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individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

KASSANDRA VASQUEZ, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

RLMK, INC., dba MCDONALD'S, a
California Corporation; LEAPDAY
ENTERPRISE, INC.; KAD ENTERPRISES,
LLC; DELPH ENTERPRISES; LLC,
KAD91, INC.,; and DOES 1-50, inclusive,

Defendants.

CASE NO.: 280653
Hon. Melinda M. Reed
Dept.: 1

**FIRST AMENDED CLASS ACTION
COMPLAINT PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE §382 FOR:**

1. Failure to Pay Wages Including Overtime as Required by Labor Code §§ 510 and 1194
2. Failure to Provide Meal Periods as Required by Labor Code §§ 226.7, 512 and IWC Wage Order 5-2001
3. Failure to Provide Rest Periods as Required by Labor Code §§ 226.7, 512
4. Failure to Pay Timely Wages Required by Labor Code § 203
5. Failure to Indemnify Necessary Business Expenses as Required by Labor Code 2802
6. Failure to Provide Accurate Itemized Wage Statements as Required by Labor Code § 226;
7. Violation of Business & Professions Code § 17200, et seq.
8. Private Attorney General Act of 2004 ("PAGA")

DEMAND FOR JURY TRIAL

1 Plaintiff KASSANDRA VASQUEZ (“Plaintiff”), individually and on behalf of all others
2 similarly situated (hereinafter collectively referred to as the “Class” or “Class Member”), hereby
3 files this Complaint against Defendants RLMK, INC., dba McDonald’s Restaurant (erroneously
4 sued as RLMK, INC., dba McDonald’s); Leapday Enterprise, Inc.; KAD Enterprises, LLC; Delph
5 Enterprises, LLC; and KAD91, Inc., and DOES 1-50, inclusive (collectively “Defendants”) and
6 alleges on information and belief as follows:

7 **I. JURISDICTION AND VENUE**

8 1. This class action is brought pursuant to California Code of Civil Procedure §382.
9 The monetary damages and restitution sought by Plaintiff exceed the minimum jurisdiction limits
10 of the California Superior Court and will be established according to proof at trial.

11 2. This Court has jurisdiction over this action pursuant to the California Constitution
12 Article VI §10, which grants the California Superior Court original jurisdiction in all causes
13 except those given by statute to other courts. The statutes under which this action is brought do
14 not give jurisdiction to any other court.

15 3. This Court has jurisdiction over Defendants because, upon information and belief,
16 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
17 avails itself of the California market so as to render the exercise of jurisdiction over it by the
18 California Courts consistent with traditional notions of fair play and substantial justice.

19 4. The California Superior Court also has jurisdiction in this matter because the
20 individual claims of the members of the Classes herein are under the seventy-five thousand dollar
21 (\$75,000.00) jurisdictional threshold for Federal Court and the aggregate claim, including attorneys’
22 fees, is under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of
23 2005. Further, there is no federal question at issue, as the issues herein are based solely on California
24 statutes and law, including the Labor Code, IWC Wage Orders 5-2001, CCP, California Civil Code
25 (“CC”) and B&PC.

26 5. Venue is proper in this Court because upon information and belief, one or more of
27 the Defendants, reside, transact business, or have offices in this County and/or the acts or
28 omissions alleged herein took place in this County.

II. PARTIES

6. Plaintiff, KASSANDRA VASQUEZ, was at all times relevant to this action, a resident of Farmersville, California. Plaintiff was employed by Defendants in approximately August 2011 as a Non-Exempt Employee and worked during the liability period for Defendants' until her separation from Defendants' employ in approximately August 2017.

7. Defendants RLMK, INC., dba McDonald's Restaurant; Leapday Enterprise, Inc.; KAD Enterprises, LLC; Delph Enterprises, LLC; and KAD91, Inc., own and operate a chain of McDonald's Restaurants in Tulare County and Fresno County, California. Plaintiff estimates there are in excess of 100 Non-Exempt Employees who work or have worked for Defendants over the last four years.

8. Other than identified herein, Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained.

9. Plaintiff is informed and believes and thereon alleges that each defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other defendants.

III. CLASS ACTION ALLEGATION

10. Plaintiff brings this action individually and on behalf of all others similarly situated as a class action pursuant to Code of Civil Procedure § 382. The members of the Class are defined as follows:

1 All persons who have been employed by Defendants as Non-Exempt Employees or
2 equivalent positions, however titled, in the state of California within four (4) years from
3 the filing of the Complaint in this action until its resolution. (collectively referred to as the
"Class" or "Plaintiff's Class" or "Class Members").

