies and office supplies throughout his
19 employment, including pens, tacks, paper clips, a stapler, and an organizer. Although
20 Defendants required Plaintiff Lartigue and class members to purchase supplies to carry out
21 their work-related responsibilities, Defendants failed to reimburse them for their out-of-pocket
22 costs.

23 133. Defendants could have provided Plaintiffs and class members with the actual
24 equipment for use on the job, such as company mobile devices, company vehicles, and
25 cleaning and office supplies. Or, Defendants could have reimbursed employees for their
26 mobile device usage, travel expenses, mileage, and supply expenses. Instead, Defendants
27 passed these operating costs off onto Plaintiffs and class members. At all relevant times,
28 Plaintiffs did not earn at least two (2) times the minimum wage.

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

135. Plaintiffs and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

NINTH CAUSE OF ACTION

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

(Against all Defendants)

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

137. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 246, 248.6, 516, 1182.12, and 2810.5.

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

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiffs and other aggrieved employees with all required overtime pay, as alleged herein;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiffs and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;

- 1 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
2 applicable IWC Wage Order for Defendants' failure to provide
3 Plaintiffs and other aggrieved employees with meal periods, as alleged
4 herein;
- 5 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
6 applicable IWC Wage Order for Defendants' failure to authorize and
7 permit Plaintiffs and other aggrieved employees to take rest periods, as
8 alleged herein;
- 9 (e) Violation of Labor Code sections 226.7 and 1198, and the applicable
10 IWC Wage Order for Defendants' failure to include all forms of
11 remuneration in the "regular rate" of pay as required by law for
12 purposes of paying meal and rest period premiums, to Plaintiffs and
13 other aggrieved employees, as alleged herein;
- 14 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
15 IWC Wage Order for failure to provide accurate and complete wage
16 statements to Plaintiffs and other aggrieved employees, as alleged
17 herein;
- 18 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
19 IWC Wage Order for failure to maintain payroll records, as alleged
20 herein;
- 21 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
22 earned wages upon termination, as alleged herein;
- 23 (i) Violation of Labor Code section 204 for failure to pay all earned wages
24 during employment, as alleged herein;
- 25 (j) Violation of Labor Code sections 212 and 213 for issuing instruments
26 for the payment of wages that were not payable in cash on demand,
27 without discount, and with prior authorization, as set forth below;
- 28 (k) Violation of Labor Code sections 221 and 224 for unlawfully deducting

a portion of wages previously paid to Plaintiff Lartigue and other aggrieved employees, as set forth below;

- (l) Violation of Labor Code section 223 for secretly paying Plaintiff Lartigue and other aggrieved employees lower wages than required by statute, while purporting to pay the proper wages, as set forth below;
- (m) Violation of Labor Code sections 246 and 248.6 for failure to properly calculate the sick leave paid to Plaintiffs and/or other aggrieved employees and for failure to provide written notice of paid sick leave benefits, as set forth below;
- (n) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide suitable resting facilities to Plaintiffs and other aggrieved employees, as set forth below;
- (o) Violation of Labor Code section 1198 for failing to provide suitable seating to Plaintiffs and other aggrieved employees, as set forth below;
- (p) Violation of Labor Code section 2802 for failure to reimburse other aggrieved employees for all business expenses necessarily incurred, as alleged herein; and
- (q) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiffs' and other aggrieved employees' employment with Defendants, as set forth below.

139. 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

1 form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443
2 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated
3 that the Division of Labor Standards Enforcement (“DLSE”) decision deeming payroll debit
4 card program permissible relied heavily on:

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

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

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

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

21 141. Further, the DLSE notes that the Labor Code manifests:

22 . . . [A] strong public policy that prohibits an employer (or its agent) from
23 imposing conditions or obstacles which interfere with or prevent an
24 employee’s (sic) from promptly receiving their due wages in *full*. The
25 imposition of a fee in order to readily *access* one’s earned and paid wages
26 under a payroll card program which is designed to discharge the
27 employer’s wage payment obligations could impermissibly interfere with
28 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)

28 *DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll service

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

6 142. During the relevant time period, Defendants had an agreement with a payroll
7 service provider, Netspend, for the issuance of payroll debit cards to employees, including
8 Plaintiff Lartigue and other aggrieved employees, to discharge their wage payment obligations
9 to their employees. Under Defendants’ payroll debit card program, on information and belief,
10 Plaintiff Lartigue and other aggrieved employees did not have easy access to the entirety of
11 their wages without incurring a fee, which resulted in a discount in their pay. For example,
12 Plaintiff Lartigue was subjected to a fee of \$1.50 per transaction when withdrawing his wages,
13 and was restricted to a \$400 daily withdrawal limit. Thus, Defendants’ payroll debit card
14 program was and continues to be unlawful as it did not give Plaintiff Lartigue and other
15 aggrieved employees access to their entire wages without discount and without delay.

16 143. Additionally, during the relevant time period, Defendants had a practice and/or
17 policy of automatically issuing payroll debit cards to departing employees without giving
18 them the option to elect their form of payment for their final wages. For example, Plaintiff
19 Lartigue received his final wages on a payroll debit card without a choice of an alternate
20 method of payment, such as a written check. Instead, Defendants automatically enrolled
21 Plaintiff Lartigue and other aggrieved employees in its payroll debit card program for the
22 purpose of issuing their final wages to them. Thus, Defendants’ payroll debit card program
23 was and continues to be unlawful as it does not give employees the choice as to whether they
24 would like to receive their final wages on a payroll debit card or via some other payment
25 method.

26 144. California courts recognize a policy favoring the full and prompt payment of
27 wages to employees. Defendants’ payroll card program is inconsistent with this policy
28 because it presents a number of obstacles and hurdles that, together, make it difficult for

1 Plaintiff Lartigue and other aggrieved employees to access their entire wages without discount
2 and without delay, in violation of California Labor Code sections 212 and 213. Plaintiff
3 Lartigue and other aggrieved employees are therefore entitled to recover civil penalties
4 pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

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

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

20 147. Defendants' payroll debit card program, which resulted in a discount of wages
21 to employees, are tantamount to taking deductions from Plaintiff Lartigue's and other
22 aggrieved employees' paychecks without their written authorization and therefore constitutes
23 an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Plaintiff
24 Lartigue and other aggrieved employees are therefore entitled to recover civil penalties
25 pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

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

1 149. During the relevant time period, Defendants willfully and systematically issued
2 payroll debit cards to Plaintiff Lartigue and other aggrieved employees that discounted their
3 wages by charging various fees in connection with the use of the payroll debit cards.
4 Defendants' payroll debit card program resulted in the payment of less than statutorily
5 required wages to Plaintiff Lartigue and other aggrieved employees. Thus, Defendants paid
6 Plaintiff Lartigue and other aggrieved employees lower wages than those they were entitled to
7 while purporting that Plaintiff Lartigue and other aggrieved employees were properly paid.

8 150. Defendants' failure to pay Plaintiff Lartigue and other aggrieved employees the
9 correct designated wages, while purporting to pay legal wages, is a violation of California
10 Labor Code section 223. Plaintiff Lartigue and other aggrieved employees are therefore
11 entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f),
12 and (g).

13 151. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
14 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
15 days from the commencement of employment with paid sick days, to be accrued at least one
16 hour for every 30 hours worked. California Labor Code section 246(i) provides that an
17 employer must provide an employee with written notice that sets forth the amount of paid sick
18 leave available, or paid time off that an employer provides in lieu of sick leave, for use on
19 either the employee's itemized wage statement or in a separate written statement provided on
20 the designated pay date with the employee's wages. Further, Labor Code section 246(l)
21 provides that an employer shall calculate paid sick leave by using one of two calculations: 1)
22 "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the
23 regular rate of pay for the workweek in which the employee uses paid sick time, whether or
24 not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for
25 nonexempt employees shall be calculated by dividing the employee's total wages, not
26 including overtime premium pay, by the employee's total hours worked in the full pay periods
27 of the prior 90 days of employment."

28 152. At all relevant times herein, California Labor Code section 248.6 provides

covered employees with COVID-19 supplemental paid sick leave. Effective through December 31, 2022, Labor Code section 248.6(d) provides that COVID-19 supplemental paid sick leave shall be set forth separately from paid sick days and that an “employer shall provide an employee with written notice that sets forth the amount of COVID-19 supplemental paid sick leave that the employee has used through the pay period in which it was due to be paid on either the employee’s itemized wage statement . . . or in a separate written statement provided on the designated pay date with the employee’s payment of wages. The employer shall list zero hours used if a worker has not used any COVID-19 supplemental paid sick leave.” Further, Labor Code section 248.6(b)(3)(A) provides that each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following: 1) “[c]alculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]” or 2) “[c]alculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total nonovertime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay, shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision.”

153. During the relevant time period, on information and belief, Defendants did not pay Plaintiff Minick and other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, Defendants paid Plaintiff Minick and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when Plaintiff Minick and other aggrieved employees took sick leave and received these other forms of pay, Defendants failed to pay all sick leave benefits by paying a lower sick leave rate than

1 required. Specifically, Defendants paid Plaintiff Minick and other aggrieved employees sick
2 leave based on their hourly rate of pay instead of their regular rate of pay.

3 154. Moreover, during the relevant time period, on information and belief,
4 Defendants have failed to provide Plaintiffs and/or other aggrieved employees with written
5 notice on all wage statements that listed the amount of COVID-19 supplemental paid sick
6 leave used by them.

