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December 3, 2024

VIA ONLINE SUBMISSION

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

Subject: *Destiny Johanson v. North State Grocery, Inc.*

Dear PAGA Administrator:

This office represents Destiny Johanson in connection with her claims under the California Labor Code. Ms. Johanson was an employee of NORTH STATE GROCERY, INC. ("NORTH STATE").

The employer may be contacted directly at the address below:

NORTH STATE GROCERY, INC.
20803 FRONT STREET
COTTONWOOD, CA 96022

Ms. Johanson intends to seek civil penalties, attorneys' 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. Johanson seeks relief on behalf of herself, the State of California, and other persons who are or were employed by NORTH STATE 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.

NORTH STATE employed Ms. Johanson as an hourly paid, non-exempt employee from approximately April 2024 to August 2024. Ms. Johanson worked for NORTH STATE as a Cashier at its Holiday Market grocery store location in Cottonwood, California. During her employment, Ms. Johanson typically worked eight (8) hours or more per day and four (4) to five (5) days per week. Ms. Johanson was compensated approximately $16.00 per hour. Her job duties included, without limitation, attending to customers, cashiering, and cleaning and organizing the cash register area.

NORTH STATE committed each of the following Labor Code violations against Ms. Johanson, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1):[1]

NORTH STATE's Company-Wide and Uniform Payroll and HR Practices

NORTH STATE GROCERY, INC. is a California corporation and a grocery store chain in Northern California operating the Holiday Market and Sav-Mor store brands, with approximately 20 locations in California. Upon information and belief, NORTH STATE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Cottonwood, California, for all non-exempt, hourly paid employees working for NORTH STATE in California, including Ms. Johanson and other aggrieved employees. At all relevant times, NORTH STATE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Johanson and other aggrieved employees, regardless of their location or position.

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

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

During the relevant time period, NORTH STATE willfully failed to pay all overtime wages owed to Ms. Johanson and other aggrieved employees. During the relevant time period, Ms. Johanson and other aggrieved employees were not paid overtime premiums for all of the hours they worked in

[1] These facts, theories, and claims are based on Ms. Johanson's experience and counsel's review of those records currently available relating to Ms. Johanson'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. Johanson 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.

excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were not recorded.

First, during the relevant time period, upon information and belief, NORTH STATE had a policy and/or practice of discouraging and impeding Ms. Johanson and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with NORTH STATE's practices of understaffing and/or single-staffing (*see infra*), led Ms. Johanson and other aggrieved employees to work off-the-clock before their shifts. For example, approximately once per week, after reporting to work on time, Ms. Johanson and other aggrieved employees were forced to wait up to five (5) minutes until a manager or keyholder employee arrived at the store and unlocked the doors in the morning before they could clock in for their shifts. Moreover, during the relevant time period, NORTH STATE only provided Ms. Johanson and other aggrieved employees with a single timekeeping machine at its stores to clock in, thus forcing Ms. Johanson and other aggrieved employees to wait in line off-the-clock and under NORTH STATE's control, time for which they were paid. For example, Ms. Johanson would be ready to clock in for the start of her shift, but was required to wait in a line of about four (4) employees and wait up to three (3) minutes to clock in. Thus, NORTH STATE failed to track all of the time that employees spent performing work-related tasks before their shifts, and Ms. Johanson and other aggrieved employees received no compensation for this time.

Second, on information and belief, NORTH STATE had, and continues to have, a company-wide policy and/or practice of strictly staffing its locations based on the labor hours allocated by each location's labor or payroll budget set by the corporate office. NORTH STATE's uniform use of labor budgeting resulted in chronic understaffing, such there were too few employees on duty to handle the workload and attend to customers. Also, NORTH STATE has systematically, and on a company-wide basis, understaffed its jobsites by adopting a single-staffing model for some positions, such as cashiers, whereby only one (1) cashier employee was scheduled to work at certain times, thereby failing to provide adequate meal period coverage to permit those employees to take compliant meal periods. NORTH STATE also had a practice of failing to adhere to a schedule for meal periods, which further caused Ms. Johanson and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Johanson's meal periods were sometimes interrupted because she was required to attend to customers requesting assistance locating products in the store, due to the lack of coverage. However, NORTH STATE did not compensate Ms. Johanson and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

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

NORTH STATE knew or should have known that as a result of these company-wide practices and/or policies, Ms. Johanson and other aggrieved employees were performing their assigned duties off-the-clock before their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Johanson and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Johanson and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

NORTH STATE's failure to pay Ms. Johanson and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Johanson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NORTH STATE into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. Tit. 8, § 11070(2)(H) (defining "Hours Worked").

