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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **OAKLAND DIVISION**

14 STEVEN MILLER, on behalf of himself and
15 all others similarly situated,

16 Plaintiff,

17 v.

18 RED ROBIN INTERNATIONAL, INC. dba
19 RED ROBIN BURGER AND SPIRITS
20 EMPORIUMS, and DOES 1-100, inclusive,

21 Defendants.

Case No.

CLASS ACTION COMPLAINT

1) FAILURE TO PAY OVERTIME
WAGES, CAL. LAB. CODE §§ 510 AND
1194, AND IWC ORDER NO. 5-2001;

2) FAILURE TO PROVIDE MEAL AND
REST PERIODS, CAL. LAB. CODE §§
218.5, 226.7, 512, AND 1198, AND IWC
ORDER NO. 5-2001;

3) FAILURE TO PAY EARNED WAGES
UPON DISCHARGE, CAL. LAB. CODE §§
201-203;

4) FAILURE TO PROVIDE ACCURATE
WAGE STATEMENTS, CAL. LAB. CODE
§§ 226, 1175, AND 1174.5

5) UNLAWFUL, UNFAIR, and/or
DECEPTIVE BUSINESS PRACTICES,
CAL. BUS. & PROF. CODE §§ 17200, *et*
seq.;

6) CIVIL PENALTIES UNDER PRIVATE
ATTORNEY GENERAL ACT, CAL. LAB.
CODE §§ 2698, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Steven Miller, individually and on behalf of all others similarly situated, by his
2 attorneys, Liu Peterson-Fisher LLP, upon personal knowledge as to himself and belief as to other
3 matters, alleges as follows:

4 INTRODUCTION

5 1. Plaintiff and Class Members are current and former Assistant Managers, Assistant
6 General Managers, and Kitchen Managers who worked and work for Red Robin International, Inc.
7 (“Red Robin”), which operates more than 50 Red Robin restaurants in California. Like many
8 chain restaurants across the state and country, Red Robin uses a lean staffing model at its
9 restaurants to extract long hours from salaried Assistant Managers, Assistant General Managers,
10 and Kitchen Manager (collectively, “Secondary Managers”), even though they spend most of their
11 days performing physically demanding non-exempt work, such as cooking, bussing tables, seating
12 customers, serving customers, cleaning, and delivering food. Because Red Robin allocates
13 insufficient staff hours to each restaurant, while simultaneously requiring Secondary Managers to
14 perform the full gamut of customer service-related tasks, Plaintiff and Class Members are
15 misclassified as “exempt” because they are forced to spend the majority of their working time
16 performing the same non-managerial tasks being performed by non-exempt workers. As a result,
17 Secondary Managers work long hours and often skip their meal and rest breaks, without receiving
18 any overtime compensation or compensation for missed meal and rest breaks from Red Robin.

19 NATURE OF THE ACTION

20 2. This lawsuit seeks to recover overtime compensation, compensation for missed
21 meal and rest breaks, and other penalties for Plaintiff and his similarly situated co-workers who
22 have worked as Secondary Managers for Red Robin in the State of California.

23 3. Upon information and belief, Red Robin owns and operates approximately 59
24 restaurants in California, each of which employs multiple Secondary Managers.

25 4. Because Red Robin requires its restaurants to maintain lean staffing of its hourly
26 workers, Secondary Managers consistently spend the vast majority of their working time
27 performing the same customer service-related duties as non-exempt, hourly-paid workers.

28 5. Throughout the relevant period it has been Red Robin’s statewide policy to

1 uniformly classify Secondary Managers in California as exempt from state overtime provisions
2 and not to pay them any overtime wages.

3 6. Red Robin regularly requires Secondary Managers to work in excess of 8 hours per
4 workday and 40 hours per workweek. However, because Red Robin classifies Secondary
5 Managers in California as exempt, it fails to pay them any overtime compensation for hours
6 worked over 8 in a workday or 40 in a workweek.

7 7. Red Robin also fails to provide Secondary Managers with legally-mandated meal
8 and rest breaks, or to pay them an hour of compensation at their regular rate of pay for each
9 workday that a meal or rest break is not provided.