7 155. Defendants' failure to properly calculate the sick leave rates of pay based on all
8 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff Minick
9 and other aggrieved employees on a company-wide basis, in violation of Labor Code sections
10 246(l) and 248.6(b)(3)(A). Moreover, Defendants' systematic failure to provide written notice
11 of sick leave benefits (including COVID-19 supplemental paid sick leave benefits) to
12 Plaintiffs and/or other aggrieved employees is in violation of Labor Code section 248.6(d).
13 Plaintiffs and/or other aggrieved employees are therefore entitled to recover civil penalties
14 pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

15 156. At all relevant times herein, California Labor Code section 1198 makes it
16 illegal to employ an employee under conditions of labor that are prohibited by the applicable
17 IWC Wage Order. California Labor Code section 1198 requires that ". . . the standard
18 conditions of labor fixed by the commission shall be the . . . standard conditions of labor for
19 employees. The employment of any employee . . . under conditions of labor prohibited by the
20 order is unlawful."

21 157. California Code of Regulations, Title 8, section 11070(13)(B) provides that
22 "[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and
23 shall be available to employees during work hours."

24 158. Defendants' California store locations are generally similar in their layout and
25 design and there was, and continues to be, space that allows for a resting facility that
26 employees may use to cease work and recover during meal or rest periods. Defendants could
27 have provided Plaintiffs and other aggrieved employees with a resting facility within all of
28 their store locations, with reasonable or no modification, but instead denied, and continue to

1 deny, employees suitable areas to rest (e.g., a breakroom with seats). As a result, Plaintiffs
2 and other aggrieved employees were forced to adjust to areas not conducive to resting or
3 search for areas outside of the store which are not designated or reserved for their rest.

4 159. Defendants did not provide Plaintiffs and other aggrieved employees with
5 suitable resting facilities during their work hours, particularly during meal or rest periods. In
6 other words, during the times when Plaintiffs and other aggrieved employees were legally
7 allowed to forgo assigned tasks, as in during a meal or rest period, Defendants denied them
8 any area within their store locations to cease work and recover. Moreover, Defendants did not
9 inform Plaintiffs and other aggrieved employees of their rights to suitable resting facilities
10 under California law.

11 160. As a result of Defendants' company-wide failure to provide suitable resting
12 facilities in their stores, Plaintiffs and other aggrieved employees were forced to adjust to
13 areas not conducive to resting or search for facilities outside their stores to cease work and
14 recover. Defendants' failure to provide suitable resting facilities to Plaintiffs and other
15 aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No.
16 7-2001, subdivision 13(B). Plaintiffs and other aggrieved employees are therefore entitled to
17 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

18 161. California Code of Regulations, Title 8, section 11070(14)(A) provides that
19 "[a]ll working employees shall be provided with suitable seats when the nature of the work
20 reasonably permits the use of seats."

21 162. Plaintiffs allege that Defendants' California stores are generally similar in their
22 layout and design and there was, and continues to be space behind cash wraps to allow for the
23 presence and use of a seat or stool by Plaintiffs and other aggrieved employees (with
24 reasonable or no modification to these work areas) during the performance of their work
25 duties. Defendants could have provided Plaintiffs and other aggrieved employees with a seat
26 or stool at their cash wraps, but instead denies employees seating and forces Plaintiffs and
27 other aggrieved employees to stand throughout the day.

28 163. Plaintiffs and other aggrieved employees spent a substantial portion of their day

1 behind or at these cash wraps. The nature of the work of an employee performing cashier
2 duties can reasonably be accomplished from a seated position. However, Defendants
3 systematically, and on a company-wide basis, did not provide seats or stools at or near the
4 cash wraps, forcing Plaintiffs and other aggrieved employees to stand throughout their work
5 shifts.

6 164. During the relevant time period, Defendants violated California Labor Code
7 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because
8 Plaintiffs and other aggrieved employees were not allowed to sit, even when the nature of the
9 work would reasonably permit the use of seats, nor were they provided with suitable seats.
10 Defendants' management did not inform Plaintiffs and other aggrieved employees that they
11 were allowed to sit down, provide any means for them to sit down, or mention any policy
12 regarding sitting.

13 165. As a result of Defendants' company-wide policy and/or practice of prohibiting
14 employees from sitting during their shifts and failure to provide suitable seating, Plaintiffs and
15 other aggrieved employees were forced to stand during shifts and denied seats. Defendants'
16 failure to provide suitable seating to Plaintiffs and other aggrieved employees violated and
17 continues to violate California Labor Code section 1198 and IWC Wage Order No. 7-2001,
18 subdivision 14(A). Plaintiffs and other aggrieved employees are therefore entitled to recover
19 civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

20 166. California Code of Regulations, Title 8, section 11070(14)(B) provides that
21 "[w]hen employees are not engaged in the active duties of their employment and the nature of
22 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
23 proximity to the work area and employees shall be permitted to use such seats when it does
24 not interfere with the performance of their duties."

25 167. During the relevant time period, Defendants violated California Labor Code
26 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because
27 Plaintiffs and other aggrieved employees were not allowed to sit, even during lulls in their
28 work duties, nor were they provided with suitable seats in reasonable proximity to their work

1 areas.

2 168. As stated, Plaintiffs allege that Defendants' California stores are generally
3 similar in their layout and design and there was, and continues to be, space near their work
4 areas (with reasonable or no modification to these work areas) to allow for the presence and
5 use of a seat or stool by Plaintiffs and other aggrieved employees during lulls in operation.
6 Defendants could have provided Plaintiffs and other aggrieved employees with a seat or stool
7 in their work areas, but instead denied Plaintiffs and other aggrieved employees suitable
8 seating altogether and effectively forced Plaintiffs and other aggrieved employees to stand
9 throughout the day.

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

18 170. As a result of Defendants' company-wide policy and/or practice prohibiting
19 employees from sitting at any time, even when they were not engaged in active duties
20 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
21 work areas, Plaintiffs and other aggrieved employees were forced to stand during shifts and
22 denied seats. Defendants' failure to provide suitable seating to Plaintiffs and other aggrieved
23 employees violated and continues to violate California Labor Code section 1198 and IWC
24 Wage Order No. 7-2001, subdivision 14(B). Plaintiffs and other aggrieved employees are
25 therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
26 (g).

27 171. At all relevant times herein, California's Wage Theft Prevention Act was
28 enacted to ensure that employers provide employees with basic information material to their

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

10 172. At all relevant times, on information and belief, Defendants failed, on a
11 company-wide basis, to provide written notice to Plaintiffs and other aggrieved employees
12 that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
13 Defendants' failure to provide Plaintiffs and other aggrieved employees with written notice of
14 basic information regarding their employment with Defendants is in violation of Labor Code
15 section 2810.5. Plaintiffs and other aggrieved employees are therefore entitled to recover civil
16 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

17 **TENTH CAUSE OF ACTION**

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

19 **Unlawful Business Practices**

20 **(Against all Defendants)**

21 173. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
22 and every allegation set forth above.

23 174. Defendants are "persons" as defined by California Business & Professions
24 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
25 and/or associations.

26 175. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
27 unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have
28 suffered injury in fact and have lost money as a result of Defendants' unlawful business

1 practices. Plaintiffs seek to enforce important rights affecting the public interest within the
2 meaning of Code of Civil Procedure section 1021.5.

3 176. Defendants' activities, as alleged herein, are violations of California law, and
4 constitute unlawful business acts and practices in violation of California Business &
5 Professions Code sections 17200, *et seq.*

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

- 9 (a) Requiring non-exempt, hourly paid employees, including Plaintiffs and
10 class members, to work overtime without paying them proper
11 compensation in violation of California Labor Code sections 510 and
12 1198, and the applicable IWC Wage Order, as alleged herein;
- 13 (b) Failing to pay at least minimum wage to Plaintiffs and class members in
14 violation of California Labor Code sections 1182.12, 1194, 1197,
15 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
16 herein;
- 17 (c) Failing to provide all meal periods to Plaintiffs and class members in
18 violation of California Labor Code sections 226.7, 512(a), 516, and
19 1198, and the applicable IWC Wage Order, as alleged herein;
- 20 (d) Failing to authorize and permit Plaintiffs and class members to take all
21 rest periods in violation of California Labor Code sections 226.7, 516,
22 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 23 (e) Failing to include all forms of remuneration in the "regular rate" of pay
24 as required by law for purposes of paying meal and rest period
25 premiums to Plaintiffs and class members, in violation of California
26 Labor Code sections 226.7 and 1198, and the applicable IWC Wage
27 Order, as alleged herein;
- 28 (f) Failing to provide Plaintiffs and class members with accurate wage

1 statements and failing to maintain accurate payroll records in violation
2 of California Labor Code sections 226(a), 1174(d), and 1198, and the
3 applicable IWC Wage Order, as alleged herein;

4 (g) Failing to timely pay all earned wages to Plaintiffs and class members in
5 violation of California Labor Code section 204, as alleged herein;

6 (h) Issuing instruments to Plaintiff Lartigue and class members for the
7 payment of wages that were not payable in cash, on demand, and
8 without discount, in violation of California Labor Code sections 212 and
9 213, as set forth below;

10 (i) Collecting or receiving wages already paid from Plaintiff Lartigue and
11 class members in violation of California Labor Code sections 221 and
12 224, as set forth below;

13 (j) Failing to pay the statutorily designated wage scale in violation of
14 California Labor Code section 223, as set forth below;

15 (k) Failing to properly calculate the sick leave paid to Plaintiffs and/or class
16 members in violation of California Labor Code section 246(l), and
17 failing to provide written notice of paid sick leave benefits in violation
18 of California Labor Code section 248.6(d), as set forth below;

19 (l) Failing to reimburse Plaintiffs and class members for all business
20 expenses necessarily incurred in violation of California Labor Code
21 section 2802, as alleged herein; and

22 (m) Failing to provide written notice of information material to Plaintiffs'
23 and class members' employment with Defendants in violation of
24 California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

25 178. At all times relevant herein, California Labor Code section 212 prohibits
26 employers from issuing any instruments for the payment of wages unless such instruments are
27 negotiable and payable in cash, on demand, and without discount. California Labor Code
28 section 213 permits employers to pay employees via direct deposit so long as the employee

authorizes payment via direct deposit.

