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and Willie Brown

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

LINDA MCCREARY and WILLIE
BROWN, as aggrieved employees pursuant
to the Private Attorneys General Act
("PAGA"), on behalf of the State of
California and other aggrieved employees,

Plaintiffs,

vs.

TACO BELL CORP., a California
corporation; TACO BELL OF AMERICA,
LLC, a Delaware limited liability company;
TB CANTINA LLC, a Delaware limited
liability company; YUM! BRANDS, INC.,
a Kentucky corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: BCV-24-100539

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiffs Linda McCreary and Willie Brown, as aggrieved employees and on behalf of
2 the State of California and all other non-party Aggrieved Employees, allege as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiffs, the State of California, and other current
7 and former employees who worked for Defendants in California as non-exempt, hourly paid
8 employees and against whom one or more violations of any provision in Division 2 Part 2
9 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the
10 applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth
11 in this complaint, at any time between one year prior to the filing of the pre-filing written notice
12 to the Labor and Workforce Development Agency (“LWDA”) in this case on December 12,
13 2023, until judgment (“non-party Aggrieved Employees”). Plaintiffs’ share of civil penalties
14 sought in this action does not exceed \$75,000.

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

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional notions
22 of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this
23 action given that the State of California, as the real party in interest in this action, is not a
24 “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726
25 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated
26 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
27 and that diversity jurisdiction cannot be established when Plaintiffs’ share of the civil penalties
28 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendants employ persons in this county, and employed Plaintiffs in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Linda McCreary (“Plaintiff McCreary”) is a resident of Bakersfield, in Kern County, California. Defendants employed Plaintiff McCreary as an hourly paid, non-exempt employee from approximately June 2023 to August 2023. Plaintiff McCreary worked as a Food Champion at Defendants’ restaurant location in Bakersfield, California. During her employment, Plaintiff McCreary typically worked five (5) hours or more per day and five (5) days per week. Plaintiff McCreary’s primary job duties included, without limitation, cashiering, providing customer service, and cleaning.

7. Plaintiff Willie Brown (“Plaintiff Brown”) is a resident of Bakersfield, in Kern County, California. Defendants employed Plaintiff Brown as an hourly paid, non-exempt employee from approximately November 2022 to March 2023. Plaintiff Brown worked as a Service Champion at Defendants’ restaurant location in Bakersfield, California. During his employment, Plaintiff Brown typically worked seven (7) or more hours per day and five (5) days per week. Plaintiff Brown’s primary job duties included, without limitation, taking orders, preparing and serving food, cleaning, and washing the dishes.

8. On information and belief, Defendants required some employees, including Plaintiffs, to execute an arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented employees with a Mutual Arbitration Agreement ("Arbitration Agreement") during the onboarding process, which had to be reviewed and acknowledged immediately. Specifically,

1 the Arbitration Agreement was one of several documents presented to new employees for
2 signature during the orientation process, including the Active Shooter: In-Store Response
3 Protocol, Anti-Discrimination and Harassment Policy, Attendance Policy, and California Paid
4 Meal Period Policy, Cash and Inventory Control, Global Code of Conduct, and Employee Meal
5 and Beverage Policy, among other documents. Also, employees did not have a meaningful
6 opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to
7 Defendants' employees for them to sign on a take-it or leave-it basis, along with all of the other
8 on-boarding documents. Further, Defendants did not set forth in the agreement or otherwise
9 provide employees with the rules which will govern the arbitration, instead forcing employees
10 to seek this information out on their own ("Arbitrations will be administered by the American
11 Arbitration Association ("AAA") under the current version of the AAA's Employment
12 Arbitration Rules and Mediation Procedures, which are available for your review online at the
13 AAA's website at <https://www.adr.org>").

14 9. TACO BELL CORP. was and is, upon information and belief, a California
15 corporation, and at all times hereinafter mentioned, an employer whose employees are engaged
16 throughout this county and the State of California.

17 10. TACO BELL OF AMERICA, LLC was and is, upon information and belief, a
18 Delaware limited liability company, and at all times hereinafter mentioned, an employer whose
19 employees are engaged throughout this county and the State of California.

20 11. TB CANTINA LLC was and is, upon information and belief, a Delaware limited
21 liability company, and at all times hereinafter mentioned, an employer whose employees are
22 engaged throughout this county and the State of California.

23 12. YUM! BRANDS, INC. was and is, upon information and belief, a Kentucky
24 corporation, and at all times hereinafter mentioned, an employer whose employees are engaged
25 throughout this county and the State of California.

26 13. Plaintiffs are unaware of the true names or capacities of the Defendants sued
27 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend
28 the complaint and serve such fictitiously named Defendants once their names and capacities

1 become known.

2 14. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
3 were the partners, agents, owners, or managers of TACO BELL CORP.; TACO BELL OF
4 AMERICA, LLC; TB CANTINA LLC; and YUM! BRANDS, INC. at all relevant times.

5 15. Plaintiffs are informed and believe, and thereon allege, that each and all of the
6 acts and omissions alleged herein was performed by, or is attributable to, TACO BELL CORP.;
7 TACO BELL OF AMERICA, LLC; TB CANTINA LLC; YUM! BRANDS, INC.; and/or DOES
8 1 through 10 (collectively, “Defendants” or “TACO BELL”), each acting as the agent,
9 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
10 Defendants and was acting within the course and scope of such agency, employment, joint
11 venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any
12 and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

20 18. Under California law, Defendants are jointly and severally liable as employers
21 for the violations alleged herein because they have each exercised sufficient control over the
22 wages, hours, working conditions, and employment status of Plaintiffs and other non-party
23 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiffs and other non-
24 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
25 of employment, determined their rate of pay, and maintained their employment records.
26 Defendants suffered or permitted Plaintiffs and other non-party Aggrieved Employees to work
27 and/or “engaged” Plaintiffs and other non-party Aggrieved Employees so as to create a
28 common-law employment relationship. As joint employers of Plaintiffs and other non-party

1 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
2 available to Plaintiffs and other non-party Aggrieved Employees under the law.

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

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

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

26 21. TACO BELL CORP.; TACO BELL OF AMERICA, LLC; TB CANTINA LLC;
27 YUM! BRANDS, INC.; and/or DOES 1 through 10 are therefore alter egos of each other.

28 22. Adherence to the fiction of the separate existence of Defendants would permit an

1 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
2 liability for the wrongful acts committed by them under the name TACO BELL.

3 23. Plaintiffs further allege, upon information and belief, that the Defendants TACO
4 BELL CORP.; TACO BELL OF AMERICA, LLC; TB CANTINA LLC; and YUM! BRANDS,
5 INC. are alter egos of each other for the following reasons:

6 (a) According to YUM! BRANDS, INC.'s SEC Form 10-K filing¹, TACO
7 BELL CORP.; TACO BELL OF AMERICA, LLC; and TB CANTINA
8 LLC are subsidiaries of YUM! BRANDS, INC.;

9 (b) On the California Secretary of State's website
10 (<https://bizfileonline.sos.ca.gov/>), TACO BELL CORP.; TACO BELL
11 OF AMERICA, LLC; and TB CANTINA LLC share the same principal
12 address and mailing address, "1 GLEN BELL WAY, IRVINE, CA
13 92618";

14 (c) According to their most recent "Statement of Information" forms filed
15 with the California Secretary of State, TACO BELL CORP.; TACO
16 BELL OF AMERICA, LLC; and TB CANTINA LLC share the same
17 managers, members, and/or officers, including, but not limited to, Kerry
18 Endert, Mark King, and/or Eric Hayden;

19 (d) On the California Secretary of State's website and the Kentucky Secretary
20 of State's website, TACO BELL CORP.; TACO BELL OF AMERICA,
21 LLC; TB CANTINA LLC; and YUM! BRANDS, INC. share the same
22 agent for service of process, C T CORPORATION SYSTEM; and

23 (e) On information and belief, TACO BELL CORP.; TACO BELL OF
24 AMERICA, LLC; TB CANTINA LLC; and YUM! BRANDS, INC.
25 utilize the same standardized employment forms and issue the same
26 employment policies.

27
28 ¹ 10-K Annual Report 02/27/2023, "SEC Filings | Yum! Brands, Inc.,"
<https://investors.yum.com/financial-information/sec-filings/> (last accessed Feb. 12, 2024).

1 **PAGA REPRESENTATIVE ALLEGATIONS**

2 24. Defendants own and operate a chain of Taco Bell restaurants, with approximately
3 46 locations in California. Upon information and belief, Defendants maintain a single,
4 centralized Human Resources (“HR”) department at their company headquarters in Irvine,
5 California, which is responsible for the recruiting and hiring of new employees, and
6 communicating and implementing Defendants’ company-wide policies, including timekeeping
7 policies and meal and rest period policies, to employees throughout California.

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

15 26. Upon information and belief, Defendants maintain a centralized Payroll
16 department at their company headquarters in Irvine, California, which processes payroll for all
17 non-exempt, hourly paid employees working for Defendants at their various locations in
18 California, including Plaintiffs and other non-party Aggrieved Employees. Based upon
19 information and belief, Defendants issue the same formatted wage statements to all non-exempt,
20 hourly paid employees in California, irrespective of their work locations. Upon information
21 and belief, Defendants process payroll for departing employees in the same manner throughout
22 the State of California, regardless of the manner in which each employee’s employment ends.

23 27. Defendants continue to employ non-exempt or hourly paid employees in
24 California.

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

1 29. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other
2 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
3 were not recorded.

4 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
5 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
6 receive at least minimum wages for compensation and that they were not receiving at least
7 minimum wages for work that was required to be done off-the-clock. In violation of the
8 California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not paid at
9 least minimum wages for work done off-the-clock.

10 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that other non-party Aggrieved Employees were entitled to receive certain
12 wages for overtime compensation and that they were not receiving certain wages for overtime
13 compensation.

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

21 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
22 should have known that Plaintiff Brown and other non-party Aggrieved Employees were
23 entitled to meal periods in accordance with the California Labor Code and applicable IWC Wage
24 Order or payment of one (1) additional hour of pay at their regular rates of pay when they were
25 not provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff
26 Brown and other non-party Aggrieved Employees were not provided with all meal periods or
27 payment of one (1) additional hour of pay at their regular rates of pay when they did not receive
28 a timely, uninterrupted, thirty (30) minute meal period.

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

9 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
10 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
11 receive complete and accurate wage statements in accordance with California law. In violation
12 of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not
13 provided complete and accurate wage statements.

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

18 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that other non-party Aggrieved Employees were entitled to receive copies
20 of instruments that they signed upon request. In violation of the California Labor Code,
21 Defendants denied other non-party Aggrieved Employees their right to obtain copies of
22 instruments that they signed.