4 11. Plaintiff also seeks to represent the subclass(es) composed of and defined as
5 follows:

6 **Sub-Class 1:** All Class Members who are or were employed by Defendants who worked in
7 excess of six or ten hours in a work day but were not provided with a timely, uninterrupted,
8 duty-free thirty-minute meal period (hereinafter collectively referred to as the "Meal
Period Subclass").

9 **Sub-Class 2:** All Class Members who are or were employed by Defendants who worked in
10 excess of three and a half (3.5) or ten hours in a work day but were not authorized and
11 permitted a rest period (hereinafter collectively referred to as the "Rest Period Subclass").

12 **Sub-Class 3:** All Class Members who are or were employed by Defendants who were not
13 reimbursed for business expenses incurred as a result of the discharge of their duties
(hereinafter collectively referred to as the "Reimbursement Subclass").

14 **Sub-Class 4:** All Class Members who have been employed by Defendants at any time
15 between October 2016 and the present and have separated their employment (hereinafter
16 collectively referred to as the "Waiting Time Penalty Subclass").

17 **Sub-Class 5:** All Class Members who are or were employed by Defendants and subject to
18 Defendant's Unfair Business Practices (hereinafter collectively referred to as the "Unfair
Business Practice Subclass").

19 12. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
20 applicable laws to amend or modify the class definition with respect to issues or in any other
21 ways. Plaintiff is a member of the Class as well as each of the Sub-Classes.

22 13. The term "Class" includes Plaintiff and all members of the Class and each of the
23 Sub-Classes, if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in
24 this complaint.

25 14. There is a well-defined community of interest in the litigation and the proposed
26 Class is easily ascertainable through the records Defendants are required to keep.

27 15. Numerosity. The members of the Class are so numerous that individual joinder
28 of all of them as plaintiffs is impracticable. While the exact number of the Class members is

1 unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there
2 are at least 100 (one hundred) Class members.

3 16. Commonality. Common questions of law and fact exist as to all Class members
4 and predominate over any questions that affect only individual members of the Class. These
5 common questions include, but are not limited to:

6 i. Whether Defendants failed to pay minimum wage compensation to Plaintiff
7 and Class Members for all hours worked;

8 ii. Whether Defendants failed to accurately pay overtime to Plaintiff and Class
9 Members;

10 iii. Whether Defendants violated Labor Code sections 226.7, 512, and
11 applicable IWC Wage Orders 5-2001, by failing to authorize and permit daily rest periods to
12 Plaintiff and Class Members for every four hours or major fraction thereof worked and failing to
13 compensate said employees one hours wages in lieu of rest periods;

14 iv. Whether Defendants violated Labor Code sections 226.7, 512 and
15 applicable IWC Wage Orders 5-2001, by failing to provide a meal period to Plaintiff and Class
16 Members on days they worked work periods in excess of six and 10 hours and failing to
17 compensate said employees one hour wages in lieu of meal periods;

18 v. Whether Defendants failed to maintain accurate time record including
19 recording Plaintiff and Class Members' meal periods pursuant to Labor Code sections 1174.5 and
20 the applicable IWC Wage Orders 5-2001;

21 vi. Whether Defendants failed to indemnify necessary business expenses
22 pursuant to Labor Code section 2802.

23 vii. Whether Defendants failed to provide accurate itemized wage statements
24 pursuant to Labor Coe section 226.

25 viii. Whether Defendants violated Business and Professions Code and Labor
26 Code sections 201-202, 510, 226.7, 226, 226.3, 512, 1174, 1174.5, 1175, 1194, 1197, 1197.1,
27 2802, and applicable IWC Wage Orders 5-2001 which violation constitutes a violation of
28

1 fundamental public policy; and

2 ix. Whether Plaintiff and the Members of the Plaintiff Class are entitled to
3 equitable relief pursuant to Business and Professions Code section 17200, *et. seq.*

4 x. Whether Plaintiffs and the Members of the Plaintiffs Class are entitled to
5 relief in the form of back wages, penalties and interest for failure to pay minimum wages pursuant
6 to Labor Code sections 558, 1194 and 1197.