10 8. By the conduct described in this Class Action Complaint, Red Robin has violated
11 California law, including California Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 1174, and
12 2698, *et seq.*; California Industrial Welfare Commission (“IWC”) Order 5-2001; and California
13 Business and Professions Code §§ 17200, *et seq.*

14 9. Plaintiff brings this action on behalf of himself and all other current and former
15 Shop Managers employed by Red Robin in California at any time between April 27, 2018 through
16 the final disposition of this action (the “Class Period”) (the “Class Members”).

17 10. In order to remedy Red Robin’s violations of the California Wage and Hour Laws,
18 Plaintiff brings this action pursuant to Federal Rule of Procedure 23.

19 **THE PARTIES**

20 **Plaintiff Steven Miller**

21 11. Plaintiff Steven Miller is an adult individual who is a resident of Antioch,
22 California.

23 12. Miller was employed by Red Robin from 2013 until April 28, 2021, holding, at
24 different times, the job titles Assistant Manager I, Kitchen Manager, and Assistant General
25 Manager. Miller worked at Red Robin’s Brentwood, Sun Valley Mall, Solano Mall, and
26 Pleasanton restaurants.

27 13. At all relevant times, Miller was a covered employee within the meaning of the
28 California Labor Code and all applicable IWC Orders.

1 14. Miller regularly worked in excess of 40 hours per week, and on frequently worked
2 60 hours per week.

3 **Defendant Red Robin International, Inc.**

4 15. Red Robin International, Inc. is a corporation, organized and existing under the
5 laws of Delaware, with corporate headquarters in Greenwood Village, Colorado. Red Robin is
6 registered to do business in California as Red Robin Burger and Spirits Emporium.

7 16. At all relevant times, Red Robin has been an employer within the meaning of the
8 California Labor Code and all applicable IWC Orders.

9 17. Red Robin operates approximately 59 restaurants in California.

10 18. Red Robin employed Plaintiff Steven Miller and has employed, will employ, or
11 continues to employ each Class Member, as described in paragraph 9.

12 19. At all times relevant herein, Red Robin has maintained control, oversight, and
13 direction over Plaintiff and the Class Members, including over the timekeeping, payroll, and other
14 employment practices that applied to them.

15 20. Red Robin International, Inc. is the entity listed on Plaintiff's paystubs and W-2s.

16 21. Plaintiff is ignorant of the true names or capacities, whether as individuals,
17 partners, corporate entities, or joint venturers, of the Defendants sued herein as Does 1 through
18 100, inclusive, and for that reason, Defendants are sued under such fictitious names. Plaintiff will
19 seek leave from the Court to amend this Complaint when such true names and capacities are
20 discovered. Plaintiff is informed and believes, and thereupon alleges, that each of said Doe
21 Defendants, whether individuals, partners, corporate entities, or joint venturers, was responsible in
22 some manner for the circumstances alleged herein, and proximately caused Plaintiff and those
23 members of the general public and Class designated herein, to be subject to the unlawful
24 employment and business practices, wrongs, injuries, and damages complained of herein.

25 **JURISDICTION & VENUE**

26 22. **Jurisdiction:** This Court has jurisdiction over this action under 28 U.S.C. §1332.

27 23. **Venue:** Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and (2).

28 Defendants regularly conduct business in the State of California, including operating restaurants in

1 Contra Costa County, which is in the Northern District of California. Red Robin is subject to
2 personal jurisdiction in the State of California. A substantial part of the events or omissions
3 giving rise to the claims occurred in the Northern District of California.

4 **CLASS ACTION ALLEGATIONS**

5 24. Plaintiff brings this action on behalf of himself and all others similarly situated, as a
6 class action pursuant to Federal Rule of Civil Procedure 23. The Class that Plaintiff
7 seeks to represent is composed of and defined as all current and former Assistant Managers,
8 Assistant General Managers, and Kitchen Managers (collectively, “Secondary Managers”)
9 employed by Red Robin in California at any time between April 27, 2018 through the final
10 disposition of this action.

11 25. **Numerosity:** The members of the Class are so numerous that joinder of all
12 members is impracticable. Upon information and belief, the size of the California class is at least
13 100 individuals. Although the precise number of putative class members is unknown, the facts on
14 which the calculation of that number depends are presently within the sole control of Defendants,
15 and the members of the Class are ascertainable from Defendants’ records.