23 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that other non-party Aggrieved Employees were entitled to receive copies
25 of their personnel records no later than 30 days from the date Defendants receive a written
26 request. In violation of the California Labor Code, Defendants denied other non-party
27 Aggrieved Employees their right to obtain copies of their personnel records within the statutory
28 time limits.

1 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
3 timely payment of all wages earned upon termination of employment. In violation of the
4 California Labor Code, Plaintiffs and other non-party Aggrieved Employees did not receive
5 payment of all wages due, including, but not limited to, overtime wages, minimum wages, meal
6 and rest period premiums, and/or reporting time pay, within permissible time periods.

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

13 41. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
15 receive itemized wage statements or separate written statements showing the amount of paid
16 sick leave available, or paid time off provided in lieu of sick leave. In violation of the California
17 Labor Code, Defendants failed to provide Plaintiffs and other non-party Aggrieved Employees
18 with written itemized wage statements or separate written statements showing this information.

19 42. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
20 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
21 suitable resting facilities to cease work and recover during meal or rest periods, but failed to
22 provide suitable resting facilities.

23 43. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
25 suitable seating and/or were entitled to sit when it did not interfere with the performance of their
26 duties and also have seats nearby to use during a lull in tasks that do require moving about or
27 standing.

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

1 should have known that Plaintiff McCreary and other non-party Aggrieved Employees were
2 entitled to be paid reporting time pay when they reported to work for their usual or scheduled
3 shift but were put to work for less than half of the usual or scheduled shift. In violation of the
4 California Labor Code, Defendants did not pay Plaintiff McCreary and other non-party
5 Aggrieved Employees all reporting time pay due.

6 45. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
7 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
8 receive full reimbursement for all business-related expenses and costs they incurred during the
9 course and scope of their employment and that they did not receive full reimbursement of
10 applicable business-related expenses and costs incurred.

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

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

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

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

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

4 (a) The aggrieved employee shall give written notice by online filing
5 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail to
6 the employer of the specific provisions of the California Labor Code
7 alleged to have been violated, including the facts and theories to support
8 the alleged violations.

9 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
10 2699.3(a) and any employer response to that notice shall be accompanied
11 by a filing fee of seventy-five dollars (\$75).

12 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
13 employer and the aggrieved employee by certified mail that it does not
14 intend to investigate the alleged violation within sixty (60) calendar days
15 of the postmark date of the Employee’s Notice. Upon receipt of the
16 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
17 (65) calendar days of the postmark date of the Employee’s Notice, the
18 aggrieved employee may commence a civil action pursuant to California
19 Labor Code section 2699 to recover civil penalties in addition to any other
20 penalties to which the employee may be entitled.

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

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

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

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

12 52. On December 12, 2023, Plaintiff McCreary provided written notice by online
13 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
14 California Labor Code alleged to have been violated, including facts and theories to support the
15 alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
16 McCreary's written notice was accompanied with the applicable filing fee of seventy-five
17 dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff McCreary's
18 written notice and assigned Plaintiff McCreary PAGA Case Number LWDA-CM-999438-23.
19 A true and correct copy of Plaintiff McCreary's written notice to the LWDA and Defendants
20 dated December 12, 2023, is attached hereto as "Exhibit 1."

21 53. On December 12, 2023, Plaintiff Brown provided written notice by online filing
22 to the LWDA and by certified mail to Defendants of the specific provisions of the California
23 Labor Code alleged to have been violated, including facts and theories to support the alleged
24 violations, in accordance with California Labor Code section 2699.3. Plaintiff Brown's written
25 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
26 PAGA Administrator has confirmed receipt of Plaintiff Brown's written notice and assigned
27 Plaintiff Brown PAGA Case Number LWDA-CM-999436-23. A true and correct copy of
28 Plaintiff Brown's written notice to the LWDA and Defendants dated December 12, 2023, is

1 attached hereto as “Exhibit 2.”

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

5 55. Thus, Plaintiffs have satisfied the administrative prerequisites under California
6 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
7 violations of California Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 246, 432, 510,
8 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

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

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

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

Order.

59. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 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 non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 246, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

61. 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, 226.7, 510, 512(a), 1174(d), 1194, 1197, 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 226(a)-(c), 246, 432, 516, and 1182.12.

62. 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 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiffs and other non-party Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;
- (b) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate other non-party Aggrieved Employees with all required overtime pay, as set forth below;

- (c) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order for Defendants' failure to include all forms of remuneration in the regular rate of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to other non-party Aggrieved Employees, as set forth below;
- (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff Brown and other non-party Aggrieved Employees with meal periods, as set forth below;
- (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiffs and other non-party Aggrieved Employees to take rest periods, as set forth below;
- (e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiffs and other non-party Aggrieved Employees, as set forth below;
- (f) Violations of Labor Code sections 226(b)-(c), 432, 1198.5, and the applicable IWC wage order for failure to produce copies or allow inspection of other non-party Aggrieved Employees' own personnel and other employment records upon written request within the statutory time limits, as set forth below;
- (g) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as set forth below;
- (h) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as set forth below;
- (i) Violation of Labor Code section 246 for failure to provide written notice of paid sick leave available, or paid time off, as set forth below;

- (j) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide suitable resting facilities to Plaintiffs and other non-party Aggrieved Employees, as set forth below;
- (k) Violation of Labor Code section 1198 for failing to provide suitable seating to Plaintiffs and other non-party Aggrieved Employees, as set forth below;
- (l) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to pay reporting time pay when Plaintiff McCreary and other non-party Aggrieved Employees were put to work for less than half of their regular scheduled shifts, as set forth below; and
- (m) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below.

FAILURE TO PAY MINIMUM WAGES

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

63. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 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. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

64. First, Defendants had, and continue to have, a company-wide policy and/or practice of requiring Plaintiffs and other non-party Aggrieved Employees to perform tasks while off-the-clock. For example, on information and belief, Defendants’ timekeeping system prevented employees from clocking in until their exact scheduled shift times so that they were prohibited from recording any time worked prior to the start of their scheduled shifts. Moreover, Defendants’ management required Plaintiff McCreary and other non-party Aggrieved

1 Employees to arrive 15 minutes prior to the start of their shifts to prepare for the upcoming shift,
2 including washing their hands, putting on hair nets, and preparing the work areas, before they
3 were allowed to clock in. As a further example, because Defendants' timekeeping system was
4 integrated with the company's point-of-sale ("POS") system, Plaintiff McCreary and other
5 non-party Aggrieved Employees would often have to spend time waiting to clock in for the start
6 of their shifts, because other employees were using the POS system to handle customer
7 transactions and input food orders for preparation. For instance, Plaintiff McCreary and other
8 non-party Aggrieved Employees were required to wait several minutes under Defendants'
9 control until a POS machine was available for clocking-in, time for which they were not paid.
10 Consequently, on information and belief, Plaintiff McCreary and other non-party Aggrieved
11 Employees performed work prior to the start of their shifts, but were unable to record this time.
12 Moreover, as a further example, Plaintiff Brown and other non-party Aggrieved Employees
13 clocked out at the end of their shifts, but were required to continue working and assisting
14 customers or completing closing duties, such as cleaning the restaurant, before they were
15 allowed to leave. Thus, Defendants failed to track all of the time that employees spent
16 performing work-related tasks outside of their shifts, and Plaintiffs and other non-party
17 Aggrieved Employees received no compensation for this time.

18 65. Second, Defendants also had a company-wide security policy and/or practice for
19 closing shifts, requiring employees to leave the restaurant premises together in one group. After
20 clocking out at the end of their shifts, Plaintiff Brown and other non-party Aggrieved Employees
21 were required to wait for a managerial employee before they could be released by that
22 managerial employee and leave Defendants' premises together. For example, when scheduled
23 for closing shifts, Plaintiff Brown and other non-party Aggrieved Employees would complete
24 their own closing tasks, clock out, and then have to wait until their manager had completed their
25 own respective closing duties, such as activating the security alarm, before being released. As
26 a result, Plaintiff Brown and other non-party Aggrieved Employees were subject to Defendants'
27 control after they had clocked out from their shifts, but were not compensated for this time.

28 66. Third, as stated, Defendants had, and continue to have, a company-wide policy

1 of strictly staffing their restaurant locations based on the labor hours allocated by each location's
2 labor or payroll budget set by the corporate office. This practice of labor budgeting and/or
3 limited payroll allocation, combined with the assignment of heavy workloads, has resulted in
4 chronic understaffing and a lack of adequate meal period coverage, because there were too few
5 employees on duty to handle the workload and attend to customers. Because Defendants did
6 not employ or staff a sufficient number of employees to meet customer demand, there was no
7 one available to relieve employees needing meal period coverage, and Plaintiff Brown and other
8 non-party Aggrieved Employees were not always afforded uninterrupted 30-minute meal
9 periods during shifts when they were entitled to receive a meal period. Moreover, Defendants
10 have a practice of failing to adhere to a schedule for meal periods, which further caused Plaintiff
11 Brown and other non-party Aggrieved Employees to not be relieved of their duties for compliant
12 meal periods.

13 67. Further, Defendants' company-wide timekeeping system prevented other
14 non-party Aggrieved Employees from recording all hours worked when their meal periods were
15 shortened or interrupted, because the system locked out other non-party Aggrieved Employees
16 once they clocked out for a meal period, and would not permit them to clock back in from a
17 meal period before 30 minutes had elapsed. Thus, Defendants did not record all hours worked
18 during meal periods and other non-party Aggrieved Employees performed work during meal
19 periods for which they were not paid.

20 68. Defendants knew or should have known that as a result of these company-wide
21 practices and/or policies, Plaintiffs and other non-party Aggrieved Employees were performing
22 their assigned duties off-the-clock before and after their shifts and/or during meal periods, and
23 were suffered or permitted to perform work for which they were not paid. Accordingly,
24 Defendants did not pay minimum wages for all hours worked by Plaintiffs and other non-party
25 Aggrieved Employees, in violation of California Labor Code sections 1182.12, 1194, 1197, and
26 1198.

27 69. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
28 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.

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

3 **FAILURE TO PAY OVERTIME**

4 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

5 70. Labor Code section 1198 makes it illegal to employ an employee under
6 conditions of labor that are prohibited by the applicable wage order. California Labor Code
7 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
8 be the . . . standard conditions of labor for employees. The employment of any employee . . .
9 under conditions of labor prohibited by the order is unlawful.”

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

14 72. Specifically, the applicable IWC Wage Order provides that Defendants are and
15 were required to pay Plaintiffs and other non-party Aggrieved Employees working more than
16 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
17 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
18 hours in a workweek.