179. Under California law, employers are permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but 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).

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

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

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

181. 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 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.

182. 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 Lartigue and class members, to discharge their wage payment obligations to their employees. Under Defendants' payroll debit card program, Plaintiff Lartigue and class members did not have easy access to the entirety of their wages without incurring a fee. Plaintiff Lartigue 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. For example, Plaintiff Lartigue was subjected to a fee of \$1.50 per transaction when withdrawing his wages, and was restricted to a \$400 daily withdrawal limit. Thus, Defendants' payroll debit card program was and continues to be unlawful as it did not give Plaintiff Lartigue and class members access to their entire wages without discount and without delay.

183. Additionally, during the relevant time period, Defendants had a practice and/or policy of automatically issuing payroll debit cards to departing employees without giving them the option to elect their form of payment for their final wages. For example, Plaintiff Lartigue received his final wages on a payroll debit card without a choice of an alternate method of payment, such as a written check. Instead, Defendants automatically enrolled Plaintiff Lartigue and class members in their payroll debit card program for the purpose of issuing their final wages to them. Thus, Defendants' payroll debit card program was and

1 continues to be unlawful as it does not give employees the choice as to whether they would
2 like to receive their final wages on a payroll debit card or via some other payment method.

3 184. California courts recognize a policy favoring the full and prompt payment of
4 wages to employees. Defendants' payroll card program is inconsistent with this policy
5 because Defendants' program is involuntary and denies Plaintiff Lartigue and class members
6 of easy access to their wages. Thus, Defendants' company-wide payroll debit card program
7 violates California Labor Code sections 212 and 213.

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

13 186. During the relevant time period, Defendants unlawfully deducted a portion of
14 wages previously paid to Plaintiff Lartigue and class members in violation of California Labor
15 Code section 221. On information and belief, Defendants systematically, and on a company-
16 wide basis, provided Plaintiff Lartigue and class members with payroll debit cards as payment
17 of their wages. Under Defendants' payroll debit card program, Plaintiff Lartigue and class
18 members were assessed various fees in connection with their use of the payroll debit cards.
19 For example, as described above, Plaintiff Lartigue and class members were required to pay
20 per-transaction fees, ATM fees, and/or other fees to obtain and/or spend their earned and due
21 wages. The fees charged to Plaintiff Lartigue and class members resulted in a discount of
22 their wages.

23 187. Defendants' practice, which resulted in a discount of wages to employees, is
24 tantamount to taking deductions from Plaintiff Lartigue's and class members' paychecks
25 without their written authorization and therefore constitutes an unlawful deduction of wages,
26 in violation of California Labor Code sections 221 and 224.

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

1 wages.

2 189. During the relevant time period, Defendants willfully and systematically issued
3 payroll debit cards to Plaintiff Lartigue and class members that discounted their wages by
4 charging various fees in connection with the use of the payroll debit cards. Defendants'
5 payroll debit card program resulted in the payment of less than statutorily required wages to
6 Plaintiff Lartigue and class members. Thus, Defendants paid Plaintiff Lartigue and class
7 members lower wages than those they were entitled to while purporting that Plaintiff Lartigue
8 and class members were properly paid.

9 190. Defendants' failure to pay Plaintiff Lartigue and class members the correct
10 designated wage, while purporting to pay legal wages, is a violation of California Labor Code
11 section 223.

12 191. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
13 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
14 days from the commencement of employment with paid sick days, to be accrued at least one
15 hour for every 30 hours worked. California Labor Code section 246(i) provides that an
16 employer must provide an employee with written notice that sets forth the amount of paid sick
17 leave available, or paid time off that an employer provides in lieu of sick leave, for use on
18 either the employee's itemized wage statement or in a separate written statement provided on
19 the designated pay date with the employee's wages. Further, Labor Code section 246(l)
20 provides that an employer shall calculate paid sick leave by using one of two calculations: 1)
21 "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the
22 regular rate of pay for the workweek in which the employee uses paid sick time, whether or
23 not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for
24 nonexempt employees shall be calculated by dividing the employee's total wages, not
25 including overtime premium pay, by the employee's total hours worked in the full pay periods
26 of the prior 90 days of employment."

27 192. At all relevant times herein, California Labor Code section 248.6 provides
28 covered employees with COVID-19 supplemental paid sick leave. Effective through

December 31, 2022, Labor Code section 248.6(d) provides that COVID-19 supplemental paid sick leave shall be set forth separately from paid sick days and that an “employer shall provide an employee with written notice that sets forth the amount of COVID-19 supplemental paid sick leave that the employee has used through the pay period in which it was due to be paid on either the employee’s itemized wage statement . . . or in a separate written statement provided on the designated pay date with the employee’s payment of wages. The employer shall list zero hours used if a worker has not used any COVID-19 supplemental paid sick leave.” Further, California Labor Code section 248.6(b)(3)(A) provides that each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following: 1) “[c]alculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]” or 2) “[c]alculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total nonovertime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay, shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision.”

193. During the relevant time period, Defendants did not pay Plaintiff Minick and class members the correct sick leave rates of pay. As stated, in addition to an hourly wage, Defendants paid Plaintiff Minick and class members incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when Plaintiff Minick and class members took sick leave and received these other forms of pay, Defendants failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, Defendants paid Plaintiff Minick and class members sick leave based on their hourly rate of

1 pay instead of their regular rate of pay.

2 194. Moreover, during the relevant time period, Defendants failed, on a company-
3 wide basis, to provide Plaintiffs and/or class members with written notice on all wage
4 statements that listed the amount of COVID-19 supplemental paid sick leave used by them.

5 195. Defendants' failure to properly calculate the sick leave rates of pay based on all
6 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff Minick
7 and class members on a company-wide basis in violation of California Labor Code section
8 246(l) and/or 248.6(b)(3)(A). Moreover, Defendants' systematic failure to provide written
9 notice of COVID-19 supplemental paid sick leave benefits to Plaintiffs and/or class members
10 is in violation of Labor Code section 248.6(d).

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

22 197. At all relevant times, on information and belief, Defendants failed, on a
23 company-wide basis, to provide written notice to Plaintiffs and class members that lists the
24 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
25 to provide Plaintiffs and class members with written notice of basic information regarding
26 their employment with Defendants is in violation of California Labor Code section 2810.5.

27 198. As a result of the violations of California law herein described, Defendants
28 unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members

1 have suffered pecuniary loss by Defendants’ unlawful business acts and practices alleged
2 herein.

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

9 **ELEVENTH CAUSE OF ACTION**

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

11 **Unfair Business Practices**

12 **(Against all Defendants)**

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

15 201. Defendants are “persons” as defined by California Business & Professions
16 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
17 and/or associations.

18 202. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
19 and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered
20 injury in fact and has lost money as a result of Defendants’ unfair business practices.
21 Plaintiffs seek to enforce important rights affecting the public interest within the meaning of
22 Code of Civil Procedure section 1021.5.

23 203. Defendants’ activities, namely Defendants’ company-wide practice and/or
24 policy of not paying Plaintiffs and class members all meal and rest period premiums due to
25 them under California Labor Code section 226.7, deprived Plaintiffs and class members of the
26 compensation guarantee and enhanced enforcement implemented by section 226.7. The
27 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
28 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*

1 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
2 were guaranteed to Plaintiffs and class members as part of their employment with Defendants,
3 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
4 unfair business practice in violation of California Business & Professions Code sections
5 17200, *et seq.* (*Id.*)

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

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

17 **REQUEST FOR JURY TRIAL**

18 Plaintiffs request a trial by jury.

19 **PRAYER FOR RELIEF**

20 Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment
21 against Defendants, jointly and severally, as follows:

22 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
23 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiffs
24 reserve the right to amend their prayer for relief to seek a different amount.

25 **Class Certification**

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

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1 willfully failing to provide all meal periods to Plaintiffs and class members;

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

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

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

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

10 21. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

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

14 **As to the Fourth Cause of Action**

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

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

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

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

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

26 28. For attorneys' fees pursuant to California Code of Civil Procedure section
27 1021.5, or as otherwise provided by law; and

28 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 Plaintiffs 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 sick leave pay owed at the time of termination of the employment of Plaintiffs 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 were due, or as otherwise provided by law;

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

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

appropriate.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiffs and class members overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay during their employment;

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

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

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

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

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

As to the Eighth Cause of Action

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

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

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

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

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

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

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

4 54. That the Court declare, adjudge and decree that Defendants violated the
5 following California Labor Code provisions as to Plaintiffs and/or other aggrieved employees:
6 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
7 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
8 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
9 permit all rest periods); 226.7 and 1198 (by failing to include all forms of remuneration in the
10 “regular rate” of pay for purposes of paying meal and rest period premiums); 226(a), 1174(d),
11 and 1198 (by failing to provide accurate wage statements and maintain accurate payroll
12 records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by
13 failing to timely pay all earned wages during employment); 212 and 213 (by failing to make
14 earned wages accessible without discount); 221 and 224 (by collecting and/or receiving wages
15 already paid); 223 (by secretly paying wages lower than required by statute); 246 and 248.6
16 (by failing to properly calculate sick leave pay and provide written notice of paid sick leave
17 available); 1198 and the applicable IWC Wage Order (by failing to provide suitable resting
18 facilities); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating);
19 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide notice of
20 material terms of employment);

21 55. For civil penalties pursuant to the California Labor Code, including sections
22 210, 225.5, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California
23 Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 248.6, 510,
24 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

25 56. For attorneys’ fees and costs pursuant to California Labor Code section
26 2699(g)(1), and any and all other relevant statutes, for Defendants’ violations of California
27 Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 248.6, 510,
28 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

1 57. For pre-judgment and post-judgment interest as provided by law; and
2 58. For such other and further relief as the Court may deem equitable and
3 appropriate.