First, as set forth above, due to NORTH STATE's company-wide practice of restricting overtime accrual by not recording hours worked that were outside of employees' scheduled shifts, NORTH STATE systematically failed to pay Ms. Johanson and other aggrieved employees for actual hours worked before their scheduled shifts, because these hours were not accurately recorded. Thus, Ms. Johanson and other aggrieved employees were required to work off-the-clock before their shifts, including, but not limited to, waiting for manager or keyholder employees to arrive and open the grocery store and/or waiting in a line of employees to clock in for the start of their shifts, but were not compensated for this time.

Second, as also stated above, due to NORTH STATE's company-wide practices of utilizing labor budgets, understaffing and/or single-staffing, assigning heavy workloads, failing to adhere to a schedule for meal periods, and subsequent lack of meal period coverage, Ms. Johanson and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid. Additionally, as stated, NORTH STATE's company-wide timekeeping system prevented Ms. Johanson and other aggrieved employees from entering time worked during meal periods because the system locked out Ms. Johanson and other aggrieved employees for a full 30 minutes. Thus, NORTH STATE systematically failed to pay Ms. Johanson and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

NORTH STATE did not pay at least minimum wages for all hours worked by Ms. Johanson and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, NORTH STATE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, NORTH STATE regularly failed to pay at least minimum wages to Ms. Johanson 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. Johanson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NORTH STATE into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

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.

First, during the relevant time period, as stated, NORTH STATE had, and continues to have, company-wide policies and/or practices of understaffing and/or single-staffing certain positions 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, resulted in a lack of meal period coverage and prevented Ms. Johanson and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. For example, as stated, Ms. Johanson's meal periods were sometimes interrupted because she was required to attend to customers requesting assistance with locating products in the store, due to the lack of coverage. Thus, Ms. Johanson 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.

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

Third, NORTH STATE had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. NORTH STATE 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. NORTH STATE's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and/or 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, discouraged and impeded Ms. Johanson 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 NORTH STATE required Ms. Johanson 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 NORTH STATE's obligation to provide Ms. Johanson and other aggrieved employees with meal periods did not arise until NORTH STATE had employed them for a full five (5) hours.

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

Moreover, NORTH STATE engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Johanson and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Accordingly, NORTH STATE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Johanson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NORTH STATE into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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, NORTH STATE regularly failed to authorize and permit Ms. Johanson 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, NORTH STATE's company-wide policies and practices, including labor budgeting and/or limited payroll allocation, understaffing and/or single-staffing certain positions, and assigning heavy workloads, prevented Ms. Johanson and other aggrieved employees from being able to take rest periods. NORTH STATE also failed to schedule rest periods, which, coupled with NORTH STATE's failure to provide adequate rest period coverage, further led to Ms. Johanson and other aggrieved employees not being authorized and permitted to take rest periods.

In addition, NORTH STATE had a company-wide practice and/or policy of requiring that Ms. Johanson and other aggrieved employees carry and respond to company-issued walkie-talkies at all times, including during rest periods. For example, Ms. Johanson would have her rest periods interrupted because she was required to answer calls from her supervisors or coworkers on her company-issued walkie-talkie to discuss work-related issues.

Furthermore, during the relevant time period, NORTH STATE maintained a company-wide on-premises rest period policy, which mandated that Ms. Johanson and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Johanson and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, NORTH STATE effectively maintained control over Ms. Johanson and other aggrieved employees during rest periods.

As a result of NORTH STATE's practices and policies, Ms. Johanson 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 rest periods to which they were entitled. For example, as stated, Ms. Johanson had her rest periods interrupted by supervisors and coworkers to discuss work-related issues, due to heavy workload, a lack of rest period coverage, and a requirement that employees carry and respond to a company-issued walkie-talkie at all times.