16 26. **Typicality:** The claims of Plaintiff Miller for damages, penalties, and restitution
17 are typical of all proposed Class Members. Red Robin’s practice of misclassifying Secondary
18 Managers was identical or nearly identical in nature throughout the State of California. Plaintiff
19 and the proposed Class suffered common injuries as a result of Red Robin’s conduct.

20 27. **Adequacy:** Plaintiff Miller is a member of the proposed Class. Plaintiff Miller
21 suffered actual harm and damages as a result of Red Robin’s misclassification of him as an exempt
22 employee. Plaintiff has been informed of his duties as class representatives and has committed to
23 serving in that capacity as an adequate representative. Plaintiff’s interests in the pursuit of the
24 case are not adverse to the interest of other Class Members, and Plaintiff is aware of no conflicts
25 of interest that are capable of destroying his adequacy to pursue the claims made herein. Plaintiff
26 is informed and believes that he has selected competent proposed Class Counsel experienced in
27 handling both the procedural and substantive aspects of the case as a class action. Plaintiff will
28 fairly protect the interests of the members of the proposed Class, has no interests antagonistic to

1 Class Members, and will vigorously pursue this suit via attorneys who are competent, skilled,
2 experienced in litigating employment matters (specifically on behalf of employees), and well-
3 acquainted with class action process and procedure.

4 28. **Superiority:** The class action mechanism is superior to other available means for
5 the fair and efficient adjudication of this controversy, since joinder of all Class Members is
6 impracticable. Given that this case involves a large number of Class Members with relatively
7 small claims, the burden and expense of individual litigation would make it virtually impossible to
8 seek individual redress for the wrongs done to them. If separate actions were brought or required
9 to be brought by each individual Class Member, the resulting multiplicity of lawsuits would also
10 cause undue burden and expense for the Court and the parties and create the risk of inconsistent
11 rulings.

12 29. **Existence and Predominance of Common Questions of Fact and Law:** There
13 are common questions of law and fact as to the members of the Class, which predominate over
14 questions affecting only individual members of the Class including, without limitation:

15 a. whether Red Robin violated the California Labor Code, IWC Wage Order
16 5-2001, and the supporting California Department of Labor regulations;

17 b. whether Red Robin failed to compensate the Class Representatives and the
18 Class Members for hours worked in excess of 8 hours per workday and 40 hours per workweek;

19 c. whether Red Robin failed to provide the Class Representatives and the
20 Class Members with meal and rest breaks in compliance with requirements of the California Labor
21 Code and applicable IWC Wage Orders;

22 d. whether Red Robin misclassified the Class Representatives and Class
23 Members as exempt employees;

24 e. whether Red Robin failed to pay all wages due to the Class Representatives
25 and Class Members at the time they ended their employment with Red Robin;

26 f. whether Red Robin failed to keep true and accurate time and pay records for
27 all hours worked by the Class Representatives and the Class Members, and other records required
28 by the California Labor Code and applicable IWC Orders;

1 g. whether Red Robin’s policy of failing to pay workers was instituted
2 willfully or with reckless disregard of the law; and

3 h. the nature and extent of class-wide injury and the measure of damages for
4 those injuries.

5 30. This action is properly maintainable as a class action under Federal Rule of Civil
6 Procedure 23(b)(3).

7 **FACTUAL ALLEGATIONS**

8 31. Throughout their employment with Red Robin, Plaintiff and Class Members
9 regularly work or worked more than 8 hours per workday and 40 hours per workweek.

10 32. Red Robin is aware that Plaintiff and Class Members regularly work or worked
11 more than 8 hours per workday and 40 hours per workweek, yet Red Robin has failed to pay them
12 any overtime compensation for any hours worked over 8 in a workday or 40 in a workweek.

13 33. Red Robin did not and does not keep accurate records of hours worked by Plaintiff
14 and Class Members. That is, Plaintiff’s and Class Members’ hours were not and are not
15 accurately recorded on pay stubs, and Plaintiff’s and Class Members were not and are not required
16 to clock in or out, or otherwise record their time.