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

5 59. That the Court declare, adjudge and decree that Defendants’ conduct of failing
6 to provide Plaintiffs and class members all overtime wages due to them, failing to provide
7 Plaintiffs and class members all minimum wages due to them, failing to provide Plaintiffs and
8 class members all meal periods, failing to authorize and permit Plaintiffs and class members to
9 take all rest periods, failing to include all forms of remuneration in the “regular rate” of pay
10 for purposes of paying meal and rest period premiums to Plaintiffs and class members, failing
11 to provide Plaintiffs and class members accurate and complete wage statements, failing to
12 maintain accurate payroll records for Plaintiffs and class members, failing to timely pay
13 Plaintiffs and class members all earned wages during employment, failing to provide access to
14 wages upon demand and without discount, unlawfully deducting a portion of wages
15 previously paid, secretly paying a lower wage, failing to reimburse Plaintiffs and class
16 members for business-related expenses, and failing to provide written notice of material terms
17 of employment, constitutes an unlawful business practice in violation of California Business
18 and Professions Code sections 17200, *et seq.*;

19 60. For restitution of unpaid wages to Plaintiffs and all class members and
20 prejudgment interest from the day such amounts were due and payable;

21 61. For the appointment of a receiver to receive, manage and distribute any and all
22 funds disgorged from Defendants and determined to have been wrongfully acquired by
23 Defendants as a result of violations of California Business & Professions Code sections
24 17200, *et seq.*;

25 62. For reasonable attorneys’ fees and costs of suit incurred herein pursuant to
26 California Code of Civil Procedure section 1021.5; and

27 63. For such other and further relief as the Court may deem equitable and
28 appropriate.

1 **As to the Eleventh Cause of Action**

2 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
3 Plaintiffs and class members the statutory benefits guaranteed under California Labor Code
4 section 226.7 constitutes an unfair business practice in violation of California Business and
5 Professions Code sections 17200, *et seq.*;

6 65. For restitution of the statutory benefits under California Labor Code section
7 226.7 unfairly withheld from Plaintiffs and class members and prejudgment interest from the
8 day such amounts were due and payable;

9 66. For the appointment of a receiver to receive, manage and distribute any and all
10 funds disgorged from Defendants and determined to have been wrongfully acquired by
11 Defendants as a result of violations of California Business & Professions Code sections
12 17200, *et seq.*;

13 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
14 California Code of Civil Procedure section 1021.5;

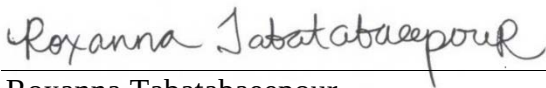
15 68. For pre-judgment and post-judgment interest as provided by law; and

16 69. For such other and further relief as the Court may deem equitable and
17 appropriate.
18

19 Dated: December 19, 2023

Respectfully submitted,

20 Capstone Law APC
21

22 By: 

23 Roxanna Tabatabaee
24 Ryan Tish
25 Alexander Wallin

26 Attorneys for Plaintiffs Rickey Lartigue and
27 Nina Minick
28

Exhibit 1



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

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

October 12, 2023

VIA ONLINE SUBMISSION

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

Subject: *Rickey Lartigue v. Quik Stop Market, Inc., et al.*

Dear PAGA Administrator:

This office represents Rickey Lartigue in connection with his claims under the California Labor Code. Mr. Lartigue was an employee of QUIK STOP MARKETS, INC.; EG RETAIL (AMERICA), LLC; and/or EG AMERICA, LLC. For the purpose of this letter, Mr. Lartigue collectively refers to these entities as "QUIK STOP."

The employers may be contacted directly at the addresses below:

QUIK STOP MARKETS, INC.
165 FLANDERS ROAD
WESTBOROUGH, MA 01581

EG RETAIL (AMERICA), LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01581

EG AMERICA, LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01581

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

QUIK STOP employed Mr. Lartigue as a non-exempt Cashier from approximately June 2022 to May 2023. Mr. Lartigue worked at QUIK STOP's convenience store located in Modesto, California. During his employment, Mr. Lartigue typically worked eight (8) hours or more per day and six (6) days per week. Mr. Lartigue's job duties included, without limitation, operating the cash register, providing customer service, maintaining store cleanliness, re-stocking items, and maintaining the gas pumping area.

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

QUIK STOP’s Company-Wide and Uniform Payroll and HR Practices

QUIK STOP MARKETS, INC. is a California corporation, while EG RETAIL (AMERICA), LLC and EG AMERICA, LLC are Delaware limited liability companies. QUIK STOP owns and operates a chain of gas station convenience stores with approximately 90 locations in California. Upon information and belief, QUIK STOP maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Westborough, Massachusetts, for all non-exempt, hourly paid employees working for QUIK STOP in California, including Mr. Lartigue and other aggrieved employees. At all relevant times, QUIK STOP issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Lartigue and other aggrieved employees, regardless of their location or position.

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

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

During the relevant time period, QUIK STOP had, and continues to have, a company-wide policy and/or practice of requiring Mr. Lartigue and other aggrieved employees to perform tasks off-the-clock after

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

their scheduled shifts and on their days off. For example, approximately twice per week, after clocking out at the end of his shift, QUIK STOP required Mr. Lartigue to continue to perform tasks such as wiping down the counter, cleaning the restroom, restocking items, and refilling the drink machine(s). Moreover, QUIK STOP's managers and coworkers contacted Mr. Lartigue on his personal cellular phone, for 10 to 15 minutes per instance, about work-related matters when he was not scheduled to work. Thus, QUIK STOP failed to track the time Mr. Lartigue and other aggrieved employees spent working after their scheduled shifts and on their days off, and Mr. Lartigue and other aggrieved employees received no compensation for this time.

Moreover, QUIK STOP had, and continues to have, a company-wide policy and/or practice of understaffing its locations, including adopting a single-staffing model for some of its positions, which, combined with heavy workloads, has resulted in a failure to provide other aggrieved employees with adequate meal period coverage. In addition, QUIK STOP required employees to keep the store open to customers and did not allow them to close or lock the store when they were working alone, in order to facilitate taking compliant meal periods. As a result of QUIK STOP's policy of understaffing and/or single-staffing, combined with a failure to schedule and/or adhere to a schedule for meal periods, other aggrieved employees were prevented from taking all uninterrupted meal periods to which they were entitled.

In addition, on information and belief, because QUIK STOP frowned upon employees accruing meal period penalties, QUIK STOP's management pressured employees to clock out 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 QUIK STOP. Thus, QUIK STOP did not record all hours worked during meal periods, and Ms. Minick and other aggrieved employees performed work during meal periods for which they were not paid.

Further, during the relevant time period, QUIK STOP maintained and implemented a company-wide on-premises meal period policy, which required that other aggrieved employees remain on QUIK STOP's premises during their meal periods. Because other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, QUIK STOP effectively maintained control over other aggrieved employees during meal periods.

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

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

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 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, § 11070(2)(G) (defining "Hours Worked").

As set forth above, during the relevant time period, QUIK STOP had a company-wide policy and/or practice of requiring Mr. Lartigue and other aggrieved employees to perform various work-related tasks while off-the-clock, including cleaning, restocking, and responding to phone calls from coworkers or managers. Thus, QUIK STOP failed to track the time Mr. Lartigue and other aggrieved employees spent working off-the-clock, and Mr. Lartigue and other aggrieved employees received no compensation for this time.

In addition, as stated, due to QUIK STOP's uniform policies and/or practices of understaffing and/or single-staffing, failing to schedule and/or adhere to a schedule for meal periods, requiring employees to stay on the work premises during meal periods, and resultant lack of meal period coverage, other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods. As a result, other aggrieved employees were not relieved of all duties during unpaid meal periods. Moreover, as also stated, in order to prevent employees from accruing meal period penalties, QUIK STOP's management pressured employees to record compliant meal periods when meal periods were missed, short, and/or interrupted. Thus, QUIK STOP systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

Under California law, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be provided with the opportunity to eat his or her meal while performing the duties required and any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long. *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141 (2019).

As stated, QUIK STOP had, and continues to have, a company-wide policy and/or practice of understaffing its locations, including adopting a single-staffing model for some of its positions, which, combined with heavy workloads, has resulted in a failure to provide Mr. Lartigue and other aggrieved employees with adequate meal period coverage. For example, Mr. Lartigue regularly worked alone during the graveyard shift at his location and QUIK STOP's management failed to provide adequate meal period coverage for him. In addition, QUIK STOP required Mr. Lartigue to keep the store open to customers during his shifts and did not allow him to close or lock the store when he was working alone, in order to facilitate taking timely, compliant meal periods. As a result of QUIK STOP's policy of understaffing and/or single-staffing, combined with a failure to schedule and/or adhere to a schedule for meal periods, Mr. Lartigue and other aggrieved employees were prevented from taking all timely, uninterrupted meal periods to which they were entitled.