NORTH STATE has also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Johanson and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, NORTH STATE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Johanson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NORTH STATE into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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. 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, NORTH STATE has knowingly and intentionally provided Ms. Johanson and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, NORTH STATE issued uniform wage statements to Ms. Johanson 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 the corresponding number of hours worked at each hourly rate. Specifically, NORTH STATE violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

Because NORTH STATE did not record the time Ms. Johanson and other aggrieved employees spent working off the clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), NORTH STATE did not list the correct amount of gross wages and net wages earned by Ms. Johanson and other aggrieved employees in compliance with sections 226(a)(1) and 226(a)(5). For the same reason, NORTH STATE failed to accurately list the total number of hours worked by Ms. Johanson 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).

Additionally, and separately from these violations, NORTH STATE issued uniform wage statements to Ms. Johanson and other aggrieved employees that failed to correctly 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. This includes providing employees with a physical address of the employer and not a Post Office Box. On information and belief, Ms. Johanson's and other aggrieved employees' wage statements incorrectly list NORTH STATE's address as "PO Box 439, Cottonwood, CA 96022," including Ms. Johanson's wage statement dated May 24, 2024, but according to the California Secretary of State's website, the entity's principal address should be "20803 FRONT STREET, COTTONWOOD, CA 96022." *See example paystub below.*

Earnings Statement			JOHANSON, DESTINY
Pay Date:	05/24/2024	Company: 12L38 - NORTH STATE GROCERY INC	Emp #: [redacted]
Period Start:	05/05/2024	PO BOX 439	Dept: 9004 - Front End
Period End:	05/18/2024	COTTONWOOD CA 96022	Pay Basis: Hourly

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 hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . . ." At all relevant times, and in violation of Labor Code section 1174(d), NORTH STATE willfully failed to maintain accurate payroll records for Ms. Johanson 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, NORTH STATE engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Johanson and other aggrieved employees, in violation of section 1198.

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

Ms. Johanson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NORTH STATE into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

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, NORTH STATE willfully failed to pay Ms. Johanson and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

Ms. Johanson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NORTH STATE into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

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.

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

Ms. Johanson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NORTH STATE into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11070(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

"The 'nature of the work' refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." *See id.*

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

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

NORTH STATE violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Johanson and other aggrieved employees were not allowed to sit, even when the nature of the work would reasonably permit the use of seats, nor were they provided with suitable seats. NORTH STATE's management did not inform Ms. Johanson and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of NORTH STATE's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Johanson and other aggrieved employees were forced to stand during shifts and denied seats. NORTH STATE's failure to provide suitable seating to Ms. Johanson and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Ms. Johanson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NORTH STATE into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11070(14)(B) provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

The IWC states that subdivision 14(B) applies during "lulls in operation" when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during "lulls in operation." *Id.*

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

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

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

Ms. Johanson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NORTH STATE into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc*., 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen 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, NORTH STATE, on a company-wide basis, required Ms. Johanson and other aggrieved employees to wear uniforms bearing the Holiday Market company logo, including polo shirts. However, NORTH STATE did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, NORTH STATE only provided Ms. Johanson with two (2) shirts at the time of hire. Because NORTH STATE failed to provide Ms. Johanson and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts, Ms. Johanson and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. Thus, NORTH STATE failed to maintain uniforms it required Ms. Johanson and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

NORTH STATE could have provided Ms. Johanson and other aggrieved employees with access to laundering services, or, NORTH STATE could have reimbursed employees for the cost of their laundering expenses or provided a uniform maintenance allowance. Instead, NORTH STATE passed these operating costs onto Ms. Johanson and other aggrieved employees.

Thus, NORTH STATE 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. Johanson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NORTH STATE into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

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

Accordingly, Ms. Johanson 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(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Johanson 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 NORTH STATE for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

Best Regards,

Mao Shiokura

Copy: NORTH STATE GROCERY, INC. (via U.S. Certified Mail)

Capstone Law, APC
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