7 17. Typicality. Plaintiff's claims herein alleged are typical of those claims which
8 could be alleged by any member of the Class and/or Subclass, and the relief sought is typical of
9 the relief which would be sought by each member of the Class and/or Subclass in separate actions.
10 Plaintiff and all members of the Class and or Subclass sustained injuries and damages arising out
11 of and caused by Defendants' common course of conduct in violation of California laws,
12 regulations, and statutes as alleged herein.

13 18. Adequacy. Plaintiff is qualified to, and will fairly and adequately protect the
14 interests of each member of the Class and/or Subclass with whom she has a well defined
15 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges an
16 obligation to make known to the Court any relationships, conflicts, or differences with any
17 member of the Class and/or Subclass. Plaintiff's attorneys and the proposed Counsel for the Class
18 and Subclass are versed in the rules governing class action discovery, certification, litigation, and
19 settlement and experienced in handling such matters. Other former and current employees of
20 Defendants may also serve as representatives of the Class and Subclass if needed.

21 19. Superiority. A class action is superior to other available means for the fair and
22 efficient adjudication of the claims of the Class and would be beneficial for the parties and the
23 court. Class action treatment will allow a large number of similarly situated persons to prosecute
24 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
25 duplication of effort and expense that numerous individual actions would require. The damages
26 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
27 and the expense and burden of individual litigation would make it extremely difficult or
28 impossible for the individual Class Members to seek and obtain individual relief. A class action

1 will serve an important public interest by permitting such individuals to effectively pursue
2 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
3 or contradictory judgments raised by individual litigation.

4 20. Public Policy Considerations: Employers in the state of California violate
5 employment and labor laws everyday. Current employees are often afraid to assert their rights out
6 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
7 they believe their former employers may damage their future endeavors through negative
8 references and/or other means. The nature of this action allows for the protection of current and
9 former employees' rights without fear or retaliation or damage.

10 **IV. FACTUAL ALLEGATIONS**

11 21. At all times set forth herein, Defendants employed Plaintiff and other persons in the
12 capacity of non-exempt positions, however titled, throughout the state of California. All Class
13 Members are California citizens.

14 22. Plaintiff is informed and believes Class Members have at all times pertinent hereto
15 been Non-Exempt within the meaning of the California Labor Code and the implementing rules
16 and regulations of the IWC California Wage Orders.

17 23. Defendants employed Plaintiff as a Non-Exempt hourly paid employee during the
18 liability period in Defendants' various California retail locations.

19 24. Defendants continue to employ Non-Exempt Employees, however titled, in
20 California and implement a uniform set of policies and practices to all non-exempt employees, as
21 they were all engaged in the generic job duties of providing customer service all restaurant
22 patrons.

23 25. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
24 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
25 of the requirements of California's wage and employment laws.

26 26. During the relevant time frame, Defendants compensated Plaintiff and Class
27 Members based upon an hourly rate.

28 27. On information and belief, during the relevant time frame, Plaintiff and Class

1 Members frequently worked well over eight (8) hours in a day and forty (40) hours in a work
2 week.

3 28. Plaintiff is informed and believes that Plaintiff and Class Members were not
4 compensated for all time worked as Plaintiff and Class Members as a result of off-the-clock work
5 performed. For instance, on a consistent and regular basis, Defendants' management would
6 interrupt Plaintiff and Class Members during their lunch breaks in order for them to help with the
7 high customer volume and help other employees with tasks, despite Plaintiff and Class Members
8 having clocked out for their lunches. This off-the-clock work ultimately was uncompensated. Even
9 though Plaintiff and Class Members were performing such work, Defendants failed to account for
10 such time. Defendants' practice resulted in a failure to pay employees for the time worked while
11 under the control of Defendants, and over time resulted on a large and disproportionate
12 underpayment of wages including overtime wages to Plaintiff and Class Members.

13 29. On information and belief, Defendants' also failed to pay wages and overtime
14 wages as a result of unlawful deductions for 30 minute meal periods that were late, cut short,
15 interrupted, or never provided.

16 30. Plaintiff and the Class Members were regularly required to work shifts in excess of
17 five hours without being provided a lawful meal period and over ten hours in a day without being
18 provided a second lawful meal period as required by law.

19 31. Indeed, during the relevant time, as a consequence of Defendants' staffing and
20 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
21 Defendants frequently failed to provide Plaintiff and the Class Members timely, legally complaint
22 uninterrupted 30-minute meal periods on shifts over five hours as required by law.