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

24 74. California Labor Code section 510 codifies the right to overtime compensation
25 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
26 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
27 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
28 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on

1 the seventh (7th) day of work.

2 75. During the relevant time period, Defendants willfully failed to pay all overtime
3 wages owed to Plaintiffs and other non-party Aggrieved Employees. During the relevant time
4 period, Plaintiffs and other non-party Aggrieved Employees were not paid overtime premiums
5 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
6 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
7 not recorded.

8 76. First, as stated above, Defendants required other non-party Aggrieved
9 Employees to perform various work-related tasks while off-the-clock before and/or after their
10 shifts, including arriving early to prepare for their shifts, waiting to clock in for the start of their
11 shifts because other employees were using the POS system, continuing to assist customers,
12 completing closing duties, and waiting to leave the premises in groups. As also stated, due to
13 Defendants' implementation of a timekeeping system that prevented employees from clocking
14 in until their exact scheduled shift times, other non-party Aggrieved Employees were prevented
15 from recording the entire time worked prior to the start of their scheduled shifts, and thus were
16 not paid for this time. Thus, Defendants failed to track this time other non-party Aggrieved
17 Employees spent working off-the-clock, and other non-party Aggrieved Employees received no
18 compensation for this time.

19 77. Second, as set forth above, due to Defendants' uniform practices of utilizing
20 labor budgets, understaffing, assignment of heavy workloads, failure to adhere to a schedule for
21 meal periods, and subsequent lack of meal period coverage, other non-party Aggrieved
22 Employees were forced to forego meal periods, have their meal periods interrupted, and/or were
23 otherwise not relieved of all duties during meal periods. Furthermore, Defendants
24 systematically failed to pay other non-party Aggrieved Employees for actual hours worked
25 during unpaid meal periods, because Defendants' timekeeping system locked out other non-
26 party Aggrieved Employees for 30 minutes when they clocked out for a meal period.

27 78. Defendants knew or should have known that, as a result of these company-wide
28 practices and/or policies, other non-party Aggrieved Employees were performing their

1 assigned duties off-the-clock before and after their shifts and/or during meal periods, and were
2 suffered or permitted to perform work for which they were not paid. Because other non-party
3 Aggrieved Employees regularly worked shifts of eight (8) hours a day or more, or forty (40)
4 hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

5 79. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
6 correct overtime rate for the recorded overtime hours that they generated. In addition to an
7 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
8 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
9 California Labor Code, Defendants failed to incorporate all compensation, including incentive
10 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
11 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times
12 when other non-party Aggrieved Employees worked overtime and received these other forms
13 of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
14 required.

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

20 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

21 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

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

25 82. At all relevant times herein set forth, California Labor Code section 512(a)
26 provides that an employer may not require, cause, or permit an employee to work for a period
27 of more than five (5) hours per day without providing the employee with a meal period of not
28 less than thirty (30) minutes, except that if the total work period per day of the employee is not

1 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
2 and the employee. Under California law, first meal periods must start after no more than five
3 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

4 83. At all relevant times herein set forth, California Labor Code sections 226.7,
5 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
6 meal period mandated by an applicable order of the IWC.

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

13 85. Under California law, an employer cannot evade meal period requirements via
14 the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec.*
15 *Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013).

16 86. During the relevant time period, as set forth above, Defendants had, and continue
17 to have, a company-wide policy and/or practice of understaffing their locations due to labor
18 budgeting and/or limited payroll allocation, which, combined with the assignment of heavy
19 workloads and failure to adhere to a schedule for meal periods, has resulted in a lack of meal
20 period coverage and prevented Plaintiff Brown and other non-party Aggrieved Employees from
21 taking all timely, uninterrupted meal periods to which they were entitled. As a result, Plaintiff
22 Brown and other non-party Aggrieved Employees had to work through all or part of their meal
23 periods, had their meal periods interrupted, and/or had to wait extended periods of time before
24 taking meal periods. For example, Plaintiff Brown was occasionally required to work through
25 his meal periods.

26 87. Further, as stated, Defendants' company-wide timekeeping system prevented
27 other non-party Aggrieved Employees from recording all hours worked when their meal periods
28 were shortened or interrupted, because the system locked out other non-party Aggrieved

1 Employees once they clocked out for a meal period, and would not permit them to clock back
2 in from a meal period before 30 minutes had elapsed.

3 88. Moreover, Defendants did not provide other non-party Aggrieved Employees
4 with second 30-minute meal periods on days that they worked in excess of 10 hours in one day.
5 Plaintiffs and other non-party Aggrieved Employees did not sign valid meal period waivers on
6 days that they were entitled to meal periods and were not relieved of all duties.

7 89. Moreover, Defendants had a company-wide policy of requiring all newly hired
8 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
9 the position that non-exempt, hourly paid employees had waived their rights to first and/or
10 second meal periods for the entirety of their employment and, on that basis, did not provide
11 them with all meal periods to which they were entitled. Furthermore, Defendants' "Meal Period
12 Waiver" requires employees to provide written notice should they wish to revoke the waiver.
13 Defendants' presumption that meal periods would not be provided for shifts in excess of five
14 (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve
15 (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition
16 on employees to revoke the waivers in writing, discouraged and impeded Plaintiff Brown and
17 other non-party Aggrieved Employees from taking all meal periods to which they were entitled.

18 90. Furthermore, an employer's obligation to provide a meal period is only
19 "triggered" when the employer "employs an employee for a work period of more than five hours
20 per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to
21 work for a full five hours, its meal break obligation is triggered.").

22 [A]fter the meal break obligation is triggered . . . an employer is
23 put to a choice: it must (1) afford an off-duty meal period; (2)
24 consent to a mutually agreed-upon waiver if one hour or less will
25 end the shift; or (3) obtain written agreement to an on-duty meal
period if circumstances permit. Failure to do one of these will
render the employer liable for premium pay.

26 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
27 require Plaintiffs and other non-party Aggrieved Employees to sign meal period waivers
28 simultaneously at or near their time of hire (as opposed to on a specific work day) renders them

1 invalid and unenforceable, because Defendants' obligation to provide Plaintiffs and other
2 non-party Aggrieved Employees with meal periods did not arise until they had employed them
3 for a full five (5) hours.

4 91. Finally, Defendants took the position that the nature of work performed by
5 Plaintiff Brown and other non-party Aggrieved Employees called for "on-duty" meal periods
6 and on that basis, did not provide off duty meal periods and did not pay Plaintiff Brown and
7 other non-party Aggrieved Employees meal period premiums for noncompliant meal periods.
8 Specifically, Defendants implemented a company-wide "On-Duty Meal Period [Agreement]"
9 and required Plaintiff Brown and other non-party Aggrieved Employees to execute the
10 agreement at their time of hire. Defendants' "On-Duty Meal Period [Agreement]" provides, in
11 relevant part:

12 Since the nature of my work duties, as a late night or graveyard
13 shift employee, prevents me from being relieved of all duty during
14 a meal period, I understand and voluntarily agree to work an on-
15 the-job thirty (30) minute meal period that shall be paid for by
Taco Bell Corp.

16 92. However, Defendants' use of an "on-duty" meal period policy is and was
17 unlawful. Under California law, "on-duty" meal periods are a limited alternative to the
18 requirement to provide off-duty meal periods and can only be utilized under certain
19 circumstances. Defendants' business did not require a single-employee staffing model given
20 multiple employees worked at their worksites. There were usually at least a few other
21 employees employed by Defendants at Plaintiff Brown's and other non-party Aggrieved
22 Employees' restaurant location and the restaurant location was not in an isolated area. Further,
23 the work of Defendants' restaurant employees is not the kind that could be said to meet the
24 "nature of the work" exception. Plaintiff Brown and other non-party Aggrieved Employees
25 were responsible for taking orders, preparing food items, and cleaning the restaurant and store.
26 None of these tasks is akin to the kind that the DLSE has found warrant an "on-duty" meal
27 period, such as transporting hazardous materials via vehicles that must be monitored at all times
28 pursuant to federal regulation. Therefore, Defendants' use of an "on duty" meal period is

1 improper and unlawful.

2 93. At all times mentioned herein, Defendants knew or should have known that as a
3 result of their policies, Plaintiff Brown and other non-party Aggrieved Employees were not
4 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
5 knew or should have known that they did not pay Plaintiff Brown and other non-party Aggrieved
6 Employees meal period premiums when meal periods were late, interrupted, shortened, and/or
7 missed.

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

17 95. Thus, Defendants failed to provide Plaintiff Brown and other non-party
18 Aggrieved Employees compliant meal periods and failed to pay the full meal period premiums
19 due. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
20 sections 226.7, 512(a), 516, and 1198. Plaintiff Brown and other non-party Aggrieved
21 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558
22 and/or 2699(a), (f), and (g).

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

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

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

28 97. At all relevant times, the applicable IWC Wage Order provides that "[e]very

1 employer shall authorize and permit all employees to take rest periods, which insofar as
2 practicable shall be in the middle of each work period” and that the “rest period time shall be
3 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
4 hours or major fraction thereof” unless the total daily work time is less than three and one-half
5 (3 ½) hours.

6 98. At all relevant times, California Labor Code section 226.7 provides that no
7 employer shall require an employee to work during any rest period mandated by an applicable
8 order of the California IWC. To comply with its obligation to authorize and permit rest periods
9 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
10 must “relinquish any control over how employees spend their break time, and relieve their
11 employees of all duties—including the obligation that an employee remain on call. A rest
12 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
13 257, 273 (2016).

14 99. Pursuant to the applicable IWC Wage Order and California Labor Code section
15 226.7(c), Plaintiffs and other non-party Aggrieved Employees are entitled to recover from
16 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
17 required rest period was not authorized and permitted.

18 100. During the relevant time period, Defendants regularly failed to authorize and
19 permit Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest period
20 per each four (4) hour period worked or major fraction thereof. As with meal periods,
21 Defendants’ company-wide use of labor budgeting and/or limited payroll allocation,
22 understaffing, and assigning heavy workloads resulted in a lack of rest period coverage and
23 prevented Plaintiffs and other non-party Aggrieved Employees from being relieved of all duty
24 in order to take compliant rest periods. Defendants also failed to schedule and/or adhere to a
25 schedule for rest periods, which, coupled with Defendants’ failure to provide adequate rest
26 period coverage, further led to Plaintiffs and other non-party Aggrieved Employees not being
27 authorized and permitted to take rest periods. Moreover, Plaintiff Brown and other non-party
28 Aggrieved Employees were sometimes required to wear a radio headset during their rest periods

1 to respond to requests from drive-thru customers, resulting in interrupted rest periods.