As a result, Mr. Lartigue and other aggrieved employees have 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. Lartigue regularly worked through his meal periods due to the lack of coverage. As a further example, Mr. Lartigue took his meal periods late, after having worked in excess of five (5) hours into his shift, and his meal periods were interrupted or cut short in order for him to attend to customers because he was working alone and there was no one available to provide meal period coverage.

Also, as stated, because QUIK STOP frowned upon employees accruing meal period penalties, QUIK STOP's management pressured other aggrieved employees to clock out for meal periods 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 QUIK STOP.

To the extent QUIK STOP required Mr. Lartigue and other aggrieved employees to sign written "on-duty" meal period agreements, such agreements are invalid as the nature of the work performed by Mr. Lartigue and other aggrieved employees and do not necessitate an "on-duty" meal period under California law. As a result of these policies, Mr. Lartigue and other aggrieved employees were not provided timely, uninterrupted 30-minute meal periods during their shifts in which they were entitled to receive a meal period.

Moreover, QUIK STOP did not provide Mr. Lartigue and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, during the relevant time period, Mr. Lartigue would work shifts in excess of 10 hours in one day but did

not take a second meal period. Mr. Lartigue 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.

Further, during the relevant time period, QUIK STOP maintained and implemented a company-wide on-premises meal period policy, which required that Mr. Lartigue and other aggrieved employees remain on QUIK STOP's premises during their meal periods. Because Mr. Lartigue and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, QUIK STOP effectively maintained control over Mr. Lartigue and other aggrieved employees during meal periods.

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

Furthermore, QUIK STOP 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. Lartigue and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that QUIK STOP did pay Mr. Lartigue and other aggrieved employees for missed, late, and interrupted meal periods, QUIK STOP did so at the incorrect rates. In addition to an hourly wage, QUIK STOP paid Mr. Lartigue and other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, QUIK STOP failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. For example, QUIK STOP paid Mr. Lartigue and other aggrieved employees shift differential pay which was listed on Mr. Lartigue's and other aggrieved employees' wage statements as "NIGHT DIFF." Therefore, during times when Mr. Lartigue and other aggrieved employees received meal period premiums and these other forms of pay, QUIK STOP failed to pay full meal period premiums by paying a lower rate than required. Specifically, QUIK STOP paid Mr. Lartigue and other aggrieved employees meal period premiums at their straight hourly rate of pay instead of at their regular rate of pay.

Accordingly, QUIK STOP failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Lartigue 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, QUIK STOP regularly failed to authorize and permit Mr. Lartigue 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, QUIK STOP’s company-wide policies and/or practices of understaffing and/or single-staffing, and assignment of heavy workloads prevented Mr. Lartigue and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. QUIK STOP also failed to schedule and/or adhere to a schedule for rest periods, which, coupled with QUIK STOP’s failure to provide adequate rest period coverage, which further led to Mr. Lartigue and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, QUIK STOP maintained a company-wide on-premises rest period policy, which required that Mr. Lartigue and other aggrieved employees remain on QUIK STOP’s premises during their rest periods. Because Mr. Lartigue 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, QUIK STOP effectively maintained control over Mr. Lartigue and other aggrieved employees during rest periods.

As a result of QUIK STOP’s practices and policies, Mr. Lartigue 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. Lartigue had to forego all of his rest periods due to a lack of rest period coverage and in order attend to customers.

QUIK STOP also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Mr. Lartigue and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that QUIK STOP did pay Mr. Lartigue and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, QUIK STOP did not pay Mr. Lartigue and other aggrieved employees at the correct rate of pay for premiums because QUIK STOP failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration in the regular rate of pay.

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

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

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

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

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

STOP engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period start and end times for Mr. Lartigue and other aggrieved employees in violation of section 1198. Furthermore, in light of QUIK STOP's failure to provide Mr. Lartigue and other aggrieved employees with second 30-minute meal periods to which they were entitled, QUIK STOP kept no records of meal start and end times for second meal periods.

Because QUIK STOP failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Lartigue 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. Lartigue 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. Lartigue 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, QUIK STOP failed to pay Mr. Lartigue 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 sick leave pay, within any time period specified by California Labor Code section 204.

Mr. Lartigue 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, QUIK STOP has a company-wide practice and/or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, QUIK STOP terminated Mr. Lartigue's employment on or about May 24, 2023; however, QUIK STOP did not provide Mr. Lartigue with his final paycheck until about

May 30, 2023. Thus, QUIK STOP failed to pay Mr. Lartigue his final wages immediately, in violation of California Labor Code section 201.

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

Mr. Lartigue 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, QUIK STOP had an agreement with a payroll service provider, Netspend, for the issuance of payroll debit cards to employees, including Mr. Lartigue and other aggrieved employees, to discharge its wage payment obligations to its employees. Under QUIK STOP's payroll debit card program, on information and belief, Mr. Lartigue and other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee, which resulted in a discount in their pay. For example, Mr. Lartigue was subjected to a fee of \$1.50 per transaction when withdrawing his wages, and was restricted to a \$400 daily withdrawal limit. Thus, QUIK STOP's payroll debit card program was and continues to be unlawful as it did not give Mr. Lartigue and other aggrieved employees access to their entire wages without discount and without delay.

Additionally, during the relevant time period, QUIK STOP had a practice and/or policy of automatically issuing payroll debit cards to departing employees without giving them the option to elect their form of payment for their final wages. For example, Mr. Lartigue received his final wages on a payroll debit card without a choice of an alternate method of payment, such as a written check. Instead, QUIK STOP automatically enrolled Mr. Lartigue and other aggrieved employees in its payroll debit card program for the purpose of issuing their final wages to them. Thus, QUIK STOP's payroll debit card program was and continues to be unlawful as it does not give employees the choice as to whether they would like to receive their final wages on a payroll debit card or via some other payment method.

California courts recognize a policy favoring the full and prompt payment of wages to employees. QUIK STOP'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. Lartigue 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. Lartigue 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, QUIK STOP unlawfully deducted a portion of wages previously paid to Mr. Lartigue and other aggrieved employees in violation of California Labor Code section 221. On

information and belief, QUIK STOP systematically, and on a company-wide basis, provided Mr. Lartigue and other aggrieved employees with payroll debit cards as payment of their wages. Under QUIK STOP's payroll debit card program, Mr. Lartigue and other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, as stated, Mr. Lartigue 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. Lartigue and other aggrieved employees resulted in a discount of their wages.

QUIK STOP's payroll debit card program, which resulted in a discount of wages to employees, are tantamount to taking deductions from Mr. Lartigue'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. Lartigue 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, QUIK STOP willfully and systematically issued payroll debit cards to Mr. Lartigue and other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. QUIK STOP's payroll debit card program resulted in the payment of less than statutorily required wages to Mr. Lartigue and other aggrieved employees. Thus, QUIK STOP paid Mr. Lartigue and other aggrieved employees lower wages than those they were entitled to while purporting that Mr. Lartigue and other aggrieved employees were properly paid.

QUIK STOP's failure to pay Mr. Lartigue and other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Mr. Lartigue 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 §§ 246 and 248.6 – Failure to Properly Calculate Paid Sick Leave and Provide Written Notice of Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Labor Code section 246(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

At all relevant times herein, California Labor Code section 248.6 provides covered employees with COVID-19 supplemental paid sick leave. Effective through December 31, 2022, Labor Code section 248.6(d) provides that COVID-19 supplemental paid sick leave shall be set forth separately from paid

sick days and that an “employer shall provide an employee with written notice that sets forth the amount of COVID-19 supplemental paid sick leave that the employee has used through the pay period in which it was due to be paid on either the employee’s itemized wage statement . . . or in a separate written statement provided on the designated pay date with the employee’s payment of wages. The employer shall list zero hours used if a worker has not used any COVID-19 supplemental paid sick leave.” Further, Labor Code section 248.6(b)(3)(A) provides that each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following: 1) “[c]alculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]” or 2) “[c]alculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total nonovertime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay, shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision.”

During the relevant time period, QUIK STOP paid other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, QUIK STOP failed to incorporate all remunerations, including shift differential pay, incentive pay, and/or nondiscretionary bonuses into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when other aggrieved employees took sick leave and received these other forms of pay, QUIK STOP failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, QUIK STOP paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

Moreover, during the relevant time period, QUIK STOP failed, on a company-wide basis, to provide Mr. Lartigue and other aggrieved employees with written notice on wage statements or separate written statements that listed the amount of COVID-19 supplemental paid sick leave used by them.

QUIK STOP’s failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide basis in violation of Labor Code sections 246(1) and 248.6(b)(3)(A). Moreover, QUIK STOP’s systematic failure to provide written notice of COVID-19 supplemental paid sick leave benefits to Mr. Lartigue and other aggrieved employees is in violation of Labor Code section 248.6(d).

Mr. Lartigue and/or other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 13(B) – Failure to Provide Suitable Resting Facilities

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC 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 11070(13)(B) provides that “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

QUIK STOP’s California store locations are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. QUIK STOP could have provided Mr. Lartigue and other aggrieved employees with a suitable resting facility within all of its store locations, with reasonable or no

modification, but instead denied, and continues to deny, employees suitable areas to rest (e.g., a breakroom with seats). As a result, Mr. Lartigue and other aggrieved employees were forced to adjust to areas not conducive to resting, such as standing to use shelving in lieu of a table or searching for areas outside of the store which are not designated or reserved for their rest.