17 34. Plaintiff and Class Members regularly work or worked in excess of five-hour shifts
18 for Red Robin, without being afforded at least a half-hour meal break in in which they were
19 relieved of all work duties, and work or worked ten-hour shifts for Red Robin, without being
20 afforded a second half-hour meal break in which they were relieved of all duty. Plaintiff and Class
21 Members regularly work or worked for Red Robin without being afforded at least one ten-minute
22 rest break, in which they were relieved of all duty, per four hours of work performed (or major
23 fraction thereof). Red Robin did not and does not pay Plaintiff and Class Members at least one
24 hour of compensation at their regular rate of pay for each workday for which a meal or rest period
25 was not provided.

26 35. Plaintiff and Class Members consistently spent and spend the majority of their time
27 performing non-managerial tasks, including but not limited to cooking, seating and serving
28 customers, bussing tables, and cleaning. These duties are the same as the duties performed by Red

1 Robin's non-exempt, hourly-paid workers.

2 36. Red Robin's business model depends on lean staffing of its restaurants, including
3 by relying on Secondary Managers to spend the majority of their time performing the same duties
4 as non-exempt, hourly-paid workers.

5 37. Plaintiff and Class Members consistently spend far less than half of their working
6 time performing managerial and/or exempt duties.

7 **FIRST CAUSE OF ACTION**
8 ***Failure to Pay Overtime Wages***
9 **(Cal. Wage Order No. 5-2001; Cal. Labor Code §§ 510, 1194)**
10 **Brought by Plaintiff on Behalf of Himself and all Class Members**

11 38. Plaintiff hereby incorporates by reference all preceding paragraphs as alleged above
12 as if fully set forth herein.

13 39. California law requires an employer, such as Red Robin, to pay overtime
14 compensation to all nonexempt employees for all hours worked over 40 per workweek, or over 8
15 per workday, at a rate of one and one-half times the regular rate of pay per hour. California law
16 also requires employers, including Red Robin to pay double time compensation to all nonexempt
17 employees for all hours worked over 12 in a workday.

18 40. Plaintiff has been misclassified as an exempt employee, when in fact he was a non-
19 exempt employee, and was entitled to be paid overtime compensation for all overtime hours
20 worked.

21 41. Throughout the Class Period, and continuing through the present, Plaintiff and
22 Class Members worked in excess of 8 hours per workday and/or 40 hours per workweek.

23 42. During the Class Period, Red Robin misclassified Plaintiff and Class Members as
24 exempt from overtime pay premiums and failed and refused to pay them overtime premium pay
25 for overtime hours worked.

26 43. Due to Red Robin's unlawful conduct, as set forth herein, Plaintiff and Class
27 Members have sustained damages, including loss of earnings for hours of overtime worked.
28 Plaintiff and Class Members are entitled to damages, including overtime wages, prejudgment
interest, and costs and attorneys' fees, pursuant to statute and other applicable law.

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SECOND CAUSE OF ACTION
California Meal and Rest Period Violations
(Cal. Wage Order No. 5-2001; Cal. Labor Code §§ 218.5, 226.7, & 512)
Brought by Plaintiff on Behalf of Himself and all Class Members

44. Plaintiff hereby incorporate by reference all preceding paragraphs as alleged above as if fully set forth herein.

45. Plaintiff and all Class Members regularly work and have worked in excess of five-hour shifts for Red Robin, without being afforded at least a half-hour meal break in in which they were relieved of all work duties, as required by California Labor Code §§ 226.7 and 512 and IWC Wage Order No. 5-2001. Plaintiff and all Class Members have also worked ten-hour shifts for Red Robin, without being afforded a second half-hour meal break in which they were relieved of all duty, as required by California Labor Code §§ 226.7 and 512 and IWC Wage Order No. 5-2001.

46. Further, Plaintiff and all Class Members regularly have worked and/or currently work for Red Robin without being afforded at least one ten-minute rest break, in which they were relieved of all duty, per four hours of work performed (or major fraction thereof), as required by California Labor Code § 226.7 and IWC Wage Order No. 5-2001.