2 101. Furthermore, upon information and belief, during the relevant time period,
3 Defendants maintained and implemented a company-wide on-premises rest period policy,
4 which required that Plaintiffs and/or other non-party Aggrieved Employees remain on the work
5 premises during their rest periods. Because Plaintiffs and/or other non-party Aggrieved
6 Employees were restricted from leaving the premises during rest periods, they were denied the
7 ability to use their rest periods freely for their own purposes, such as running personal errands.
8 Thus, Defendants effectively maintained control over Plaintiffs and/or other non-party
9 Aggrieved Employees during rest periods.

10 102. As a result of Defendants' practices and policies, Plaintiffs and other non-party
11 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess
12 of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
13 entitled. For example, throughout her employment, Plaintiff McCreary regularly had to forego
14 her rest periods because the restaurant was busy, and she did not have sufficient coverage.
15 When Plaintiff McCreary was able to take her rest periods, Defendants' management frequently
16 interrupted them requesting that she return to work and assist customers. As a further example,
17 Plaintiff Brown sometimes had to forego his rest periods because the restaurant was busy, and
18 he did not have sufficient coverage. When Plaintiff Brown was able to take his rest periods,
19 they were sometimes interrupted.

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

104. Accordingly, Defendants failed to authorize and permit all compliant rest periods and failed to pay the full rest period premiums due. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

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

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

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

107. First, because Defendants did not record the time Plaintiffs and other non-party Aggrieved Employees spent working off-the-clock, Defendants did not list the correct amount of gross wages and net wages earned by Plaintiffs and other non-party Aggrieved Employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiffs and other non-party 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

1 number of hours worked at each hourly rate, in violation of section 226(a)(9).

2 108. Second, because Defendants did not calculate other non-party Aggrieved
3 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal
4 and rest period premiums, Defendants did not list the correct amount of gross wages in
5 compliance with section 226(a)(1) and did not list the correct amount of net wages in violation
6 of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect
7 during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest
8 period premiums, in violation of section 226(a)(9).

9 109. Third, and separately from these violations, Defendants issued uniform wage
10 statements to Plaintiffs and other non-party Aggrieved Employees that failed to list the address
11 of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section
12 226(a)(8) is to provide California employees with transparency as to the true identity of their
13 employer, to allow the employee to contact their employer during employment or in the future
14 for various reasons, including filing an administrative claim, judicial claim, or other action to
15 seek relief against their employer, to obtain unemployment benefits, etc. During the relevant
16 time period, Defendants systematically, and on a company-wide basis, issued wage statements
17 to Plaintiffs and other non-party Aggrieved Employees that fail to list the employing entity's
18 correct address. Plaintiffs' and other non-party Aggrieved Employees' wage statements
19 incorrectly list the employer's address as "3301 STOBBER ROAD, LOUISVILLE, KY 40213,"
20 but according to the California Secretary of State's website, TACO BELL CORP.'s entity
21 address should be "1 GLEN BELL WAY, IRVINE, CA 92618."

22 110. The wage statement deficiencies also include, among other things, failing to list
23 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
24 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for
25 which aggrieved employees were paid; failing to list the name of the employee and only the last
26 four digits of his or her social security number or an employee identification number other than
27 a social security number; failing to list the name of the legal entity that is the employer; and/or
28 failing to state all hours worked as a result of not recording or stating the hours they worked

1 off-the-clock. In addition, Defendants failed to provide Plaintiffs and other non-party
2 Aggrieved Employees the option to elect to receive hard copies of their wage statements at any
3 time and/or failed to provide them with the ability to easily access the information and convert
4 the wage statements into hard copies at no expense to them.

5 111. California Labor Code section 1174(d) provides that “[e]very person employing
6 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
7 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
8 plants or establishments at which employees are employed, payroll records showing the hours
9 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
10 applicable piece rate paid to, employees employed at the respective plants or
11 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
12 civil penalty if they fail to maintain accurate and complete records as required by section
13 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
14 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other non-
15 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto as
16 a result of failing to record the off-the-clock hours that they worked.

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

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

**FAILURE TO PRODUCE AND/OR PERMIT INSPECTION OF RECORDS AND
INSTRUMENTS SIGNED**

VIOLATION OF LABOR CODE SECTIONS 226(b)-(c), 1174(d), AND 1198

114. At all relevant times herein, California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee's request.

115. At all times relevant herein, California Labor Code section 432 states, "[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request." California Labor Code section 433 states, "[a]ny person violating this article is guilty of a misdemeanor."

116. At all times relevant herein, California Labor Code section 1198.5 requires that an employer provide a copy of an employee's personnel record no later than 30 days from the date the employer receives a written request.

117. At all times relevant herein, the applicable IWC Wage Order No. 5-2001, section 7(A), provides that "[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request." IWC Wage Order No. 5-

2001, section 7(C), also provides, “[a]ll required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee’s records shall be available for inspection by the employee upon reasonable request.”

118. During the relevant time period, other non-party Aggrieved Employees sent Defendants reasonable written requests for documents and records relating to their employment with Defendants. During the relevant time period, Defendants failed to produce for inspection and copying or otherwise permit inspection and copying of documents and records relating to other non-party Aggrieved Employees’ employment. Thus, Defendants have failed to comply with the reasonable written requests for documents and records relating to other non-party Aggrieved Employees’ employment within the statutory time limits, in violation of Labor Code sections 226(b)-(c), 432, 1198, 1198.5, and the applicable IWC Wage Order.

119. Because Defendants’ violations of 226(f) and 1198.5 were committed against other non-party Aggrieved Employees, other non-party Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code sections 226(f), 1198.5(k), and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

120. At all relevant times herein set forth, 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. Labor Code section 204 further provides 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.

121. At all relevant times herein, California Labor Code section 204 also requires that

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

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

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

12 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

21 125. On information and belief, Defendants have a company-wide practice and/or
22 policy of paying departing employees their final wages on the next regular pay cycle, instead of
23 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
24 on information and belief, Plaintiff Brown provided Defendants with more than seventy-two
25 (72) hours' notice of his intention to quit; however, Defendants did not provide Plaintiff Brown
26 with his final wages until one week after his last day of work. Thus, Defendants failed to pay
27 Plaintiff Brown his final wages within the requisite time limit, in violation of California Labor
28 Code section 202.

126. Additionally, Defendants willfully failed to pay Plaintiffs and other non-party Aggrieved Employees 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 reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

127. Defendants' failure to pay Plaintiffs and those non-party Aggrieved Employees 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 California Labor Code sections 201 and 202. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

**FAILURE TO PROVIDE WRITTEN NOTICE OF PAID SICK LEAVE BENEFITS
VIOLATION OF LABOR CODE SECTION 246**

128. California's Healthy Workplaces, Healthy Families Act of 2014 was enacted to provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Codified at California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249, 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.

129. During the relevant time period, Defendants have failed to provide Plaintiffs and other non-party Aggrieved Employees written notice on wage statements and/or other separate written statements that listed the amount of paid sick leave (or equivalent paid leave or paid time off) available to them. Defendants' ongoing and systematic failure to provide written

1 notice of sick leave benefits to Plaintiffs and other non-party Aggrieved Employees violates
2 California Labor Code section 246(i).

3 130. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
4 recover civil penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

5 **FAILURE TO PROVIDE SUITABLE RESTING FACILITIES**
6 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
7 **REGULATIONS, TITLE 8, SECTION 11050(13)(B)**

8 131. At all relevant times herein, California Labor Code section 1198 makes it illegal
9 to employ an employee under conditions of labor that are prohibited by the applicable wage
10 order. California Labor Code section 1198 requires that “. . . the standard conditions of labor
11 fixed by the commission shall be the . . . standard conditions of labor for employees. The
12 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”
13 California Code of Regulations, Title 8, section 11050(13)(B) provides that “[s]uitable resting
14 facilities shall be provided in an area separate from the toilet rooms and shall be available to
15 employees during work hours.”

16 132. Defendants’ California restaurant locations are generally similar in their layout
17 and design and there was, and continues to be, space that allows for a resting facility that
18 employees may use to cease work and recover during meal or rest periods. Defendants could
19 have provided Plaintiffs and other non-party Aggrieved Employees with a suitable resting
20 facility within all of their restaurant locations, with reasonable or no modification, but instead
21 denied, and continue to deny, employees suitable areas to rest (e.g., a breakroom with seats).
22 As a result, Plaintiffs and other non-party Aggrieved Employees were forced to adjust to areas
23 not conducive to resting, such as sitting in the public customer area or searching for areas
24 outside of the restaurant which are not designated or reserved for their rest, such as their
25 personal vehicles.

26 133. Defendants did not provide Plaintiffs and other non-party Aggrieved Employees
27 with suitable resting facilities during their work hours, particularly during meal or rest periods.
28 In other words, during the times when Plaintiffs and other non-party Aggrieved Employees were

1 legally allowed to forgo assigned tasks, as in during a meal or rest period, Defendants denied
2 them any area within their restaurant locations to cease work and recover. Moreover,
3 Defendants did not inform Plaintiffs and other non-party Aggrieved Employees of their rights
4 to suitable resting facilities under California law.

5 134. As a result of Defendants' company-wide failure to provide suitable resting
6 facilities in their restaurant locations, Plaintiffs and other non-party Aggrieved Employees were
7 forced to adjust to areas not conducive to resting or search for facilities outside their restaurants
8 to cease work and recover. Defendants' failure to provide suitable resting facilities to Plaintiffs
9 and other non-party Aggrieved Employees violates California Labor Code section 1198 and
10 IWC Wage Order No. 5-2001, subdivision 13(B).

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

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

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

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

26 138. During the relevant time period, Defendants violated California Labor Code
27 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because
28 Plaintiffs and other non-party Aggrieved Employees were not allowed to sit, even during lulls

1 in their work duties, nor were they provided with suitable seats in reasonable proximity to their
2 work areas.

3 139. Defendants' California restaurants are generally similar in their layout and
4 design and there was, and continues to be, space near their work areas (with reasonable or no
5 modification to these work areas) to allow for the presence and use of a seat or stool by Plaintiffs
6 and other non-party Aggrieved Employees during lulls in operation. Defendants could have
7 provided Plaintiffs and other non-party Aggrieved Employees with a seat or stool in their work
8 areas, but instead denied, and continue to deny, employees seating, forcing them to stand
9 throughout the day.

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

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

25 142. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
26 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

27 //

28 //

FAILURE TO PAY REPORTING TIME PAY
VIOLATION OF LABOR CODE SECTION 1198

143. 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.”

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

145. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because Defendants failed to pay Plaintiff McCreary and other non-party Aggrieved Employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day’s work.