QUIK STOP did not provide Mr. Lartigue and other aggrieved employees with suitable resting facilities during their work hours, particularly during meal or rest periods. In other words, during the times when Mr. Lartigue and other aggrieved employees were legally allowed to forgo assigned tasks, as in during a meal or rest period, QUIK STOP denied them any area within its store locations to cease work and recover. Moreover, QUIK STOP did not inform Mr. Lartigue and other aggrieved employees of their rights to suitable resting facilities under California law.

As a result of QUIK STOP's company-wide failure to provide suitable resting facilities in its store locations, Mr. Lartigue and other aggrieved employees were forced to adjust to areas not conducive to resting or search for facilities outside their stores to cease work and recover. QUIK STOP's failure to provide suitable resting facilities to Mr. Lartigue and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 13(B).

Mr. Lartigue and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring QUIK STOP into compliance with California's resting facilities 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 11070 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 IWC 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 11070(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.*

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

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

QUIK STOP violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Mr. Lartigue and 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. QUIK STOP's management did not inform Mr. Lartigue and 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 QUIK STOP's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Mr. Lartigue and other aggrieved employees were forced to stand during shifts and denied seats. QUIK STOP's failure to provide suitable seating to Mr. Lartigue and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Mr. Lartigue and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring QUIK STOP 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 11070 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 IWC 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 11070(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.*

QUIK STOP's California stores 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. Lartigue and other aggrieved employees during lulls in operation. QUIK STOP could have provided Mr. Lartigue 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.

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

As a result of QUIK STOP'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. Lartigue and other aggrieved employees were forced to stand during shifts and denied seats. QUIK STOP's failure to provide suitable seating to Mr. Lartigue and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, 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."

First, during the relevant time period, QUIK STOP had a company-wide policy of requiring Mr. Lartigue and other aggrieved employees to utilize their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but QUIK STOP failed to reimburse them for the costs of their work-related mobile device expenses. For example, QUIK STOP's management contacted Mr. Lartigue on his personal cellular phone regarding work-related matters, such as issues with store equipment and machinery, on his days off. Although QUIK STOP required Mr. Lartigue and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related duties, QUIK STOP failed to reimburse them for these costs.

Second, during the relevant time period, QUIK STOP had a company-wide policy of requiring Mr. Lartigue and other aggrieved employees to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, on about five (5) instances, Mr. Lartigue was required to drive to a grocery store located approximately 10-12 miles away to pick up cups and lids for his store location. Although QUIK STOP required Mr. Lartigue and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, QUIK STOP failed to reimburse them for their mileage or travel expenses.

Third, during the relevant time period, QUIK STOP required Mr. Lartigue and other aggrieved employees to purchase supplies necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Mr. Lartigue was required to spend approximately \$50 on cleaning supplies and office supplies throughout his employment, including pens, tacks, paper clips, a stapler, and

an organizer. Although QUIK STOP required Mr. Lartigue and other aggrieved employees to purchase supplies to carry out their work-related responsibilities, QUIK STOP failed to reimburse them for their out-of-pocket costs.

QUIK STOP could have provided Mr. Lartigue and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, company vehicles, and cleaning and office supplies. Or, QUIK STOP could have reimbursed employees for their mobile device usage, mileage, travel expenses, and supply expenses. Instead, QUIK STOP passed these operating costs off onto Mr. Lartigue and other aggrieved employees. At all relevant times, Mr. Lartigue did not earn at least two (2) times the minimum wage.

Thus, QUIK STOP 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. Lartigue 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.

QUIK STOP failed to provide Mr. Lartigue and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). QUIK STOP's failure to provide Mr. Lartigue and other aggrieved employees with written notice of basic information regarding their employment with QUIK STOP is in violation of Labor Code section 2810.5.

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

Accordingly, Mr. Lartigue 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. Lartigue, 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 QUIK STOP for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 248.6, 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. Lartigue seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

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

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

Best Regards,

A handwritten signature in black ink, appearing to read 'Mao Shiokura', with a stylized, flowing script.

Mao Shiokura

Copy: QUIK STOP MARKETS, INC. (via U.S. Certified Mail); EG RETAIL (AMERICA), LLC (via U.S. Certified Mail); EG AMERICA, LLC (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



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QUIK STOP MARKETS, INC.
165 FLANDERS ROAD
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165 FLANDERS ROAD
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COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
☐ Addressee
B. Received by (Printed Name) C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail[®]
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Restricted Delivery
☐ Priority Mail Express[®]
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☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2264 5737

EG RETAIL (AMERICA), LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01581

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.

EG RETAIL (AMERICA), LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01581



9590 9402 7706 2122 1500 25

2

7022 2410 0000 2264 5737

lower 3003

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery

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

- Service Type
- ☐ Adult Signature
 - ☐ Adult Signature Restricted Delivery
 - ☒ Certified Mail®
 - ☐ Certified Mail Restricted Delivery
 - ☐ Collect on Delivery
 - ☐ Collect on Delivery Restricted Delivery
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Restricted Delivery

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Certified Mail Fee

Extra Services & Fees (Print box, add fee as appropriate)
☐ Return Receipt (hardcopy) ☐ ☐ Return Receipt (electronic) ☐

Postmark

EG RETAIL (AMERICA), LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01581

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



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U.S. Postal Service[™]
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OFFICIAL USE

LAURENCE U.

CLIVE STOR

Postmark

EG AMERICA, LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01581

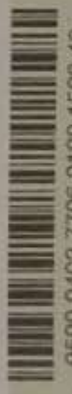
7022 2410 0000 0152 2202

EG AMERICA, LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01581

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.

EG AMERICA, LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01581



9590 9402 7706 2122 1500 49
2. Article Number (Transfer from service label)

7022 2410 0000 2264 5744

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

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent
☒ Addressee
- B. Received by (Printed Name) C. Date of Delivery

1. 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[®]
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☐ Registered Mail[™]
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation[™]
☐ Signature Confirmation Restricted Delivery

restricted delivery

Domestic Return Receipt

Exhibit 2



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

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

October 12, 2023

VIA ONLINE SUBMISSION

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

Subject: *Nina Minick v. Quik Stop Market, Inc., et al.*

Dear PAGA Administrator:

This office represents Nina Minick in connection with her claims under the California Labor Code. Ms. Minick was an employee of QUIK STOP MARKETS, INC.; EG RETAIL (AMERICA), LLC; and/or EG AMERICA, LLC. For the purpose of this letter, Ms. Minick collectively refers to these entities as "QUIK STOP."

The employers may be contacted directly at the addresses below:

QUIK STOP MARKETS, INC.
165 FLANDERS ROAD
WESTBOROUGH, MA 01581

EG RETAIL (AMERICA), LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01581

EG AMERICA, LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01581

Ms. Minick intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Minick seeks relief on behalf of herself, the State of California, and other persons who are or were employed by QUIK STOP in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

QUIK STOP employed Ms. Minick as a non-exempt Retail Sales Associate from approximately November 2022 to May 2023. Ms. Minick worked at QUIK STOP's convenience store located in Modesto, California. During her employment, Ms. Minick typically worked eight (8) hours or more per day and three (3) or more days per week. Ms. Minick's job duties included, without limitation, operating the cash register, providing customer service, maintaining store cleanliness, re-stocking items, and maintaining the gas pumping area.

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

QUIK STOP’s Company-Wide and Uniform Payroll and HR Practices

QUIK STOP MARKETS, INC. is a California corporation, while EG RETAIL (AMERICA), LLC and EG AMERICA, LLC are Delaware limited liability companies. QUIK STOP owns and operates a chain of gas station convenience stores with approximately 90 locations in California. Upon information and belief, QUIK STOP maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Westborough, Massachusetts, for all non-exempt, hourly paid employees working for QUIK STOP in California, including Ms. Minick and other aggrieved employees. At all relevant times, QUIK STOP issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Minick and other aggrieved employees, regardless of their location or position.

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

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

During the relevant time period, QUIK STOP had, and continues to have, a company-wide policy and/or practice of understaffing its locations, including adopting a single-staffing model for some of its

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

positions, which, combined with heavy workloads, has resulted in a failure to provide Ms. Minick and other aggrieved employees with adequate meal period coverage. In addition, QUIK STOP required employees to keep the store open to customers and did not allow them to close or lock the store when they were working alone, in order to facilitate taking compliant meal periods. As a result of QUIK STOP's policy of understaffing and/or single-staffing, combined with a failure to schedule and/or adhere to a schedule for meal periods, Ms. Minick and other aggrieved employees were prevented from taking all uninterrupted meal periods to which they were entitled.

In addition, on information and belief, because QUIK STOP frowned upon employees accruing meal period penalties, QUIK STOP's management pressured employees to clock out 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 QUIK STOP. Thus, QUIK STOP did not record all hours worked during meal periods, and Ms. Minick and other aggrieved employees performed work during meal periods for which they were not paid.

Further, during the relevant time period, QUIK STOP maintained and implemented a company-wide on-premises meal period policy, which required that Ms. Minick and other aggrieved employees remain on QUIK STOP's premises during their meal periods. Because Ms. Minick and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, QUIK STOP effectively maintained control over Ms. Minick and other aggrieved employees during meal periods.

Additionally, QUIK STOP had, and continues to have, a company-wide policy and/or practice of requiring other aggrieved employees to perform tasks off-the-clock after their scheduled shifts and on their days off. For example, after clocking out at the end of their shifts, QUIK STOP required other aggrieved employees to continue to perform tasks such as wiping down the counter, cleaning the restroom, restocking items, and refilling the drink machine(s). Moreover, QUIK STOP's managers and coworkers contacted other aggrieved employees on their personal cellular phones about work-related matters when they were not scheduled to work. Thus, QUIK STOP failed to track the time other aggrieved employees spent working after their scheduled shifts and on their days off, and other aggrieved employees received no compensation for this time.