47. Because Red Robin has failed to afford proper meal periods to Plaintiff and Class Members, it is liable to Plaintiff and Class Members for one hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided, pursuant to California Labor Code § 226.7 and IWC Wage Order No. 5-2001, plus interest, costs, and reasonable attorneys' fees.

48. Because Red Robin has failed to afford proper rest periods to Plaintiff and Class Members, it is liable to Plaintiff and Class Members for one hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not provided, pursuant to California Labor Code § 226.7 and IWC Wage Order No. 5-2001, plus interest, costs, and reasonable attorneys' fees.

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THIRD CAUSE OF ACTION
Waiting Time Penalties
(California Wage Payment Provisions, Cal. Labor Code §§ 201, 202, & 203)
Brought by Plaintiff on Behalf of Himself and
all Former Employee Class Members

49. Plaintiff hereby incorporates by reference all preceding paragraphs as alleged above as if fully set forth herein.

50. California Labor Code §§ 201 and 202 require Red Robin to pay its employees all wages due within time specified by law.

51. California Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

52. Plaintiff and Class Members who have not been employed by Red Robin for at least thirty days ("Former Employee Class Members") are entitled to said unpaid compensation, but have not yet received it.

53. As a consequence of Red Robin's willful conduct of not paying Plaintiff and Class Members compensation for all hours worked under the California Labor Code, Plaintiff and Former Employee Class Members are entitled to thirty days' wages under Labor Code § 203, including interest thereon, attorneys' fees and costs.

FOURTH CAUSE OF ACTION
Failure to Provide Accurate Wage Statements
(Cal. Wage Order No. 5-2001; Cal. Labor Code §§ 226, 1174, & 1174.5)
Brought by Plaintiff on Behalf of Himself and all Class Members

54. Plaintiff hereby incorporates by reference all preceding paragraphs as alleged above as if fully set forth herein.

55. Red Robin knowingly and intentionally failed to provide timely, accurate, itemized wage statements including, inter alia, all hours worked, to Plaintiff and Class Members in accordance with Labor Code § 226(a) and IWC Wage Order No. 5-2001. Such failure caused injury to Plaintiff and Class Members, by, among other things, impeding them from knowing the amount of wages to which they are and were entitled.

56. At all times relevant herein, Red Robin has failed to maintain accurate records of

1 all hours worked by Plaintiff and Class Members as required under California Labor Code §
2 1174(d).

3 57. Plaintiff and Class Members are entitled to the amount provided under Labor Code
4 §§ 226(e) and 1174.5, including the greater of all actual damages or fifty dollars (\$50) for the
5 initial pay period in which a violation occurred and one hundred dollars (\$100) per employee for
6 each violation in a subsequent pay period.

7 58. Plaintiff and Class Members are also entitled to an award of costs and reasonable
8 attorneys' fees under California Labor Code § 226(h).

9 **SECOND CAUSE OF ACTION**
10 ***Unfair Business Practices***
11 **(California Business and Professions Code §§ 17200, et seq.)**
12 **Brought by Plaintiff on Behalf of Himself and All Class Members**

13 59. Plaintiff hereby incorporates by reference all preceding paragraphs as alleged above
14 as if fully set forth herein.

15 60. Unfair practices prohibited by California's Unfair Competition Law or "UCL"
16 include "any unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code
17 § 17200.

18 61. Red Robin committed unlawful and unfair business practices, including but not
19 limited to failing to pay Plaintiff and Class Members overtime wages, failing to provide them with
20 proper meal and rest periods, and failing to furnish them with accurate and itemized wage
21 statements. Accordingly, Plaintiff and Class Members have suffered injury in fact.

22 62. Red Robin's conduct alleged herein occurred during the four years preceding the
23 filing of this Complaint.

24 63. Plaintiff, on behalf of all Class Members, seeks (1) restitution in the amount of the
25 respective unpaid wages earned and due at a rate not less than one and one-half times the regular
26 rate of pay for work performed in excess of 40 hours per workweek, or 8 hours per workday, and
27 double the regular rate of pay for work performed in excess of 12 hours per workday, and
28 (2) recovery of attorneys' fees and costs of this action to be paid by Red Robin, as provided by the
UCL and California Labor Code §§ 218, 218.5, and 1194.