23 32. Similarly, as a consequence of Defendants' staffing and scheduling practices, lack
24 of coverage, work demands, and Defendants' policies and practices, Defendants frequently failed
25 to provide Plaintiff and the Class Members legally compliant second meal periods on shifts over
26 ten hours as required by law.

27 33. On information and belief, Plaintiff and Class Members did not waive their rights
28 to meal periods under the law.

1 34. Plaintiff and the Class Members were not provided with valid lawful on-duty meal
2 periods.

3 35. Despite the above-mentioned meal period violations, Defendants failed to
4 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one
5 additional hour of pay at their regular rate as required by California law when meal periods were
6 not timely or lawfully provided in a compliant manner.

7 36. Plaintiff are informed and believe, and thereon alleges, that Defendants know,
8 should know, knew, and/or should have known that Plaintiff and the other Class Members were
9 entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but
10 were not receiving such compensation.

11 37. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
12 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
13 period for every four hours worked or major fraction thereof, which is a violation of the Labor
14 Code and IWC wage order.

15 38. Defendants maintained and enforced scheduling practices, policies, and imposed
16 work demands that frequently required Plaintiff and Class Members to forego their lawful, paid
17 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
18 requisite rest periods were not timely authorized and permitted as a result of Defendants' failure to
19 provide relief for Plaintiff and Class Members to take their lawfully required breaks.

20 39. Despite the above-mentioned rest period violations, Defendants did not compensate
21 Plaintiff, and on information and belief, did not pay Class Members one additional hour of pay at
22 their regular rate as required by California law, including Labor Code section 226.7 and the
23 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
24 permitted.

25 40. Moreover, Plaintiff and the Class Members were required to incur necessary
26 expenses in the discharge of their duties. Defendants failed to reimburse Plaintiff and Class
27 Members for the use of their use of their personal vehicles, as Plaintiff and Class Members were
28 often sent to other McDonald's locations to pick up supplies, such as hamburger meats, lettuce,

1 buns, or mixes by Defendants' management. Defendants did not reimburse Plaintiff and Class
2 Members for such necessary expenses incurred in accordance with Labor Code section 2802.

3 41. Plaintiff are informed and believe, and thereon alleges, that at all times herein
4 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
5 thereof for resignations without prior notice as the case may be) they had a duty to accurately
6 compensate Plaintiff and Class Members for all wages owed including minimum wages, meal and
7 rest period premiums, and that Defendants had the financial ability to pay such compensation, but
8 willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the above-
9 specified violations.

10 42. Upon information and belief, Defendants knew and or should have known that it is
11 improper to implement policies and commit unlawful acts such as:

12 (a) requiring employees to work four (4) hours or a major fraction thereof without
13 being provided a minimum ten (10) minute rest period and without compensating the employees
14 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
15 rest period was not provided;

16 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day
17 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
18 and without compensating employees with one (1) hour of pay at the regular rate of compensation
19 for each workday that such a meal period was not provided;

20 (c) failing to pay Plaintiff and Class Members for all wages including overtime wages
21 owed;

22 (d) failing to timely pay Plaintiff and Class Members;

23 (e) failing to reimburse expenses;

24 (f) failing to provide accurate wage statements; and

25 (g) conducting and engaging in unfair business practices.

26 43. In addition to the violations above, and on information and belief, Defendants knew
27 they had a duty to compensate Plaintiff and Class Members for the allegations asserted herein and
28 that Defendants had the financial ability to pay such compensation, but willfully, knowingly,

1 recklessly, and/or intentionally failed to do so.

2 44. Plaintiff and Class Members they seek to represent are covered by, and Defendants
3 are required to comply with, applicable California Labor Codes, Industrial Welfare Commission
4 Occupational Wage Orders (hereinafter “IWC Wage Orders”) and corresponding applicable
5 provisions of California Code of Regulations, Title 8, section 11000 *et seq.*

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY WAGES INCLUDING OVERTIME**

8 **(Against All Defendants)**

9 45. Plaintiff incorporates and re-alleges each and every allegation contained above as
10 though fully set forth herein.

11 46. At all times relevant, the IWC wage orders applicable to Plaintiff’s and the Class
12 require employers to pay its employees for each hour worked at least minimum wage. “Hours
13 worked” means the time during which an employee is subject to the control of an employer, and
14 includes all the time the employee is suffered or permitted to work, whether or not required to do
15 so, and in the case of an employee who is required to reside on the employment premises, that
16 time spent carrying out assigned duties shall be counted as hours worked.