Moreover, QUIK STOP knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Minick and other aggrieved employees were performing their assigned duties off-the-clock and were suffered or permitted to perform work for which they were not paid. Because Ms. Minick and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Furthermore, QUIK STOP did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, QUIK STOP paid Ms. Minick and other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration (*see infra*). However, in violation of the California Labor Code, QUIK STOP failed to incorporate all remunerations, including shift differential pay, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, QUIK STOP failed to pay all overtime wages by paying a lower overtime rate than required.

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 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, § 11070(2)(G) (defining “Hours Worked”).

As set forth above, during the relevant time period, due to QUIK STOP’s uniform policies and/or practices of understaffing and/or single-staffing, failing to schedule and/or adhere to a schedule for meal periods, requiring employees to stay on the work premises during meal periods, and resultant lack of meal period coverage, Ms. Minick and/or other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods. As a result, Ms. Minick and/or other aggrieved employees were not relieved of all duties during unpaid meal periods. Moreover, as also stated, in order to prevent employees from accruing meal period penalties, QUIK STOP’s management pressured employees to record compliant meal periods when meal periods were missed, short, and/or interrupted. Thus, QUIK STOP systematically failed to pay Ms. Minick and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

In addition, as stated, QUIK STOP had a company-wide policy and/or practice of requiring other aggrieved employees to perform various work-related tasks while off-the-clock, including cleaning, restocking, and responding to phone calls from coworkers or managers. Thus, QUIK STOP failed to track the time other aggrieved employees spent working off-the-clock, and other aggrieved employees received no compensation for this time.

Thus, QUIK STOP did not pay minimum wages for all hours worked by Ms. Minick and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, QUIK STOP 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, QUIK STOP regularly failed to pay at least minimum wages to Ms. Minick and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Minick 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.

Under California law, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be provided with the opportunity to eat his or her meal while performing the duties required and any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long. *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141 (2019).

As stated, QUIK STOP had, and continues to have, a company-wide policy and/or practice of understaffing its locations, including adopting a single-staffing model for some of its positions, which, combined with heavy workloads, has resulted in a failure to provide Ms. Minick and other aggrieved employees with adequate meal period coverage. For example, Ms. Minick regularly worked alone during at her location and QUIK STOP's management failed to provide adequate meal period coverage for her. In addition, QUIK STOP required Ms. Minick to keep the store open to customers during her shifts and did not allow her to close or lock the store when he was working alone, in order to facilitate taking timely, compliant meal periods. As a result of QUIK STOP's policy of understaffing and/or single-staffing, combined with a failure to schedule and/or adhere to a schedule for meal periods, Ms. Minick and other aggrieved employees were prevented from taking all timely, uninterrupted meal periods to which they were entitled.

As a result, Ms. Minick and other aggrieved employees have 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, Ms. Minick regularly worked through her meal periods due to the lack of coverage. As a further example, Ms. Minick took her meal periods late, after having worked in excess of five (5) hours into his shift, and his meal periods were interrupted or cut short in order for her to attend to customers because she was working alone and there was no one available to provide meal period coverage.

Also, as stated, because QUIK STOP frowned upon employees accruing meal period penalties, QUIK STOP's management pressured Ms. Minick and other aggrieved employees to clock out for meal periods 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 QUIK STOP.

To the extent QUIK STOP required Ms. Minick and other aggrieved employees to sign written "on-duty" meal period agreements, such agreements are invalid as the nature of the work performed by Ms. Minick and other aggrieved employees and do not necessitate an "on-duty" meal period under California law. As a result of these policies, Ms. Minick and other aggrieved employees were not provided timely, uninterrupted 30-minute meal periods during their shifts in which they were entitled to receive a meal period.

Moreover, QUIK STOP did not provide Ms. Minick and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, during the relevant time period, Ms. Minick would work shifts in excess of 10 hours in one day but did not take a second meal period. Ms. Minick 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.

Further, during the relevant time period, QUIK STOP maintained and implemented a company-wide on-premises meal period policy, which required that Ms. Minick and other aggrieved employees remain on QUIK STOP's premises during their meal periods. Because Ms. Minick and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, QUIK STOP effectively maintained control over Ms. Minick and other aggrieved employees during meal periods.

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

Furthermore, QUIK STOP engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Minick and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that QUIK STOP did pay Ms. Minick and other aggrieved employees for missed, late, and interrupted meal periods, QUIK STOP did so at the incorrect rates. In addition to an hourly wage, QUIK STOP paid Ms. Minick and other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, QUIK STOP failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. For example, QUIK STOP paid Ms. Minick and other aggrieved employees shift differential pay which was listed on Ms. Minick's and other aggrieved employees' wage statements as "NIGHT DIFF." Therefore, during times when Ms. Minick and other aggrieved employees received meal period premiums and these other forms of pay, QUIK STOP failed to pay full meal period premiums by paying a lower rate than required. Specifically, QUIK STOP paid Ms. Minick and other aggrieved employees meal period premiums at their straight hourly rate of pay instead of at their regular rate of pay.

Accordingly, QUIK STOP failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Minick 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, QUIK STOP regularly failed to authorize and permit Ms. Minick 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, QUIK STOP's company-wide policies and/or practices of understaffing and/or single-staffing, and assignment of heavy workloads prevented Ms. Minick and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. QUIK STOP also failed to schedule and/or adhere to a schedule for rest periods, which, coupled with QUIK STOP's failure to provide adequate rest period coverage, which further led to Ms. Minick and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, QUIK STOP maintained a company-wide on-premises rest period policy, which required that Ms. Minick and other aggrieved employees remain on QUIK STOP's premises during their rest periods. Because Ms. Minick 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, QUIK STOP effectively maintained control over Ms. Minick and other aggrieved employees during rest periods.

As a result of QUIK STOP's practices and policies, Ms. Minick 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, Ms. Minick had to forego many of her rest periods due to a lack of rest period coverage and in order attend to customers. When she was able to take rest periods, she would be interrupted by customers.

QUIK STOP also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Ms. Minick and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that QUIK STOP did pay Ms. Minick and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, QUIK STOP did not pay Ms. Minick and other aggrieved employees at the correct rate of pay for premiums because QUIK STOP failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration in the regular rate of pay.

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

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

Also, because QUIK STOP did not calculate Ms. Minick's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, QUIK STOP did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). QUIK STOP also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

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

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments" Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), QUIK STOP willfully failed to maintain accurate payroll records for Ms. Minick 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, QUIK STOP engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period start and end times for Ms. Minick and other aggrieved employees in violation of section 1198. Furthermore, in light of QUIK STOP's failure to

provide Ms. Minick and other aggrieved employees with second 30-minute meal periods to which they were entitled, QUIK STOP kept no records of meal start and end times for second meal periods.

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

Ms. Minick 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, QUIK STOP failed to pay Ms. Minick 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 sick leave pay, within any time period specified by California Labor Code section 204.

Ms. Minick 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, QUIK STOP has a company-wide practice and/or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. Thus, QUIK STOP failed to pay employees their final wages immediately or within seventy-two (72) hours of quitting, in violation of California Labor Code sections 201 and 202.

Additionally, QUIK STOP willfully failed to pay Ms. Minick and other aggrieved employees who are no longer employed by QUIK STOP all their earned wages, including, but not limited to, overtime wages,

minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving QUIK STOP's employ.

Ms. Minick 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, QUIK STOP had an agreement with a payroll service provider, Netspend, for the issuance of payroll debit cards to employees, including other aggrieved employees, to discharge its wage payment obligations to its employees. Under QUIK STOP’s payroll debit card program, on information and belief, other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee, which resulted in a discount in their pay. For example, other aggrieved employees were subjected to a fee of \$1.50 per transaction when withdrawing their wages, and were restricted to a \$400 daily withdrawal limit. Thus, QUIK STOP’s payroll debit card program was and continues to be unlawful as it did not give other aggrieved employees access to their entire wages without discount and without delay.

Additionally, during the relevant time period, QUIK STOP had a practice and/or policy of automatically issuing payroll debit cards to departing employees without giving them the option to elect their form of payment for their final wages. For example, other aggrieved employees received their final wages on a payroll debit card without a choice of an alternate method of payment, such as a written check. Instead, QUIK STOP automatically enrolled other aggrieved employees in its payroll debit card program for the purpose of issuing their final wages to them. Thus, QUIK STOP’s payroll debit card program was and continues to be unlawful as it does not give employees the choice as to whether they would like to receive their final wages on a payroll debit card or via some other payment method.

California courts recognize a policy favoring the full and prompt payment of wages to employees. QUIK STOP’s payroll card program is inconsistent with this policy because it presents a number of obstacles and hurdles that, together, make it difficult for other aggrieved employees to access their entire wages without discount and without delay, in violation of California Labor Code sections 212 and 213. 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, QUIK STOP unlawfully deducted a portion of wages previously paid to other aggrieved employees in violation of California Labor Code section 221. On information and belief, QUIK STOP systematically, and on a company-wide basis, provided other aggrieved employees with payroll debit cards as payment of their wages. Under QUIK STOP’s payroll debit card program, other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, as stated, 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 other aggrieved employees resulted in a discount of their wages.