THIRD CAUSE OF ACTION
PAGA Claim for Civil Penalties
(California Labor Code § 2698, et seq.)
Brought by Plaintiff on Behalf of Himself, Class Members,
and the General Public

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4 64. Plaintiff hereby incorporates by reference all preceding paragraphs as alleged above
5 as if fully set forth herein.

6 65. Under the California Private Attorneys General Act of 2004, California Labor Code
7 §§ 2698-2699.5 (“PAGA”), an aggrieved employee, on behalf of himself or herself and other
8 current or former employees as well as the general public, may bring a representative action as a
9 private attorney general to recover penalties for an employer’s violations of the California Labor
10 Code and IWC Orders. These civil penalties are in addition to any other relief available under the
11 California Labor Code, and must be allocated 75% to the California Labor and Workforce
12 Development Agency (“LWDA”) and 25% to the aggrieved employee, pursuant to California
13 Labor Code § 2699.

14 66. As set forth above, Red Robin has committed violations of the California Labor
15 Code and IWC Order No. 5-2001, for which Plaintiff, as private attorney generals, is entitled to
16 recover applicable statutory civil penalties on his own behalf, on behalf of Class Members, and on
17 behalf of the general public, including but not limited to for Red Robin’s failure to pay overtime
18 wages to Plaintiff and Class Members, failure to provide them with meal and rest breaks, and
19 failure to furnish them with accurate wage statements, which constitute violations of the California
20 Labor Code and IWC Order No. 5-2001, each of which is actionable under PAGA.

21 67. California Labor Code § 2699(a), which is part of PAGA, provides:

22 Notwithstanding any other provision of law, any provision of this
23 code that provides for a civil penalty to be assessed and collected by
24 the Labor and Workforce Development Agency or any of its
25 departments, divisions, commissions, boards, agencies, or
26 employees, for a violation of this code, may, as an alternative, be
27 recovered through a civil action brought by an aggrieved employee
28 on behalf of himself or herself and other current or former
29 employees pursuant to the procedures specified in Section 2699.3.

30 68. California Labor Code § 2699(f), which is part of PAGA, provides:

31 For all provisions of this code except those for which a civil penalty
32 is specifically provided, there is established a civil penalty for a

1 violation of these provisions as follows: ... (2) If, at the time of the
2 alleged violation, the person employs one or more employees, the
3 civil penalty is one hundred dollars (\$100) for each aggrieved
4 employee per pay period for the initial violation and two hundred
5 dollars (\$200) for each aggrieved employee per pay period for each
6 subsequent violation.

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8 69. Plaintiff is entitled to civil penalties, to be paid by Red Robin and allocated as
9 PAGA requires, pursuant to California Labor Code § 2699(a) for Red Robin's violations of the
10 California Labor Code and IWC Orders for which violations a civil penalty is already specifically
11 provided by law. Further, Plaintiff is entitled to civil penalties, to be paid by Red Robin and
12 allocated as PAGA requires, pursuant to California Labor Code § 2699(f) for Red Robin's
13 violations of the California Labor Code and IWC Orders for which violations a civil penalty is not
14 already specifically provided by law.

15 70. On February 7, 2022, Plaintiff provided written notice by certified mail to the
16 LWDA and to Red Robin of the legal claims and theories in this case. More than 65 calendar days
17 have passed since the postmark date of the notice provided to the LWDA, and Plaintiff has not
18 received a response from the LWDA. Accordingly, Plaintiff has exhausted his administrative
19 remedies pursuant to PAGA. A true and correct copy of Plaintiff's February 7, 2022 PAGA
20 notice is attached hereto as Exhibit A.