146. On information and belief, Defendants had a company-wide practice of sending Plaintiff McCreary and other non-party Aggrieved Employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Plaintiff McCreary and other non-party Aggrieved Employees for half of their usual or scheduled shift. For example, when scheduled to work 6- or 8-hour shifts, Defendants’ managers sent Plaintiff McCreary and other non-party Aggrieved Employees home an hour after

1 the start of their shifts because business was slow. Although Plaintiff McCreary and other non-
2 party Aggrieved Employees would report to work based on the schedule that Defendants
3 provided to them, Defendants would send them home before they had worked at least half of
4 their scheduled shifts without giving them reporting time pay.

5 147. Accordingly, Plaintiff McCreary and other non-party Aggrieved Employees were
6 not properly compensated with reporting time pay in violation of California Labor Code section
7 1198 and California Code of Regulations, Title 8, section 11040(5)(A). Plaintiff McCreary and
8 other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant
9 to Labor Code sections 2699(a), (f), and (g).

10 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

11 **VIOLATION OF LABOR CODE SECTION 2802**

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

20 149. During the relevant time period, Defendants, on a company-wide basis, required
21 Plaintiffs and other non-party Aggrieved Employees to report to work in clean and presentable
22 uniforms bearing the company logo and name. However, Defendants did not provide their
23 employees with sufficient uniforms to wear for their shifts throughout the week. Defendants
24 only provided Plaintiffs with one (1) shirt, one (1) hat, and one (1) apron at the time of hire.
25 Because Defendants failed to provide Plaintiffs and other non-party Aggrieved Employees with
26 an adequate number of uniforms in relation to the tasks they were required to perform, Plaintiffs
27 and/or other non-party Aggrieved Employees had to wash their uniforms more frequently than
28 they otherwise would do laundry, and incur expenses in doing so. Thus, Defendants failed to

maintain the uniforms they required Plaintiffs and/or other non-party Aggrieved Employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

150. Defendants could have provided Plaintiffs and other non-party Aggrieved Employees with an adequate number of uniforms or access to laundering services. Or, Defendants could have reimbursed employees for the costs of their laundering expenses or provided a uniform maintenance allowance. Instead, Defendants passed these operating costs off onto Plaintiffs and/or other aggrieved employees.

151. Defendants' company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred and passing on their operating costs to Plaintiffs and other non-party Aggrieved Employees violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiffs and other non-party Aggrieved Employees for necessary business-related expenses and costs.

152. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

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

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

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved Employees: 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums); 226.7, 512(a), 516, and 1198

(by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 226(b)-(c), 432, and 1198.5 (by failing to produce copies or allow inspection of records and instruments signed); 204 (by failing to timely pay all earned wages during employment); 201 and 202 (by failing to timely pay all earned wages upon termination); 246 (by failing to provide written notice of paid sick leave); 1198 and the applicable IWC Wage Order (by failing to provide suitable resting facilities); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); 1198 and the applicable IWC Wage Order (by failing to provide reporting time pay); and 2802 (by failing to reimburse business expenses);

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 248.5, 256, 558, 1174.5, and 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 246, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 246, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

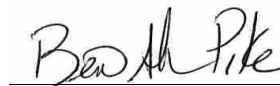
6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: February 16, 2024

Respectfully submitted,

Capstone Law APC

By:



Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi

Attorneys for Linda McCreary and Willie Brown

EXHIBIT “1”



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December 12, 2023

VIA ONLINE SUBMISSION

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

Subject: *Linda McCreary v. Taco Bell Corp., et al.*

Dear PAGA Administrator:

This office represents Linda McCreary in connection with her claims under the California Labor Code. Ms. McCreary was an employee of TACO BELL CORP.; TACO BELL OF AMERICA, LLC; TB CANTINA LLC; and/or YUM! BRANDS, INC. For the purpose of this letter, Ms. McCreary collectively refers to these entities as "TACO BELL."

The employers may be contacted directly at the addresses below:

TACO BELL CORP.
1 GLEN BELL WAY
IRVINE, CA 92618

TACO BELL OF AMERICA, LLC
1 GLEN BELL WAY
IRVINE, CA 92618

TB CANTINA LLC
1 GLEN BELL WAY
IRVINE, CA 92618

YUM! BRANDS, INC.
1441 GARDINER LANE
LOUISVILLE, KY 40213

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

TACO BELL employed Ms. McCreary as an hourly paid, non-exempt Cashier from approximately June 2023 to August 2023. During her employment, Ms. McCreary typically worked five (5) or more hours per day and five (5) days per week. At the time her employment ended, Ms. McCreary was compensated approximately \$15.50 per hour. Her primary job duties included, without limitation, cashiering, providing customer service, and cleaning.

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

TACO BELL’s Company-Wide and Uniform Payroll and HR Practices

TACO BELL CORP. is a California corporation; TACO BELL OF AMERICA, LLC and TB CANTINA LLC are Delaware limited liability companies; and YUM! BRANDS, INC. is Kentucky corporation. Together, they operate a chain of Taco Bell restaurants with approximately 46 locations in California. Upon information and belief, TACO BELL maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Irvine, California, or Louisville, Kentucky, for all non-exempt, hourly paid employees working for TACO BELL in California, including Ms. McCreary and other aggrieved employees. At all relevant times, TACO BELL issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. McCreary and other aggrieved employees, regardless of their location or position.

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

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 Industrial Welfare Commission (“IWC”). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

First, TACO BELL had, and continues to have, a company-wide policy and/or practice of requiring Ms. McCreary and other aggrieved employees to perform tasks while off-the-clock. For example, on information and belief, TACO BELL’s timekeeping system prevented employees from clocking in until their exact scheduled shift times so that they were prohibited from recording any time worked prior to the start of their scheduled shifts. Moreover, TACO BELL’s management required Ms. McCreary and other aggrieved employees to arrive 15 minutes prior to the start of their shifts to prepare for the upcoming shift, including washing their hands, putting on hair nets, and preparing the work areas, before they were

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

allowed to clock in. As a further example, because TACO BELL's timekeeping system was integrated with the company's point-of-sale ("POS") system, Ms. McCreary and other aggrieved employees would often have to spend time waiting to clock in for the start of their shifts, because other employees were using the POS system to handle customer transactions and input food orders for preparation. For instance, Ms. McCreary and other aggrieved employees were required to wait several minutes under TACO BELL's control until a POS machine was available for clocking-in, time for which they were not paid. Consequently, on information and belief, Ms. McCreary and other aggrieved employees performed work prior to the start of their shifts, but were unable to record this time. Moreover, as a further example, other aggrieved employees clocked out at the end of their shifts, but were required to continue working and assisting customers or completing closing duties, such as cleaning the restaurant, before they were allowed to leave. Thus, TACO BELL failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Ms. McCreary and other aggrieved employees received no compensation for this time.

Second, TACO BELL also had a company-wide security policy and/or practice for closing shifts, requiring employees to leave the restaurant premises together in one group. After clocking out at the end of their shifts, other aggrieved employees were required to wait for a managerial employee before they could be released by that managerial employee and leave TACO BELL's premises together. For example, when scheduled for closing shifts, other aggrieved employees would complete their own closing tasks, clock out, and then have to wait until their manager had completed their own respective closing duties, such as activating the security alarm, before being released. As a result, other aggrieved employees were subject to TACO BELL's control after they had clocked out from their shifts, but were not compensated for this time.

Third, as stated, TACO BELL had, and continues to have, a company-wide policy of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. This practice of labor budgeting and/or limited payroll allocation, combined with the assignment of heavy workloads, has resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. Because TACO BELL did not employ or staff a sufficient number of employees to meet customer demand, there was no one available to relieve employees needing meal period coverage, and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, TACO BELL has a practice of failing to adhere to a schedule for meal periods, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods.

Further, TACO BELL's company-wide timekeeping system prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, TACO BELL did not record all hours worked during meal periods and other aggrieved employees performed work during meal periods for which they were not paid.

Accordingly, TACO BELL regularly failed to pay at least minimum wages to Ms. McCreary 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. McCreary 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 §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable 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.

TACO BELL willfully failed to pay all overtime wages owed to other aggrieved employees. During the relevant time period, 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 ten (10) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, as stated above, TACO BELL required other aggrieved employees to perform various work-related tasks while off-the-clock before and/or after their shifts, including arriving early to prepare for their shifts, waiting to clock in for the start of their shifts because other employees were using the POS system, continuing to assist customers, completing closing duties, and waiting to leave the premises in groups. As also stated, due to TACO BELL's implementation of a timekeeping system that prevented employees from clocking in until their exact scheduled shift times, other aggrieved employees were prevented from recording the entire time worked prior to the start of their scheduled shifts, and thus were not paid for this time. Thus, TACO BELL failed to track this time other aggrieved employees spent working off-the-clock, and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to TACO BELL's uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to adhere to a schedule for meal periods, and subsequent lack of meal period coverage, other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Furthermore, TACO BELL systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods, because TACO BELL's timekeeping system locked out other aggrieved employees for 30 minutes when they clocked out for a meal period.

TACO BELL knew or should have known that as a result of these company-wide practices and/or policies, other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because 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, TACO BELL did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, on information and belief, TACO BELL paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, TACO BELL failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, TACO BELL failed to pay all overtime wages by paying a lower overtime rate than required.

TACO BELL's failure to pay other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. 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, 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).

During the relevant time period, as set forth above, TACO BELL had, and continues to have, a company-wide policy and/or practice of understaffing its locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads and failure to adhere to a schedule for meal periods, has resulted in a lack of meal period coverage and prevented other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods.

Further, as stated, TACO BELL's company-wide timekeeping system prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Moreover, TACO BELL did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. Ms. McCreary 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.

Moreover, TACO BELL had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. TACO BELL took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Furthermore, TACO BELL's "Meal Period Waiver" requires employees to provide written notice should

they wish to revoke the waiver. TACO BELL's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That TACO BELL requires Ms. McCreary and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because TACO BELL's obligation to provide Ms. McCreary and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

Finally, TACO BELL took the position that the nature of work performed by other aggrieved employees called for "on-duty" meal periods and on that basis, did not provide off duty meal periods and did not pay other aggrieved employees meal period premiums for noncompliant meal periods. Specifically, TACO BELL implemented a company-wide "On-Duty Meal Period [Agreement]" and required other aggrieved employees to execute the agreement at their time of hire. TACO BELL's "On-Duty Meal Period [Agreement]" provides, in relevant part:

Since the nature of my work duties, as a late night or graveyard shift employee, prevents me from being relieved of all duty during a meal period, I understand and voluntarily agree to work an on-the-job thirty (30) minute meal period that shall be paid for by Taco Bell Corp.