QUIK STOP's payroll debit card program, which resulted in a discount of wages to employees, are tantamount to taking deductions from 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. 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, QUIK STOP willfully and systematically issued payroll debit cards to other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. QUIK STOP's payroll debit card program resulted in the payment of less than statutorily required wages to other aggrieved employees. Thus, QUIK STOP paid other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

QUIK STOP's failure to pay other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. 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 §§ 246 and 248.6 – Failure to Properly Calculate Paid Sick Leave and Provide Written Notice of Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Labor Code section 246(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

At all relevant times herein, California Labor Code section 248.6 provides covered employees with COVID-19 supplemental paid sick leave. Effective through December 31, 2022, Labor Code section 248.6(d) provides that COVID-19 supplemental paid sick leave shall be set forth separately from paid sick days and that an "employer shall provide an employee with written notice that sets forth the amount of COVID-19 supplemental paid sick leave that the employee has used through the pay period in which it was due to be paid on either the employee's itemized wage statement . . . or in a separate written statement provided on the designated pay date with the employee's payment of wages. The employer shall list zero hours used if a worker has not used any COVID-19 supplemental paid sick leave." Further, Labor Code section 248.6(b)(3)(A) provides that each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following: 1) "[c]alculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee

actually works overtime in that workweek[;]” or 2) “[c]alculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total nonovertime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay, shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision.”

During the relevant time period, QUIK STOP paid Ms. Minick and other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, QUIK STOP failed to incorporate all remunerations, including shift differential pay, incentive pay, and/or nondiscretionary bonuses into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when Ms. Minick and other aggrieved employees took sick leave and received these other forms of pay, QUIK STOP failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, QUIK STOP paid Ms. Minick and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

Moreover, during the relevant time period, QUIK STOP failed, on a company-wide basis, to provide Ms. Minick and/or other aggrieved employees with written notice on wage statements or separate written statements that listed the amount of COVID-19 supplemental paid sick leave used by them.

QUIK STOP’s failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Ms. Minick and other aggrieved employees on a company-wide basis in violation of Labor Code sections 246(l) and 248.6(b)(3)(A). Moreover, QUIK STOP’s systematic failure to provide written notice of COVID-19 supplemental paid sick leave benefits to Ms. Minick and/or other aggrieved employees is in violation of Labor Code section 248.6(d).

Ms. Minick and/or other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 13(B) – Failure to Provide Suitable Resting Facilities

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC 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 11070(13)(B) provides that “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

QUIK STOP’s California store locations are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. QUIK STOP could have provided Ms. Minick and other aggrieved employees with a suitable resting facility within all of its store locations, with reasonable or no modification, but instead denied, and continues to deny, employees suitable areas to rest (e.g., a breakroom with seats). As a result, Ms. Minick and other aggrieved employees were forced to adjust to areas not conducive to resting, such as standing to use shelving in lieu of a table or searching for areas outside of the store which are not designated or reserved for their rest.

QUIK STOP did not provide Ms. Minick and other aggrieved employees with suitable resting facilities during their work hours, particularly during meal or rest periods. In other words, during the times when

Ms. Minick and other aggrieved employees were legally allowed to forgo assigned tasks, as in during a meal or rest period, QUIK STOP denied them any area within its store locations to cease work and recover. Moreover, QUIK STOP did not inform Ms. Minick and other aggrieved employees of their rights to suitable resting facilities under California law.

As a result of QUIK STOP's company-wide failure to provide suitable resting facilities in its store locations, Ms. Minick and other aggrieved employees were forced to adjust to areas not conducive to resting or search for facilities outside their stores to cease work and recover. QUIK STOP's failure to provide suitable resting facilities to Ms. Minick and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 13(B).

Ms. Minick and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring QUIK STOP into compliance with California's resting facilities 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 11070 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 IWC 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 11070(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.*

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

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

QUIK STOP violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Minick and 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. QUIK STOP's management did not inform Ms. Minick and 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 QUIK STOP's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Minick and other aggrieved employees were forced to stand during shifts and denied seats. QUIK STOP's failure to provide suitable seating to Ms. Minick and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Ms. Minick and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring QUIK STOP 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 11070 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 IWC 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 11070(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.*

QUIK STOP's California stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Ms. Minick and other aggrieved employees during lulls in operation. QUIK STOP could have provided Ms. Minick 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.

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

As a result of QUIK STOP's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Ms. Minick and other aggrieved employees were forced to stand during shifts and denied seats. QUIK STOP's failure to provide suitable seating to Ms. Minick and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, 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."

First, during the relevant time period, QUIK STOP had a company-wide policy of requiring Ms. Minick and other aggrieved employees to utilize their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but QUIK STOP failed to reimburse them for the costs of their work-related mobile device expenses. For example, Ms. Minick was required to communicate with QUIK STOP's management via her personal cellular phone regarding work-related matters, such as equipment maintenance, supplies, and incident reports. Although QUIK STOP required Ms. Minick and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related duties, QUIK STOP failed to reimburse them for these costs.

Second, during the relevant time period, QUIK STOP had a company-wide policy of requiring other aggrieved employees to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, other aggrieved employees were required to drive to nearby grocery stores to pick up cups and lids for their store locations. Although QUIK STOP required other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, QUIK STOP failed to reimburse them for their mileage or travel expenses.

Third, during the relevant time period, QUIK STOP required other aggrieved employees to purchase supplies necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, other aggrieved employees were required to purchase various cleaning and office supplies throughout their employment, including pens, tacks, paper clips, a stapler, and an organizer. Although QUIK STOP required other aggrieved employees to purchase supplies to carry out their work-related responsibilities, QUIK STOP failed to reimburse them for their out-of-pocket costs.

QUIK STOP could have provided Ms. Minick and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, company vehicles, and/or cleaning and office supplies. Or, QUIK STOP could have reimbursed employees for their mobile device usage, mileage, travel expenses, and/or supply expenses. Instead, QUIK STOP passed these operating costs off onto Ms.

Minick and other aggrieved employees. At all relevant times, Ms. Minick did not earn at least two (2) times the minimum wage.

Thus, QUIK STOP 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. Ms. Minick 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.

QUIK STOP failed to provide Ms. Minick and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). QUIK STOP's failure to provide Ms. Minick and other aggrieved employees with written notice of basic information regarding their employment with QUIK STOP is in violation of Labor Code section 2810.5.

Ms. Minick 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." QUIK STOP, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Minick's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Minick seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Minick, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against QUIK STOP for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223,

224, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: QUIK STOP MARKETS, INC. (via U.S. Certified Mail); EG RETAIL (AMERICA), LLC (via U.S. Certified Mail); EG AMERICA, LLC (via U.S. Certified Mail)

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Quake Spd

Year	Number of cases	Number of deaths
1990	10	0
1991	10	0
1992	10	0
1993	10	0
1994	10	0
1995	10	0
1996	10	0
1997	10	0
1998	10	0
1999	10	0
2000	10	0
2001	10	0
2002	10	0
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2093	10	0
2094	10	0
2095	10	0
2096	10	0
2097	10	0
2098	10	0
2099	10	0
2100	10	0

QUIK STOP MARKETS, INC.
165 FLANDERS ROAD
WESTBOROUGH, MA 01581

MS Form 3100 April 2013 1040-2013-00000000

9025 4922 0000 0742 2204

QUIK STOP MARKETS, INC.
165 FLANDERS ROAD
WESTBOROUGH, MA 01581

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165 FLANDERS ROAD
WESTBOROUGH, MA 01581

9590 9402 7706 2122 1500 63
2 Article Number (Transfer from service label)

9025 4900 2264 5706

7022 2410 0000 2264
PS Form 3811 July 2020 PSN 7530-02-000-9083

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

[illegible][illegible]

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

244

1

Service Turnover

11

[illegible]

Adult Signature Required Delivery

Editorial Board

Confidential Mail Restricted Delivery

Collect on Delivery

Customers are Necessary Restricted Delivery

Unrestricted Delivery

THE UNIVERSITY OF CHICAGO

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



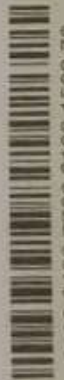
7022 2410 0000 2264 5713

EG RETAIL (AMERICA), LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01581

SENDER: COMPLETE THIS SECTION

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- Attach this card to the back of the mailpiece.

EG RETAIL (AMERICA), LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01581



9590 9402 7706 2122 1500 70

2. Article Number (Transfer from service label)

7022 2410 0000 2264 5713

restricted delivery

COMPLETE THIS SECTION ON DELIVERY

A. Signature		☐ Agent
☒		☐ Addressee
B. Received by (Printed Name)	C. Date of Delivery	

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

Service Type	☐ Priority Mail Express®
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	☐ Signature Confirmation Restricted Delivery
☐ Collect on Delivery Restricted Delivery	

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WESTBOROUGH, MA 01581

PS Form 3800, 4-2011 PSN 7530-02-000-9047

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2264 5652

EG AMERICA, LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01581

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.

EG AMERICA, LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01581



9590 9402 7706 2122 1500 56

2. Address Number (Transmitted from electronic label)

7022 2410 0000 2264 5652

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

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

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	☐ Restricted Delivery

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WESTBOROUGH, MA 01581

PS Form 3800, April 2015 PSN 7530-02-000-9053 See Reverse for Instructions

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 **December 19, 2023**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT** 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:

Squire Patton Boggs (US) LLP
Michael W. Kelly (State Bar # 214038)
michael.kelly@squirepb.com
555 California Street, Suite 550
San Francisco, California 94104
Telephone: +1 415 954 0200
Facsimile: +1 415 393 9887

Attorneys for Defendants
QUIK STOP MARKETS, INC., a
California corporation; EG RETAIL
(AMERICA), LLC, a Delaware limited
liability company; and EG AMERICA,
LLC, a Delaware limited liability company

[] **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.

[X] **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).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **December 19, 2023**, at Los Angeles, California.

Trevor Beach

Type/Print Name

/s/ Trevor Beach

Signature