21 71. Under PAGA, Plaintiff and the State of California are entitled to recover the
22 maximum civil penalties permitted by law for violations of the California Labor Code and
23 violations of the IWC Order No. 5-2001 that are alleged in this Complaint.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated, seek the
26 following relief:

27 1. Unpaid overtime pay, compensation for missed meal and rest periods, and
28 monetary penalties as permitted by California state law;

2. Certification of this case as a class action pursuant to Federal Rule of Civil
Procedures 23(b)(3);

3. Designation of the named Plaintiff as Class Representative for the Class Members,

1 and designation of Plaintiff’s counsel of record as Class Counsel;

2 4. A permanent injunction against Red Robin and its directors, officers, owners,
3 agents, successors, employees, and representatives—and any and all persons acting in concert with
4 them—from engaging in the unlawful practices, policies, customs, and usages set forth herein;

5 5. Issuance of a declaratory judgment that the practices complained of in this Class
6 Action Complaint are unlawful under California state law;

7 6. Pre-judgment and post-judgment interest as provided by law;

8 7. A reasonable incentive award to compensate each Plaintiff for time spent
9 attempting to recover unpaid wages and penalties on behalf of Class Members and for the risks
10 undertaken in doing so;

11 8. Attorneys’ fees and costs of the action, pursuant to California Code of Civil
12 Procedure Code § 1021.5, California Business & Professions Code §§ 17200, *et seq.*, California
13 Labor Code § 2699(g), and any other applicable provision of law;

14 9. Such other relief as this Court shall deem just and proper.

15 **DEMAND FOR JURY TRIAL**

16 Pursuant to Rule 38(b) of the Federal Rules of civil Procedure, Plaintiffs demand a trial by
17 jury on all questions of fact raised by the Complaint.

18
19 DATED: April 27, 2022

Respectfully submitted,

20 **LIU PETERSON-FISHER LLP**

21
22 *By: /s/ Rebecca Peterson-Fisher*
Jennifer Liu (State Bar No. 279370)
Rebecca Peterson-Fisher (State Bar No. 255359)
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27 *Attorneys for Plaintiff and the Proposed Class*

EXHIBIT A



February 7, 2022

Via Online Submission: www.dir.ca.gov
California Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

Via U.S. Certified Mail
Red Robin International, Inc.
6312 S. Fiddlers Green Cir., Suite 200N
Greenwood Village, CO 80111

Corporation Service Company
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

**Re: Amended PAGA Notice Pursuant to California Labor Code § 2699
Mr. Matthew Pellouchoud et al. / Red Robin International, Inc.**

Dear Sir or Madam:

This letter amends the PAGA notice filed previously by on behalf of Mr. Pellouchoud on January 12, 2022. Our firm represents Mr. Matthew Pellouchoud and Mr. Steven Miller in connection with their wage and hour claims against Red Robin International, Inc. (“Red Robin”). Mr. Pellouchoud worked for Red Robin from approximately September of 2018 to November 23, 2021 as an Assistant General Manager (“AGM”). During his employment, Mr. Pellouchoud worked as the AGM for three different Red Robin locations in California and filled in occasionally at several other locations. Mr. Miller worked for Red Robin from approximately November 2013 to May 2021. During his employment with Red Robin, Mr. Miller held the positions Assistant Manager (“AM”), AGM, and Kitchen Manager (“KM”). Mr. Miller worked at three different Red Robin locations in California.

Based on our investigation to date, we believe Red Robin violated a number of California wage and hour laws as a result of misclassifying Mr. Pellouchoud, Mr. Miller, and other managers as exempt employees. More than 51% of Mr. Pellouchoud’s time was spent performing nonexempt duties, including but not limited to seating guests, cleaning tables, unloading and storing inventory, making food deliveries, and working the line. The same was true for Mr. Miller when he worked as an AM and as an AGM. Mr. Pellouchoud, Mr. Miller and other AMs and AGMs routinely worked more than eight hours a day and more than forty hours a week, but they were not paid overtime premium pay. Upon information and belief, General Managers (“GMs”) also spent more than 51% of their time performing the same kinds of nonexempt duties that AMs and AGMs performed, but likewise, they were not paid overtime

California Labor & Workforce Development Agency
February 7, 2022
Page 2 of 3

premium pay for hours in excess of eight in a day or forty in a week. In addition, when Mr. Miller worked as a KM, more than 51% of his time was spent performing nonexempt duties, such as cooking, food preparation, and expediting, and he routinely worked more than eight hours a day and more than forty hours a week without receiving overtime premium pay. Furthermore, AMs, KMs, GMs, and AGMs were responsible for covering rest breaks and meal breaks for employees classified as exempt and usually did not have sufficient time to take legally compliant rest and meal breaks themselves. However, Red Robin did not pay them an extra hour of pay for any missed rest breaks and/or meal breaks.