However, TACO BELL's use of an "on-duty" meal period policy is and was unlawful. Under California law, "on-duty" meal periods are a limited alternative to the requirement to provide off-duty meal periods and can only be utilized under certain circumstances. TACO BELL's business did not require a single-employee staffing model given multiple employees worked at its worksites. There were usually at least a few other employees employed by TACO BELL at other aggrieved employees' restaurant location and the restaurant location was not in an isolated area. Further, the work of TACO BELL's restaurant employees is not the kind that could be said to meet the "nature of the work" exception. Other aggrieved employees were responsible for taking orders, preparing food items, and cleaning the restaurant and store. None of these tasks is akin to the kind that the DLSE has found warrant an "on-duty" meal period, such as transporting hazardous materials via vehicles that must be monitored at all times pursuant to federal regulation. Therefore, TACO BELL's use of an "on duty" meal period is improper and unlawful.

At all times herein mentioned, TACO BELL knew or should have known that, as a result of these policies, other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. TACO BELL further knew or should have

known that it did not pay other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, TACO BELL 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, other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that TACO BELL did pay other aggrieved employees for missed, late, and interrupted meal periods, TACO BELL did not pay other aggrieved employees at the correct rate of pay for premiums because TACO BELL systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, TACO BELL failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. 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, TACO BELL regularly failed to authorize and permit Ms. McCreary 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, TACO BELL's company-wide use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads resulted in a lack of rest period coverage and prevented Ms. McCreary and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. TACO BELL also failed to schedule and/or adhere to a schedule for rest periods, which, coupled with TACO BELL's failure to provide adequate rest period coverage, further led to Ms. McCreary and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, other aggrieved employees were sometimes required to wear a radio headset during their rest periods to respond to requests from drive-thru customers, resulting in interrupted rest periods.

Furthermore, upon information and belief, during the relevant time period, TACO BELL maintained and implemented a company-wide on-premises rest period policy, which required that Ms. McCreary and/or other aggrieved employees remain on the work premises during their rest periods. Because Ms. McCreary and/or 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, TACO BELL effectively maintained control over Ms. McCreary and/or other aggrieved employees during rest periods.

As a result of TACO BELL's practices and policies, Ms. McCreary and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout her employment, Ms. McCreary regularly had to forego her rest periods because the restaurant was busy, and she did not have sufficient coverage. When Ms. McCreary was able to take her rest periods, TACO BELL's management frequently interrupted them requesting that she return to work and assist customers.

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

Accordingly, TACO BELL failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. McCreary 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. TACO BELL has not provided Ms. McCreary 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, TACO BELL has knowingly and intentionally provided Ms. McCreary and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TACO BELL issued uniform wage statements to Ms. McCreary and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, TACO BELL violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

Because TACO BELL did not record the time Ms. McCreary and other aggrieved employees spent working off-the-clock, TACO BELL did not list the correct amount of gross wages and net wages earned

by Ms. McCreary and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, TACO BELL failed to accurately list the total number of hours worked by Ms. McCreary 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).

Further, because TACO BELL did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, TACO BELL 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). TACO BELL also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

In addition, and separately from these violations, TACO BELL issued uniform wage statements to Ms. McCreary and other aggrieved employees that failed to list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, TACO BELL systematically, and on a company-wide basis, issued wage statements to Ms. McCreary and other aggrieved employees that fail to list the employing entity's correct address. Ms. McCreary's and other aggrieved employees' wage statements incorrectly list the employer's address as "3301 STOBBER ROAD, LOUISVILLE, KY 40213," but according to the California Secretary of State's website, TACO BELL CORP.'s entity address should be "1 GLEN BELL WAY, IRVINE, CA 92618." *See example paystub below.*

The image shows a sample 'Earnings Statement' paystub. At the top left, it says 'C0 4GS' and '000057-000057'. A red box highlights the employer information: 'Taco Bell Corp. 3301 Stober Rd Louisville, KY 40213'. To the right, under 'Earnings Statement', it lists 'Employee ID' (redacted), 'Page 001 of 001', 'Period Beg/End: 06/14/2023 - 06/27/2023', 'Check Date: 07/03/2023', 'Check Number: [redacted]', and 'Batch Number: [redacted]'. At the bottom left, there is a promotional message about direct deposit. At the bottom right, the employee's name 'Linda McCreary' is listed above a redacted signature line.

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock. In addition, TACO BELL failed to provide Ms. McCreary and/or other aggrieved employees the option to elect to receive hard copies of their wage statements at any time and/or failed to provide them with the ability to easily access the information and convert the wage statements into hard copies at no expense to them.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which

employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), TACO BELL willfully failed to maintain accurate payroll records for Ms. McCreary 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, TACO BELL failed, on a company-wide basis, to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. McCreary and other aggrieved employees, in violation of section 1198. Furthermore, in light of TACO BELL’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, TACO BELL kept no records of meal start and end times for second meal periods.

Ms. McCreary 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 §§ 226(b)-(c), 432, 1198, and 1198.5 – Failure to Produce and/or Permit Inspection of Records and Instruments Signed

California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee’s request. California Labor Code section 226(f) states “[a] failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.” California Labor Code section 226(h) states “[a]n employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney’s fees.”

California Labor Code section 432 states “[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” California Labor Code section 433 states “[a]ny person violating this article is guilty of a misdemeanor.”

California Labor Code section 1198.5 requires that an employer provide a copy of an employee’s personnel record no later than 30 days from the date the employer receives a written request. If an employer fails to satisfy this written request, the former employee may recover a penalty of \$750 from the employer. Cal. Lab. Code § 1198.5(k). The former employee may also bring an action for injunctive relief and may recover costs and reasonable attorney’s fees. Cal. Lab. Code § 1198.5(l).

IWC Wage Order No. 5-2001, subdivision 7(A), provides “[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3)

Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.” IWC Wage Order No. 5-2001, subdivision 7(C), also provides “[a]ll required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee’s records shall be available for inspection by the employee upon reasonable request.”

During the relevant time period, other aggrieved employees sent TACO BELL reasonable written requests for documents and records relating to their employment with TACO BELL. During the relevant time period, TACO BELL failed to produce for inspection and copying or otherwise permit inspection and copying of documents and records relating to other aggrieved employees’ employment. Thus, TACO BELL has failed to comply with the reasonable written requests for documents and records relating to other aggrieved employees’ employment within the statutory time limits, in violation of Labor Code sections 226(b)-(c), 432, 1198, 1198.5, and the applicable IWC Wage Order.

Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226(f) and (h), 1198.5(k)-(l), 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, TACO BELL willfully failed to pay Ms. McCreary and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

Ms. McCreary 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.

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

Ms. McCreary 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 § 246 – Failure to Provide Written Notice of Paid Sick Leave

California's Healthy Workplaces, Healthy Families Act of 2014 was enacted to 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. Employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Codified at California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249, 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.

During the relevant time period, TACO BELL has failed to provide Ms. McCreary and other aggrieved employees written notice on wage statements and/or other separate written statements that listed the amount of paid sick leave (or equivalent paid leave or paid time off) available to them. TACO BELL's ongoing and systematic failure to provide written notice of sick leave benefits to Ms. McCreary and other aggrieved employees violates California Labor Code section 246(i).

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 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 wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11050(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."

TACO BELL's California restaurant 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. TACO BELL could have provided Ms. McCreary and other aggrieved employees with a suitable resting facility within all of its restaurant 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. McCreary and other aggrieved employees were forced to adjust to areas not conducive to resting, such as sitting in the public customer area or searching for areas outside of the restaurant which are not designated or reserved for their rest, such as their personal vehicles.

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

As a result of TACO BELL's company-wide failure to provide suitable resting facilities in its restaurant locations, Ms. McCreary and other aggrieved employees were forced to adjust to areas not conducive to resting or search for facilities outside their restaurants to cease work and recover. TACO BELL's failure to provide suitable resting facilities to Ms. McCreary and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 13(B).

Ms. McCreary and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring TACO BELL 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 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

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

The IWC states that 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.*

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

TACO BELL did not provide Ms. McCreary 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. McCreary and other aggrieved employees engaged in duties in which the nature of the work required standing, TACO BELL denied them the use of seats nearby during lulls in

their work duties. Moreover, TACO BELL did not inform Ms. McCreary and other aggrieved employees of their rights to a seat or stool under California law.

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

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

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

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

During the relevant time period, TACO BELL violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5)(A), because TACO BELL failed to pay Ms. McCreary and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day's work.

On information and belief, TACO BELL had a company-wide practice of sending Ms. McCreary and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Ms. McCreary and other aggrieved employees for half of their usual or scheduled shift. For example, when scheduled to work a 6- or 8-hour shift, TACO BELL managers sent Ms. McCreary home an hour after the start of her shift because business was slow. Although Ms. McCreary and other aggrieved employees would report to work based on the schedule that TACO BELL provided to them, TACO BELL would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

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

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, TACO BELL, on a company-wide basis, required Ms. McCreary and other aggrieved employees to report to work in clean and presentable uniforms bearing the company logo and name. However, TACO BELL did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. TACO BELL only provided Ms. McCreary with one (1) shirt, one (1) hat, and one (1) apron at the time of hire. Because TACO BELL failed to provide Ms. McCreary and other aggrieved employees with an adequate number of uniforms in relation to the tasks they were required to perform, Ms. McCreary and/or other aggrieved employees had to wash their uniforms more frequently than they otherwise would do laundry, and incur expenses in doing so. Thus, TACO BELL failed to maintain the uniforms it required Ms. McCreary and/or other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

TACO BELL could have provided Ms. McCreary and other aggrieved employees with an adequate number of uniforms or access to laundering services. Or, TACO BELL could have reimbursed employees for the costs of their laundering expenses or provided a uniform maintenance allowance. Instead, TACO BELL passed these operating costs off onto Ms. McCreary and/or other aggrieved employees.

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

Accordingly, Ms. McCreary 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.

McCreary, 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 TACO BELL for violations of California Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 246, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

Pre-Litigation Demand

This notice shall further serve as Ms. McCreary's reasonable attempt to settle her dispute with TACO BELL prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform TACO BELL of Ms. McCreary's aforementioned grievances and the proposed remedies as detailed below, while affording TACO BELL a reasonable opportunity to satisfy Ms. McCreary's demands.

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

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

7. TACO BELL shall provide Ms. McCreary and all aggrieved employees employed by TACO BELL at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. TACO BELL shall timely provide those aggrieved employees who request to inspect or copy records pertaining to their employment, with a copy of their personnel record, signed instruments, and documents and records related to their employment, as required by Labor Code sections 226(b), 432, and 1198.5.
9. TACO BELL shall provide all aggrieved employees with written notice of sick leave benefits, as set forth in Labor Code section 246(i)
10. TACO BELL shall implement and provide suitable seating and suitable resting facilities to all aggrieved employees.
11. TACO BELL shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
12. TACO BELL shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.