17 47. At all relevant times, Labor Code §1197 provides that the minimum wage for
18 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a
19 lesser wage than the established minimum is unlawful. Further, pursuant to the IWC Wage Order
20 and Labor Code, Plaintiff and Class Members are to be paid minimum wage for each hour
21 worked, and cannot be averaged At all times relevant, the IWC wage orders applicable to Plaintiff
22 and Class Members’ employment by Defendants provided that employees working for more than
23 eight (8) hours in a day or forty (40) hours in a work week are entitled to overtime compensation
24 at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight
25 (8) hours in a day or forty (40) hours in a work week. An employee who works more than twelve
26 (12) hours in a day is entitled to overtime compensation at a rate of twice the regular rate of pay.

27 48. At all relevant times, Labor Code §1197.1 states “[a]ny employer or other persons
28 acting individually as an officer, agent, or employee of another person, who pays or causes to be

1 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or
2 by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
3 damages payable to the employee, and any applicable penalties pursuant to Section 203.

4 49. Labor Code §510 codifies the right to overtime compensation at the rate of one and
5 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or
6 forty (40) hours in a work week and to overtime compensation at twice the regular rate of pay for
7 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
8 seventh day of work in a particular work week.

9 50. At all times relevant, Plaintiff and Class Members regularly performed non-exempt
10 work and thus were subject to the overtime requirements of the IWC Wage Orders, CCR § 11000,
11 et. seq. and the Labor Code.

12 51. At all times relevant, Plaintiff and Class Members consistently worked in excess of
13 eight (8) hours in a day and/or forty (40) hours in a week as a result of the off-the-clock work
14 performed as discussed above.

15 52. Defendants also failed to pay all wages and overtime wages due to Defendant's
16 automatic deduction of meal periods that were short, interrupted, late, or unprovided.

17 53. Accordingly, Defendants owe Plaintiff and Class Members overtime wages, and
18 have failed to pay Plaintiff and Class Members the overtime wages owed.

19 54. Pursuant to Labor Code §§ 510, 558 and 1194, Plaintiff and Class Members are
20 entitled to recover their unpaid wages and overtime compensation, as well as interest, costs, and
21 attorneys' fees.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

24 **(Against All Defendants)**

25 55. Plaintiff incorporates and re-alleges each and every allegation contained above as
26 though fully set forth herein.

27 56. Pursuant to Labor Code §512, no employer shall employ an employee for a work
28 period of more than five (5) hours without providing a meal break of not less than thirty (30)

1 minutes in which the employee is relieved of all of his or her duties. An employer may not
2 employ an employee for a work period of more than ten (10) hours per day without providing the
3 employee with a second meal period of not less than thirty (30) minutes, except that if the total
4 hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual
5 consent of the employer and the employee only if the first meal period was not waived.

6 57. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
7 employment by Defendants, in order for an "on duty" meal period to be permissible, the nature of
8 the work of the employee must prevent an employee from being relieved of all duties relating to
9 his or her work for the employer and the employees must consent in writing to the "on duty" meal
10 period. On information and belief, Plaintiff and Class Members did not consent in writing to an
11 "on duty" meal period. Further, the nature of the work of Plaintiff and Class Members was not
12 such that they were prevented from being relieved of all duties. Despite the requirements of the
13 IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants and
14 Labor Code §512 and §226.7, Defendants did not provide Plaintiff and Class Members with all
15 their statutorily authorized meal periods.

16 58. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
17 provide Plaintiff and Class Members, timely and uninterrupted meal periods of not less than thirty
18 (30) minutes pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
19 employment by Defendants. As a proximate result of the aforementioned violations, Plaintiff and
20 the other Class Members have been damaged in an amount according to proof at time of trial.

21 59. By their failure to provide a compliant meal period for each shift worked over five
22 (5) hours and their failure to provide a compliant second meal period for any shift worked over ten
23 (10) hours per day by Plaintiff and the Class Members, and by failing to provide compensation in
24 lieu of such non-provided meal periods, as alleged above, Defendants violated the provisions of
25 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders.

