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Attorneys for Plaintiff THOMAS LONGACRE

on behalf of the general public as private attorney general

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

THOMAS LONGACRE, on behalf of the
general public as private attorney general,

Plaintiff,

v.

KEHE DISTRIBUTORS, INC., a Delaware
Corporation; and DOES 1-50, inclusive

Defendant.

Case No.: STK-CV-UOE-2022-0001211

Assigned For All Purposes To:

Judge: HON. Erin Guy Castillo

Dept.: 10B

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

1. Failure to Provide Meal Periods as Required by Labor Code §§ 226.7, 512 and IWC Wage Orders;
2. Failure to Provide Rest Periods as Required by Labor Code §§ 226.7, 512;
3. Failure to Pay Timely Wages under Labor Code §§ 203 and 204;
4. Failure to Provide Accurate Itemized Wage Statements as required by Labor Code § 226;
5. Failure to Accurately Record and Pay Sick Leave as Required by Labor Code § 246; and
6. Violation of Business & Professions Code § 17200, *et seq.*
7. Private Attorney General Act of 2004 ("PAGA")

DEMAND FOR JURY TRIAL

1 Plaintiff THOMAS LONGACRE (“Plaintiff”), individually and on behalf of all others
2 similarly situated (hereinafter collectively referred to as the “Class” or “Class Members”), hereby
3 files this Complaint against Defendant KEHE DISTRIBUTORS, INC.; and DOES 1-10, inclusive
4 (“Defendant”) and alleges on information and belief as follows:

5 **I. JURISDICTION AND VENUE**

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

9 2. This is also a representative action for recovery of penalties under the Private
10 Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits
11 “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public
12 as private attorney general and all other current and former aggrieved employees, to recover civil
13 penalties and address an employer’s violations of the California Labor Code.

14 3. In this case, Defendant violated various provisions of the California Labor Code. As
15 set forth below, Defendant implemented policies and practices which led to Defendant’s: (a) failure
16 to provide meal periods for every work period exceeding more than five (5) and ten (10) hours per
17 day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in
18 lieu of providing a meal period; (b) failure to provide rest breaks for every four hours or major
19 fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional
20 hour’s of pay in lieu of providing a rest period; (c) failing to pay all wages earned and owed upon
21 separation from Defendant’s employ and during employment; (d) failing to provide accurate
22 itemized wage statements; (e) failing to accurately calculate sick pay; and (f) failure to provide cool
23 down recovery periods. As a result Plaintiff seeks penalties under Labor Code 2698, *et seq.* on behalf
24 of the general public as private attorney general and all other aggrieved employees.

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

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

II. PARTIES

7. Plaintiff, THOMAS LONGACRE, was at all times relevant to this action, a resident of California. Plaintiff was employed by Defendant in approximately March 2021 as a Non-Exempt Employee with the title of Order Selector and worked during the liability period for Defendant until Plaintiff's separation from Defendant's employ in approximately June 2021. Plaintiff's duties included but were not limited to placing orders on double EPJ with pallets, drop off orders at loading dock, warehouse loading and unloading.

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 believe and thereon allege that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects

1 pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendant.

2 III. CLASS ACTION ALLEGATIONS

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

6 All persons who are or have been employed by Defendant as non-exempt employees or
7 equivalent positions, however titled, in the state of California within four (4) years from the
8 filing of the Complaint in this action until its resolution. (Collectively referred to as the
9 “Class” or “Class Members”).

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

11 **Sub-Class 1:** All Class Members who are or were employed by Defendant who worked in
12 excess of six or ten hours in a work day but were not provided with a timely, uninterrupted,
13 duty-free thirty-minute meal period or paid a one-hour premium at the correct regular rate
14 (hereinafter collectively referred to as the “Meal Period Subclass”).

15 **Sub-Class 2:** All Class Members who are or were employed by Defendant who worked in
16 excess of three and a half (3.5) or ten hours in a work day but were not authorized and
17 permitted a rest period or paid a one-hour premium at the correct regular rate (hereinafter
18 collectively referred to as the “Rest Period Subclass”).