TACO BELL shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226(f), 226.3, 248.5, 256, 558, 1174.5, 1197.1, 1198.5(k), and 2699, and Wage Order No. 5-2001, section 20.

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

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

Best Regards,



Ninel Kocharyan

Copy: TACO BELL CORP. (via U.S. Certified Mail); TACO BELL OF AMERICA, LLC (via U.S. Certified Mail); TB CANTINA LLC (via U.S. Certified Mail); YUM! BRANDS, INC. (via U.S. Certified Mail)

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

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IRVINE, CA 92618

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McCREARY, J.

TACO BELL

Postmark

TACO BELL OF
AMERICA, LLC
1 GLEN BELL WAY
IRVINE, CA 92618

TACO BELL OF
AMERICA, LLC
1 GLEN BELL WAY
IRVINE, CA 92618

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AMERICA, LLC
1 GLEN BELL WAY
IRVINE, CA 92618



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MCCREARY V.

TALO BELL

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1 GLEN BELL WAY
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PS Form 3800, April 2015 PSN 7530-02-000-9047

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TB CANTINA LLC
1 GLEN BELL WAY
IRVINE, CA 92618

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TB CANTINA LLC
1 GLEN BELL WAY
IRVINE, CA 92618



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YUM! BRANDS, INC.
1441 GARDINER LANE
LOUISVILLE, KY 40213

YUM! BRANDS, INC.
1441 GARDINER LANE
LOUISVILLE, KY 40213

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YUM! BRANDS, INC.
1441 GARDINER LANE
LOUISVILLE, KY 40213



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☐ Addressee

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YUM! BRANDS, INC.
1441 GARDINER LANE
LOUISVILLE, KY 40213



9590 9402 7690 2122 7197 89

7022 2410 0000 2406 0156

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

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X *GLT*

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☐ Addressee

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EXHIBIT “2”



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

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

December 12, 2023

VIA ONLINE SUBMISSION

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

Subject: *Willie Brown v. Taco Bell Corp., et al.*

Dear PAGA Administrator:

This office represents Willie Brown in connection with his claims under the California Labor Code. Mr. Brown was an employee of TACO BELL CORP.; TACO BELL OF AMERICA, LLC; TB CANTINA LLC; and/or YUM! BRANDS, INC. For the purpose of this letter, Mr. Brown collectively refers to these entities as "TACO BELL."

The employers may be contacted directly at the addresses below:

TACO BELL CORP.
1 GLEN BELL WAY
IRVINE, CA 92618

TACO BELL OF AMERICA, LLC
1 GLEN BELL WAY
IRVINE, CA 92618

TB CANTINA LLC
1 GLEN BELL WAY
IRVINE, CA 92618

YUM! BRANDS, INC.
1441 GARDINER LANE
LOUISVILLE, KY 40213

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

TACO BELL employed Mr. Brown as an hourly paid, non-exempt Service Champion from approximately November 2022 to March 2023. During his employment, Mr. Brown typically worked seven (7) or more hours per day and five (5) days per week. At the time his employment ended, Mr. Brown was compensated approximately \$15.50 per hour. His primary job duties included, without limitation, taking orders, preparing and serving food, cleaning, and washing the dishes.

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

TACO BELL’s Company-Wide and Uniform Payroll and HR Practices

TACO BELL CORP. is a California corporation; TACO BELL OF AMERICA, LLC and TB CANTINA LLC are Delaware limited liability companies; and YUM! BRANDS, INC. is Kentucky corporation. Together, they operate a chain of Taco Bell restaurants with approximately 46 locations in California. Upon information and belief, TACO BELL maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Irvine, California, or Louisville, Kentucky, for all non-exempt, hourly paid employees working for TACO BELL in California, including Mr. Brown and other aggrieved employees. At all relevant times, TACO BELL issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Brown and other aggrieved employees, regardless of their location or position.

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

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 Industrial Welfare Commission (“IWC”). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

First, TACO BELL had, and continues to have, a company-wide policy and/or practice of requiring Mr. Brown and other aggrieved employees to perform tasks while off-the-clock. For example, on information and belief, TACO BELL’s timekeeping system prevented employees from clocking in until their exact scheduled shift times so that they were prohibited from recording any time worked prior to the start of their scheduled shifts. Moreover, TACO BELL’s management required other aggrieved employees to arrive 15 minutes prior to the start of their shifts to prepare for the upcoming shift, including washing their hands, putting on hair nets, and preparing the work areas, before they were allowed to clock in. As a further example, because TACO BELL’s timekeeping system was integrated with the company’s point-

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

of-sale (“POS”) system, other aggrieved employees would often have to spend time waiting to clock in for the start of their shifts, because other employees were using the POS system to handle customer transactions and input food orders for preparation. For instance, other aggrieved employees were required to wait several minutes under TACO BELL’s control until a POS machine was available for clocking-in, time for which they were not paid. Consequently, on information and belief, other aggrieved employees performed work prior to the start of their shifts, but were unable to record this time. Moreover, as a further example, approximately once per week, Mr. Brown clocked out at the end of his shift, but was required to continue working and assisting customers or completing closing duties, such as cleaning the restaurant, before he was allowed to leave. Thus, TACO BELL failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Brown and other aggrieved employees received no compensation for this time.

Second, TACO BELL also had a company-wide security policy and/or practice for closing shifts, requiring employees to leave the restaurant premises together in one group. After clocking out at the end of their shifts, Mr. Brown and other aggrieved employees were required to wait for a managerial employee before they could be released by that managerial employee and leave TACO BELL’s premises together. For example, when scheduled for closing shifts, Mr. Brown would complete his own closing tasks, clock out, and then have to wait until his manager had completed their own respective closing duties, such as activating the security alarm, before being released. As a result, Mr. Brown and other aggrieved employees were subject to TACO BELL’s control after they had clocked out from their shifts, but were not compensated for this time.

Third, as stated, TACO BELL had, and continues to have, a company-wide policy of strictly staffing its restaurant locations based on the labor hours allocated by each location’s labor or payroll budget set by corporate. This practice of labor budgeting and/or limited payroll allocation, combined with the assignment of heavy workloads, has resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. Because TACO BELL did not employ or staff a sufficient number of employees to meet customer demand, there was no one available to relieve employees needing meal period coverage, and Mr. Brown and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, TACO BELL has a practice of failing to adhere to a schedule for meal periods, which further caused Mr. Brown and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Further, TACO BELL’s company-wide timekeeping system prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, TACO BELL did not record all hours worked during meal periods and other aggrieved employees performed work during meal periods for which they were not paid.

Accordingly, TACO BELL regularly failed to pay at least minimum wages to Mr. Brown 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. Brown 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 §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable 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.

TACO BELL willfully failed to pay all overtime wages owed to other aggrieved employees. During the relevant time period, 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 ten (10) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, as stated above, TACO BELL required other aggrieved employees to perform various work-related tasks while off-the-clock before and/or after their shifts, including arriving early to prepare for their shifts, waiting to clock in for the start of their shifts because other employees were using the POS system, continuing to assist customers, completing closing duties, and waiting to leave the premises in groups. As also stated, due to TACO BELL's implementation of a timekeeping system that prevented employees from clocking in until their exact scheduled shift times, other aggrieved employees were prevented from recording the entire time worked prior to the start of their scheduled shifts, and thus were not paid for this time. Thus, TACO BELL failed to track this time other aggrieved employees spent working off-the-clock, and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to TACO BELL's uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to adhere to a schedule for meal periods, and subsequent lack of meal period coverage, other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Furthermore, TACO BELL systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods, because TACO BELL's timekeeping system locked out other aggrieved employees for 30 minutes when they clocked out for a meal period.

TACO BELL knew or should have known that as a result of these company-wide practices and/or policies, other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because 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, TACO BELL did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, on information and belief, TACO BELL paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, TACO BELL failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, TACO BELL failed to pay all overtime wages by paying a lower overtime rate than required.

TACO BELL's failure to pay other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. 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, 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).

During the relevant time period, as set forth above, TACO BELL had, and continues to have, a company-wide policy and/or practice of understaffing its locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads and failure to adhere to a schedule for meal periods, has resulted in a lack of meal period coverage and prevented Mr. Brown and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Brown and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Brown was occasionally required to work through his meal periods.

Further, as stated, TACO BELL's company-wide timekeeping system prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Moreover, TACO BELL did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. Mr. Brown 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.

Moreover, TACO BELL had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. TACO BELL took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Furthermore, TACO BELL's "Meal Period Waiver" requires employees to provide written notice should they wish to revoke the waiver. TACO BELL's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and

imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Brown and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That TACO BELL requires Mr. Brown and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because TACO BELL's obligation to provide Mr. Brown and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

Finally, TACO BELL took the position that the nature of work performed by Mr. Brown and other aggrieved employees called for "on-duty" meal periods and on that basis, did not provide off duty meal periods and did not pay Mr. Brown and other aggrieved employees meal period premiums for noncompliant meal periods. Specifically, TACO BELL implemented a company-wide "On-Duty Meal Period [Agreement]" and required Mr. Brown and other aggrieved employees to execute the agreement at their time of hire. TACO BELL's "On-Duty Meal Period [Agreement]" provides, in relevant part:

Since the nature of my work duties, as a late night or graveyard shift employee, prevents me from being relieved of all duty during a meal period, I understand and voluntarily agree to work an on-the-job thirty (30) minute meal period that shall be paid for by Taco Bell Corp.

However, TACO BELL's use of an "on-duty" meal period policy is and was unlawful. Under California law, "on-duty" meal periods are a limited alternative to the requirement to provide off-duty meal periods and can only be utilized under certain circumstances. TACO BELL's business did not require a single-employee staffing model given multiple employees worked at its worksites. There were usually at least a few other employees employed by TACO BELL at Mr. Brown's restaurant location and the restaurant location was not in an isolated area. Further, the work of TACO BELL's restaurant employees is not the kind that could be said to meet the "nature of the work" exception. Mr. Brown and other aggrieved employees were responsible for taking orders, preparing food items, and cleaning the restaurant and store. None of these tasks is akin to the kind that the DLSE has found warrant an "on-duty" meal period, such as transporting hazardous materials via vehicles that must be monitored at all times pursuant to federal regulation. Therefore, TACO BELL's use of an "on duty" meal period is improper and unlawful.