26 60. Plaintiff and the Class Members she seeks to represent did not voluntarily or
27 willfully waive meal periods and were regularly required to work shifts without being provided all
28 of their legally required meal periods. Defendants created a working environment in which

1 Plaintiff and Class Members were not provided all of their meal periods due to shift scheduling
2 and/or work related demands placed upon them by Defendants as well as a lack of sufficient
3 staffing to meet the needs of Defendants' business as discussed above. On information and belief,
4 Defendants' implemented a policy and practice which resulted in systematic and class-wide
5 violations of the Labor Code. On information and belief, Defendants' violations have been
6 widespread throughout the liability period and will be evidenced by Defendants' time records for
7 the Class Members.

8 61. As a result of the unlawful acts of Defendants described herein, Plaintiff and the
9 Class Members they seek to represent have been deprived of premium wages in amounts to be
10 determined at trial. Pursuant to Labor Code §226.7, Plaintiff and Class Members are entitled to
11 recover one (1) hour of premium pay for each day in which a meal period was not provided, along
12 with interest and penalties thereon, attorneys' fees, and costs.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

15 **(Against All Defendants)**

16 62. Plaintiff incorporates and re-alleges each and every allegation contained above as
17 though fully set forth herein.

18 63. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
19 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
20 periods, which insofar as practicable shall be in the middle of each work period.... [The]
21 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
22 minutes net rest time per four (4) hours worked or major fraction thereof... Authorized rest period
23 time shall be counted as hours worked, for which there shall be no deduction from wages." Labor
24 Code §226.7(a) prohibits an employer from requiring any employee to work during any rest period
25 mandated by an applicable order of the IWC.

26 64. Defendants were required to authorize and permit employees such as Plaintiff and
27 Class Members to take rest periods, based upon the total hours worked at a rate of ten (10) minutes
28 net rest per four (4) hours worked, or major fraction thereof, with no deduction from wages.

1 Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class Members'
2 employment by Defendants, Defendants failed and refused to authorize and permit Plaintiff and
3 Class Members, to take ten (10) minute rest periods for every four (4) hours worked, or major
4 fraction thereof.

5 65. On information and belief Defendants created a working environment in which
6 Plaintiff and Class Members were not provided all of their rest periods due to shift scheduling
7 and/or work related demands placed upon them by Defendants as well as a lack of sufficient
8 staffing to meet the needs of Defendants' business as discussed above. On information and belief,
9 Defendants implemented a policy and practice which resulted in systematic and class-wide
10 violations of the Labor Code. On information and belief, Defendants' violations have been
11 widespread throughout the liability period.

12 66. As a proximate result of the aforementioned violations, Plaintiff and Class
13 Members have been damaged in an amount according to proof at time of trial. Pursuant to Labor
14 Code §226.7, Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for
15 each day in which Defendants failed to provide a rest period to Plaintiff and the Class, plus
16 interest and penalties thereon, attorneys' fees, and costs.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PAY TIMELY PAY WAGES**

19 **(Against All Defendants)**

20 67. Plaintiff incorporates and re-alleges each and every allegation contained above as
21 though fully set forth herein.

22 68. Plaintiff incorporates and re-alleges each and every allegation contained above as
23 though fully set forth herein. Labor Code §§201-202 requires an employer who discharges an
24 employee to pay compensation due and owing to said employee immediately upon discharge and
25 that if an employee voluntarily leaves his or her employment, his or her wages shall become due
26 and payable not later than seventy-two (72) hours thereafter, unless the employee has given
27 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee
28 is entitled to his or her wages on their last day of work.

69. Labor Code §203 provides that if an employer willfully fails to pay compensation promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for waiting time penalties in the form of continued compensation for up to thirty (30) work days.

70. During the relevant time period, Defendants willfully failed and refused, and continue to willfully fail and refuse, to pay Plaintiff and Class Members their wages, earned and unpaid, either at the time of discharge, or within seventy-two (72) hours of their voluntarily leaving Defendants' employ. These wages include regular and overtime.

71. As a result, Defendants are liable to Plaintiff and members of the Non-Exempt Production Employee class for waiting time penalties pursuant to Labor Code §203, in an amount according to proof at the time of trial.

FIFTH CAUSE OF ACTION

FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES

(Against All Defendants)

72. Plaintiff incorporates and re-alleges each and every allegation contained above as though fully set forth herein.

73. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Class Members for necessary expenditures incurred in direct consequences of the discharge of his or her duties. As a necessary part of their employment, Plaintiff and on information and belief Class Members were not adequately reimbursed by Defendants for expenses related to all expenses incurred as results of their personal vehicle usage and Defendants' failure to reimburse Plaintiff and Class Members for their uniforms as discussed above. Despite these realities of the job, Defendants failed to provide reimbursements for the use of personal cell phones and the use of personal vehicles necessary to carry out Plaintiff's and Class Members' job duties.