19 **Sub-Class 3:** All Class Members who are or were employed by Defendant and worked in
20 high heat conditions but were not provided with recovery periods or paid a one-hour
21 premium at the correct regular rate (hereinafter collectively referred to as the “Recovery
22 Period Subclass”).

23 **Sub-Class 4:** All Class Members who are or were employed by Defendant who received
24 wage statements from Defendant (hereinafter collectively referred to as the “Wage
25 Statement Subclass”).

26 **Sub-Class 5:** All Class Members who are or were employed by Defendant who were not
27 paid all sick pay owed at the correct regular rate from Defendant (hereinafter collectively
28 referred to as the “Sick Pay Subclass”).

Sub-Class 6: All Class Members who are or were employed by Defendant who were not
timely paid all wages and overtime from Defendant (hereinafter collectively referred to as
the “Unpaid Wages Subclass”).

Sub-Class 7: All Class Members who have been employed by Defendant and
have separated their employment and were not paid all wages owed from
Defendant at the time of termination (hereinafter collectively referred to as the
“Waiting Time Penalty Subclass”).

Sub-Class 8: All Class Members who are or were employed by Defendant and

1 subject to Defendant's Unfair Business Practices (hereinafter collectively
2 referred to as the "Unfair Business Practice Subclass").

3 12. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
4 applicable laws to amend or modify the class definition with respect to issues or in any other ways.
5 Plaintiff is a member of the Class as well the Subclass.

6 13. The term "Class" includes Plaintiff and all members of the Class and the Subclass,
7 if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in this complaint.

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

10 15. Numerosity. The members of the Class are so numerous that individual joinder of
11 all of them as plaintiffs is impracticable. While the exact number of the Class Members is unknown
12 to Plaintiff at this time, Plaintiff is informed and believe and thereon alleges that there are at least
13 100 (one hundred) Class Members.

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

17 i. Whether Defendant deprived Plaintiff and Class Members of
18 lawful meal periods without compensation at the correct regular
19 rate;

20 ii. Whether Defendant deprived Plaintiff and Class Members of
21 lawful rest breaks without compensation at the correct regular rate;

22 iii. Whether Defendant deprived Plaintiff and Class Members of
23 lawful recovery periods without compensation at the correct
24 regular rate;p

25 iv. Whether Defendant failed to timely pay all wages due to Plaintiff
26 and Subclass members upon termination or within 72 hours of
27 resignation;

28 v. Whether Plaintiff and Class Members were not timely paid all

wages and overtime during employment, pursuant to Labor Code section 204;

vi. Whether Defendant provided accurate itemized wage statements pursuant to Labor Code § 226;

vii. Whether Defendant failed to pay sick time using the proper regular rate pursuant to Labor Code § 246;

viii. Whether Defendant violated Business and Professions Code and Labor Code sections 201-204, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198 and applicable IWC Wage Orders which violation constitutes a violation of fundamental public policy; and

ix. Whether Plaintiff and Class Members are entitled to equitable relief pursuant to Business and Professions Code § 17200, *et. seq.*

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

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

19. Superiority. A class action is superior to other available means for the fair and

efficient adjudication of the claims of the Class and would be beneficial for the parties and the court. Class action treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. The damages suffered by each Class member are relatively small in the sense pertinent to class action analysis, and the expense and burden of individual litigation would make it extremely difficult or impossible for the individual Class Members to seek and obtain individual relief. A class action will serve an important public interest by permitting such individuals to effectively pursue recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

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

IV. FACTUAL ALLEGATIONS

21. At all times set forth herein, Defendant employed Plaintiff and other persons in the capacity of non-exempt positions, however titled, throughout the state of California.

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

23. Defendant continues to employ Non-Exempt Employees, however titled, in California and implement a uniform set of policies and practices to all non-exempt employees, as they were all engaged in the generic job duties related to Defendant's warehouse and distribution operations.

24. Plaintiff is informed and believes, and thereon alleges, that Defendant are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the

1 requirements of California's wage and employment laws.