At all times herein mentioned, TACO BELL knew or should have known that, as a result of these policies, Mr. Brown and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. TACO BELL further knew or should have known that it did not pay Mr. Brown and other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, TACO BELL 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. Brown and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that TACO BELL did pay other aggrieved employees for missed, late, and interrupted meal periods, TACO BELL did not pay other aggrieved employees at the correct rate of pay for premiums because TACO BELL systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, TACO BELL failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Brown 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, TACO BELL regularly failed to authorize and permit Mr. Brown 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, TACO BELL's company-wide use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads resulted in a lack of rest period coverage and prevented Mr. Brown and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. TACO BELL also failed to schedule and/or adhere to a schedule for rest periods, which, coupled with TACO BELL's failure to provide adequate rest period coverage, further led to Mr. Brown and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, Mr. Brown and other aggrieved employees were sometimes required to wear a radio headset during their rest periods to respond to requests from drive-thru customers, resulting in interrupted rest periods.

Furthermore, upon information and belief, during the relevant time period, TACO BELL maintained and implemented a company-wide on-premises rest period policy, which required that Mr. Brown and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Brown and/or 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, TACO BELL effectively maintained control over Mr. Brown and/or other aggrieved employees during rest periods.

As a result of TACO BELL's practices and policies, Mr. Brown and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Brown sometimes had to forego his rest periods because the restaurant was busy, and he did not have sufficient coverage. When Mr. Brown was able to take his rest periods, they were sometimes interrupted.

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

Accordingly, TACO BELL failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Brown 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. TACO BELL has not provided Mr. Brown 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, TACO BELL has knowingly and intentionally provided Mr. Brown and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TACO BELL issued uniform wage statements to Mr. Brown and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, TACO BELL violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

Because TACO BELL did not record the time Mr. Brown and other aggrieved employees spent working off-the-clock, TACO BELL did not list the correct amount of gross wages and net wages earned by Mr. Brown and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5),

respectively. For the same reason, TACO BELL failed to accurately list the total number of hours worked by Mr. Brown 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).

Further, because TACO BELL did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, TACO BELL 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). TACO BELL also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

In addition, and separately from these violations, TACO BELL issued uniform wage statements to Mr. Brown and other aggrieved employees that failed to list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, TACO BELL systematically, and on a company-wide basis, issued wage statements to Mr. Brown and other aggrieved employees that fail to list the employing entity's correct address. Mr. Brown's and other aggrieved employees' wage statements incorrectly list the employer's address as "3301 STOBBER ROAD, LOUISVILLE, KY 40213," but according to the California Secretary of State's website, TACO BELL CORP.'s entity address should be "1 GLEN BELL WAY, IRVINE, CA 92618." *See example paystub below.*

CO
465

000143-000143

Earnings Statement

Employee ID: [REDACTED]

Period Beg/End: 02/08/2023 - 02/21/2023

Check Date: 02/28/2023

Check Number: [REDACTED]

Batch Number: [REDACTED]

Willie Brown

[REDACTED]

Taco Bell Corp.
3301 Stober Rd
Louisville, KY 40213

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock. In addition, TACO BELL failed to provide other aggrieved employees the option to elect to receive hard copies of their wage statements at any time and/or failed to provide them with the ability to easily access the information and convert the wage statements into hard copies at no expense to them.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which

employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), TACO BELL willfully failed to maintain accurate payroll records for Mr. Brown 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, TACO BELL failed, on a company-wide basis, to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Brown and other aggrieved employees, in violation of section 1198. Furthermore, in light of TACO BELL’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, TACO BELL kept no records of meal start and end times for second meal periods.

Mr. Brown 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 §§ 226(b)-(c), 432, 1198, and 1198.5 – Failure to Produce and/or Permit Inspection of Records and Instruments Signed

California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee’s request. California Labor Code section 226(f) states “[a] failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.” California Labor Code section 226(h) states “[a]n employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney’s fees.”

California Labor Code section 432 states “[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” California Labor Code section 433 states “[a]ny person violating this article is guilty of a misdemeanor.”

California Labor Code section 1198.5 requires that an employer provide a copy of an employee’s personnel record no later than 30 days from the date the employer receives a written request. If an employer fails to satisfy this written request, the former employee may recover a penalty of \$750 from the employer. Cal. Lab. Code § 1198.5(k). The former employee may also bring an action for injunctive relief and may recover costs and reasonable attorney’s fees. Cal. Lab. Code § 1198.5(l).

IWC Wage Order No. 5-2001, subdivision 7(A), provides “[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3)

Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.” IWC Wage Order No. 5-2001, subdivision 7(C), also provides “[a]ll required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee’s records shall be available for inspection by the employee upon reasonable request.”

During the relevant time period, other aggrieved employees sent TACO BELL reasonable written requests for documents and records relating to their employment with TACO BELL. During the relevant time period, TACO BELL failed to produce for inspection and copying or otherwise permit inspection and copying of documents and records relating to other aggrieved employees’ employment. Thus, TACO BELL has failed to comply with the reasonable written requests for documents and records relating to other aggrieved employees’ employment within the statutory time limits, in violation of Labor Code sections 226(b)-(c), 432, 1198, 1198.5, and the applicable IWC Wage Order.

Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226(f) and (h), 1198.5(k)-(l), 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, TACO BELL willfully failed to pay Mr. Brown and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

Mr. Brown 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, TACO BELL has a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, on information and belief, Mr. Brown provided TACO BELL with more than seventy-two (72) hours' notice of his intention to quit; however, TACO BELL did not provide Mr. Brown with his final wages until one week later. Thus, TACO BELL failed to pay Mr. Brown his final wages within the requisite time limit, in violation of California Labor Code section 202.

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

Mr. Brown 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 § 246 – Failure to Provide Written Notice of Paid Sick Leave

California's Healthy Workplaces, Healthy Families Act of 2014 was enacted to 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. Employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Codified at California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249, 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.

During the relevant time period, TACO BELL has failed to provide Mr. Brown and other aggrieved employees written notice on wage statements and/or other separate written statements that listed the amount of paid sick leave (or equivalent paid leave or paid time off) available to them. TACO BELL's ongoing and systematic failure to provide written notice of sick leave benefits to Mr. Brown and other aggrieved employees violates California Labor Code section 246(i).

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 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 wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11050(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."

TACO BELL's California restaurant 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. TACO BELL could have provided Mr. Brown and other aggrieved employees with a suitable resting facility within all of its restaurant 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. Brown and other aggrieved employees were forced to adjust to areas not conducive to resting, such as sitting in the public customer area or searching for areas outside of the restaurant which are not designated or reserved for their rest, such as their personal vehicles.

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

As a result of TACO BELL's company-wide failure to provide suitable resting facilities in its restaurant locations, Mr. Brown and other aggrieved employees were forced to adjust to areas not conducive to resting or search for facilities outside their restaurants to cease work and recover. TACO BELL's failure to provide suitable resting facilities to Mr. Brown and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 13(B).

Mr. Brown and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring TACO BELL 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 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

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

The IWC states that 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.*

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

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

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

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

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

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

During the relevant time period, TACO BELL violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5)(A), because TACO BELL failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day's work.

On information and belief, TACO BELL had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay other aggrieved employees for half of their usual or scheduled shift. For example, when scheduled to work 6- or 8-hour shifts, TACO BELL managers sent other aggrieved employees home an hour after the start of their shifts because business was slow. Although other

aggrieved employees would report to work based on the schedule that TACO BELL provided to them, TACO BELL would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

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

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, TACO BELL, on a company-wide basis, required Mr. Brown and other aggrieved employees to report to work in clean and presentable uniforms bearing the company logo and name. However, TACO BELL did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. TACO BELL only provided Mr. Brown with one (1) shirt, one (1) hat, and one (1) apron at the time of hire. Because TACO BELL failed to provide Mr. Brown and other aggrieved employees with an adequate number of uniforms in relation to the tasks they were required to perform, Mr. Brown and/or other aggrieved employees had to wash their uniforms more frequently than they otherwise would do laundry, and incur expenses in doing so. Thus, TACO BELL failed to maintain the uniforms it required Mr. Brown and/or other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

TACO BELL could have provided Mr. Brown and other aggrieved employees with an adequate number of uniforms or access to laundering services. Or, TACO BELL could have reimbursed employees for the costs of their laundering expenses or provided a uniform maintenance allowance. Instead, TACO BELL passed these operating costs off onto Mr. Brown and/or other aggrieved employees.

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

Accordingly, Mr. Brown 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. Brown, 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 TACO BELL for violations of California Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 246, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

Pre-Litigation Demand

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

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

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

6. TACO BELL shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. TACO BELL shall provide Mr. Brown and all aggrieved employees employed by TACO BELL at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. TACO BELL shall timely provide those aggrieved employees who request to inspect or copy records pertaining to their employment, with a copy of their personnel record, signed instruments, and documents and records related to their employment, as required by Labor Code sections 226(b), 432, and 1198.5.
9. TACO BELL shall provide all aggrieved employees with written notice of sick leave benefits, as set forth in Labor Code section 246(i)
10. TACO BELL shall implement and provide suitable seating and suitable resting facilities to all aggrieved employees.
11. TACO BELL shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
12. TACO BELL shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.

TACO BELL shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226(f), 226.3, 248.5, 256, 558, 1174.5, 1197.1, 1198.5(k), and 2699, and Wage Order No. 5-2001, section 20.

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

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

Best Regards,



Ninel Kocharyan

Copy: TACO BELL CORP. (via U.S. Certified Mail); TACO BELL OF AMERICA, LLC (via U.S. Certified Mail); TB CANTINA LLC (via U.S. Certified Mail); YUM! BRANDS, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
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1 GLEN BELL WAY
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TACO BELL OF
AMERICA, LLC
1 GLEN BELL WAY
IRVINE, CA 92618

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TB CANTINA LLC
1 GLEN BELL WAY
IRVINE, CA 92618

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TB CANTINA LLC
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IRVINE, CA 92618



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2. Affix to the reverse of the receipt the return address label.

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TACO BELL

YUM! BRANDS, INC.
1441 GARDINER LANE
LOUISVILLE, KY 40213

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YUM! BRANDS, INC.
1441 GARDINER LANE
LOUISVILLE, KY 40213

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.

YUM! BRANDS, INC.
1441 GARDINER LANE
LOUISVILLE, KY 40213

9590 9402 7690 2122 7197 65

2. Article Number (Transfer from service label)

7022 2410 0000 2406 0125

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature _____ ☐ Agent
X ☐ 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

☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
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YUM! BRANDS, INC.
1441 GARDINER LANE
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COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ 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

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

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

restricted Delivery

Domestic Return Receipt