74. Labor Code §2804 states in pertinent part: "Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his or her personal representative of any right or remedy to which he is entitled under the laws of this State.

75. As a result of the unlawful acts of Defendants, Plaintiff and the Class Members

1 have been deprived of un-reimbursed expense amounts to be determined at trial, and are entitled to
2 the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
3 pursuant to Labor Code §§ 226, and 2802.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

6 **(Against All Defendants)**

7 76. Plaintiff incorporates and re-alleges each and every allegation contained above as
8 though fully set forth herein.

9 77. Section 226(a) of the California Labor Code requires Defendants to itemize in wage
10 statements all deductions from payment of wages and to accurately report total hours worked by
11 Plaintiff and the Class including applicable hourly rates and reimbursement expenses among other
12 things. Defendants have knowingly and intentionally failed to comply with Labor Code section
13 226 and 204 on wage statements that have been provided to Plaintiff and the Class.

14 78. IWC Wage Orders require Defendants to maintain time records showing, among
15 others, when the employee begins and ends each work period, meal periods, split shift intervals
16 and total daily hours worked in an itemized wage statement, and must show all deductions and
17 reimbursements from payment of wages, and accurately report total hours worked by Plaintiff and
18 the Class. On information and belief, Defendants have failed to record all or some of the items
19 delineated in Industrial Wage Orders and Labor Code §226.

20 79. Defendants have failed to accurately record all time worked and failed to accurately
21 pay minimum and overtime wages.

22 80. Defendants have failed to accurately record meal and rest period premiums.

23 81. Plaintiff and the Class have been injured as they were unable to determine whether
24 they had been paid correctly for all hours worked per pay period among other things.

25 82. Pursuant to Labor Code section 226, Plaintiff and the Class are entitled up to a
26 maximum of \$4,000 each for record keeping violations.

27 83. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
28 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)

1 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
2 for each violation in a subsequent citation, for which the employer fails to provide the employee a
3 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

4 84. As a result of the unlawful acts of Defendants, Plaintiff and the Class Members
5 have been deprived of un-reimbursed expense amounts to be determined at trial, and are entitled to
6 the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
7 pursuant to Labor Code §§ 226.

8 **SEVENTH CAUSE OF ACTION**

9 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et.seq.**

10 **(Against All Defendants)**

11 85. Plaintiff incorporates and re-alleges each and every allegation contained above as
12 though fully set forth herein.

13 86. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
14 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
15 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
16 meaning of the California Code of Civil Procedure §1021.5.

17 87. Defendants' policies, activities, and actions as alleged herein, are violations of
18 California law and constitute unlawful business acts and practices in violation of California
19 Business and Professions Code §§17200, et seq.

20 88. A violation of California Business and Professions Code §§17200, et seq., may be
21 predicated on the violation of any state or federal law. Defendants' policy of failing to provide
22 Plaintiff and the Class with meal periods and rest breaks or the one (1) hour of premium pay when
23 a meal or rest break period was not provided or provided outside of the required time frames,
24 violates Labor Code § 226, §512, and §226.7 and applicable IWC Wage Orders and California
25 Code of Regulations. Defendants' failure to reimburse necessary business expenses incurred also
26 violate Labor Code § 2802.

27 89. Plaintiff and Class Members have been personally aggrieved by Defendants'
28 unlawful and unfair business acts and practices alleged herein by the loss of money and/or

1 property.

2 90. Pursuant to California Business and Professions Code §§17200, et seq., Plaintiff
3 and Class Members are entitled to restitution of the wages withheld and retained by Defendants
4 during a period that commences four (4) years prior to the filing of this complaint; an award of
5 attorneys' fees, interest; and an award of costs.

6 **EIGHTH CAUSE OF ACTION**

7 **PRIVATE ATTORNEY GENERAL ACT ("PAGA")**

8 **(Against All Defendants)**

9 91. Plaintiff incorporates and re-alleges each and every allegation contained above as
10 though fully set forth herein.

11 92. Pursuant to Labor Code § 2699.3, (a) A civil action by an aggrieved employee
12 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in
13 Section 2699.5 shall commence only after the following requirements have been met:

14 (1) The aggrieved employee or representative shall give written notice by certified mail to
15 the Labor and Workforce Development Agency and the employer of the specific
16 provisions of this code alleged to have been violated, including the facts and theories to
17 support the alleged violation.