Based on our investigation to date, we believe Red Robin's company-wide policies and practices, as applied in the State of California, violate sections of the California Labor Code, including but not limited to:

1. Labor Code §§ 510, 558, 1194, 1197, 1197.1, and 1198, by failing to pay managers classified as exempt for all hours worked (including overtime hours);
2. Labor Code §§ 226.7, 512, and 558, by failing to provide managers classified as exempt with legally compliant meal and rest periods;
3. Labor Code §§ 204 and 210, by failing to timely pay wages to managers classified as exempt;
4. Labor Code §§ 201-203, by failing to pay managers classified as exempt all earned wages upon discharge;
5. Labor Code §§ 226 and 226.3, by failing to furnish accurate wage statements to managers classified as exempt; and
6. Labor Code § 1174, by failing to maintain requisite payroll records for managers classified as exempt.

We further believe that all of the above violations have occurred at each of Red Robin's locations in California as a result of Red Robin's company-wide policies and practices.

This letter serves as notice of Mr. Pellouchoud's and Mr. Miller's intent to seek civil penalties pursuant to the Private Attorneys General Act, California Labor Code §§ 2698, *et seq.* ("PAGA") for the violations alleged above on behalf of themselves and all aggrieved current and former managers (including all managerial job titles) classified as exempt who are or were employed by Red Robin in the state of California during the applicable limitations period. We request that the Labor & Workforce Development Agency ("LWDA") notify us if it intends to investigate the above allegations pursuant to PAGA. We also request that the LWDA inform us if it does not intend to investigate these violations, so that we may file a lawsuit asserting PAGA claims, or amend an existing complaint to add PAGA claims, to seek penalties on behalf of Mr. Pellouchoud, Mr. Miller, and all other aggrieved employees who worked in California and were subjected to the illegal policies and practices described above. The facts and claims contained

California Labor & Workforce Development Agency
February 7, 2022
Page 3 of 3

herein are based on the limited information available at the time of this writing. Therefore, if through further investigation, discovery, and/or expert review, we become aware of additional compensation or penalties owed to Mr. Pellouchoud, Mr. Miller, and/or other aggrieved employees, we reserve the right to revise these facts and/or add any new claims by filing an amended PAGA notice.

Thank you for your attention to this matter. Please direct all communications and correspondence regarding this matter to our office going forward. If you have any questions, please do not hesitate to contact us at (650) 461-9000.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Rebecca Peterson-Fisher', written in a cursive style.

Rebecca Peterson-Fisher

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

STEVEN MILLER, on behalf of himself and all others
similarly situated

Plaintiff(s)

v.

RED ROBIN INTERNATIONAL, INC. dba RED
ROBIN BURGER AND SPIRITS EMPORIUMS, and
DOES 1-100, inclusive

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Red Robin International, Inc.
6312 South Fiddler's Green Circle, Suite 200N
North Greenwood Village, Colorado 80111

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

STEVEN MILLER, on behalf of himself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Contra Costa County, California (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Rebecca Peterson-Fisher and Jennifer Liu of Liu Peterson-Fisher LLP 800 Menlo Ave, Suite 102, Menlo Park, CA 94025 TEL: (650) 461-9000

DEFENDANTS

RED ROBIN INTERNATIONAL, INC. dba RED ROBIN BURGER AND SPIRITS EMPORIUMS, and DOES 1-100, inclusive

County of Residence of First Listed Defendant Arapahoe County, Colorado (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): California Labor Code §§ 201-203, 218.5, 226, 226.7, 510, 512, 1175, 1198, 1174.5, 2698; Cal. Bus. & Prof. Code §§ 17200; IWC Order No. 5-2001 Brief description of cause: Failure to pay accurate wage stmts, overtime wages, and earned wages on discharge; meal and rest break, PAGA, etc.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 04/27/2022

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of the attorney of record.

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Red Robin Hit with Former Manager's Class Action Over Allegedly Unpaid Wages](#)