18 (2) (A) The agency shall notify the employer and the aggrieved employee or representative
19 by certified mail that it does not intend to investigate the alleged violation within
20 sixty (60) calendar days of the postmark date of the notice received pursuant to
21 paragraph (1). Upon receipt of that notice or if no notice is provided within sixty-five
22 (65) calendar days of the postmark date of the notice given pursuant to paragraph (1),
23 the aggrieved employee may commence a civil action pursuant to Section 2699.

24 93. On March 30, 2021 Plaintiff complied with notice requirements pursuant to Labor
25 Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,
26 indicating that the LWDA and Defendants were put on notice of the claims alleged here and that
27 the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not
28 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a

1 representative capacity. The substance and violations set forth in this Complaint of which the
2 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
3 Action Complaint to the LWDA.

4 94. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
5 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
6 Employees of Defendants.

7 95. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
8 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
9 including without limitation Labor Code section 201-204, 226, 226.7, 226.3, 510, 512, 558,
10 1021.5, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2800, 2802, 2804, and, 2698 *et seq.*,
11 applicable IWC Wage Orders and California Code of Regulations, Title 8, section 11000 *et. seq.*

12 96. As a result of their unlawful acts, Plaintiff and the proposed class are entitled to
13 civil penalties pursuant to Labor Code Private Attorney General Act of 2004, Labor Code §2698
14 *et. seq.*

15 WHEREFORE, Plaintiff and the aggrieved employees he seeks to represent requests relief as
16 described herein and below.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

19 **Class Certification**

- 20 1. That this action be certified as a class action;
21 2. That Plaintiff be appointed as the representative of the Class;
22 3. That Plaintiff be appointed as the representative of the Subclass; and
23 4. That counsel for Plaintiff is appointed as counsel for the Class and Subclass.

24 **On the First Cause of Action**

- 25 1. For compensatory damages equal to the unpaid balance of minimum wage
26 compensation and overtime owed to Plaintiff and Class members as well as interest and costs;
27 2. For reasonable attorneys' fees and costs pursuant to Labor Code §§ 510, and 1194;
28 3. For liquidated damages in an amount equal to the wages unlawfully unpaid and

1 interest thereon pursuant to Labor Code §§ 1194.2, 558;

2 4. For such other and further relief as the Court deems proper.

3 On the Second Cause of Action

4 1. For one (1) hour of premium pay for each day in which a required meal period was
5 not provided or not provided in a timely manner; and

6 2. For such other and further relief as the Court deems proper.

7 On the Third Cause of Action

8 1. For one (1) hour of premium pay for each day in which a required rest period was
9 not authorized or permitted; and

10 2. For such other and further relief as the Court deems proper.

11 On the Fourth Cause of Action

12 1. For statutory penalties pursuant to Labor Code §203;

13 2. For interest for wages untimely paid; and

14 3. For such other and further relief as the Court deems proper.

15
16 On the Fifth Cause of Action

17 1. For statutory penalties pursuant to Labor Code §2802;

18 2. For interest for wages untimely paid; and

19 3. For such other and further relief as the Court deems proper.

20 On the Sixth Cause of Action

21 1. For statutory penalties pursuant to Labor Code §226;

22 2. For interest for wages untimely paid; and

23 3. For such other and further relief as the Court deems proper.

24 On the Seventh Cause of Action

25 1. That Defendants, jointly and/or severally, pay restitution of sums to Plaintiff and
26 Class Members for their past failure to, pay wages, premium wages for meal and/or rest periods,
27 that were not provided as described herein to Plaintiff and Class Members, and to reimburse
28 expenses, over the last four (4) years in an amount according to proof;

2. For pre-judgment interest on any unpaid wages due from the day that such amounts were due;

3. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to recover;

4. For costs of suit incurred herein; and

5. For such other and further relief as the Court deems proper.

On the Eighth Cause of Action

1. For statutory penalties pursuant to Labor Code §2698 et. seq.; and

2. For such other and further relief as the Court deems proper;

DEMAND FOR JURY TRIAL

Plaintiff and members of the Class and Subclass request a jury trial in this matter.

Dated: March 30, 2021

JAMES HAWKINS APLC

By:

JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.
Attorneys for Plaintiff KASSANDRA
VASQUEZ, individually and on behalf of all
others similarly situated.