2 25. On information and belief, during the relevant time frame, Plaintiff, Class Members
3 and Aggrieved Employees frequently worked well over eight (8) hours in a day and forty (40) hours
4 in a work week.

5 26. During the relevant time frame, Defendant compensated Plaintiff, Class Members
6 and Aggrieved Employees based upon an hourly rate.

7 27. On information and belief, during the relevant time frame, Plaintiff, Class Members
8 and Aggrieved Employees typically worked six (6) days a week.

9 28. Plaintiff is informed and believes that the Class Members and Aggrieved Employees
10 were required to keep similar schedules.

11 29. Defendant also failed to properly calculate Plaintiff's, Class Members' and the
12 Aggrieved Employees' regular rate of pay including but not limited to by failing to include all forms
13 of compensation/remuneration in the regular rate including but not limited to bonuses, incentives,
14 commissions, and other compensation for meal, rest and recovery period premium pay, overtime
15 and sick pay calculation purposes.

16 30. Plaintiff, Class Members and the Aggrieved Employees were regularly required to
17 work shifts in excess of five hours without being provided a lawful meal period and over ten hours
18 in a day without being provided a second lawful meal period or paid the one-hour premium at the
19 correct regular rate as required by law.

20 31. Indeed, during the relevant time, as a consequence of Defendant's staffing and
21 scheduling practices, work demands, and Defendant's policies and practices, Defendant frequently
22 failed to provide Plaintiff, Class Members and the Aggrieved Employees timely, legally complaint
23 uninterrupted 30-minute meal periods on shifts over five hours or paid the one-hour premium at the
24 correct regular rate as required by law.

25 32. Similarly, as a consequence of Defendant's staffing and scheduling practices, work
26 demands, and Defendant's policies and practices, Defendant frequently failed to provide Plaintiff,
27 Class Members and the Aggrieved Employees legally compliant second meal periods on shifts over
28 ten hours or paid the one-hour premium at the correct regular rate as required by law.

1 33. On information and belief, Plaintiff, Class Members and Aggrieved Employees did
2 not waive their rights to meal periods under the law.

3 34. Plaintiff, Class Members and the Aggrieved Employees were not provided with valid
4 lawful on-duty meal periods.

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

9 36. Plaintiff is informed and believes, and thereon alleges, that Defendant know, should
10 know, knew, and/or should have known that Plaintiff and the other Class Members and Aggrieved
11 Employees were entitled to receive premium wages based on their regular rate of pay under Labor
12 Code §226.7 but were not receiving such compensation.

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

17 38. Plaintiff, Class Members and Aggrieved Employees were required to take their rest
18 breaks on the premises and were not allowed to leave premises during their breaks.

19 39. Defendant maintained and enforced scheduling practices, policies, and imposed
20 work demands that frequently required Plaintiff, Class Members and Aggrieved Employees to
21 forego their lawful, paid rest periods of a net ten minutes for every four hours worked or major
22 fraction thereof. Such requisite rest periods were not timely authorized and permitted as a result of
23 Defendant's failure to provide relief for Plaintiff, Class Members and Aggrieved Employees to take
24 their lawfully required breaks.

25 40. Despite the above-mentioned rest period violations, Defendant did not compensate
26 Plaintiff, and on information and belief, did not pay Class Members and Aggrieved Employees one
27 additional hour of pay at their regular rate as required by California law, including Labor Code
28 section 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were

1 not authorized and permitted.

2 41. In addition, upon information and belief, Plaintiff alleges that Defendant failed to
3 pay sick leave pay to Plaintiff, Class Members and the Aggrieved Employees at the proper rate, as
4 Defendant failed to factor all forms of compensation into the regular rate.

5 42. On information and belief, Plaintiff, Class Members and Aggrieved Employees
6 worked in a facility that did not have air conditioning or proper air ventilation, causing the
7 temperature inside the warehouse to get extremely hot, often exceeding temperatures that can cause
8 heat related illness. Further, on information and belief, Defendant did not have a policy, practice or
9 procedure in place to allow employees to take cool down recovery periods when suffering from heat
10 exhaustion or other heat related illness as a result of the extreme temperatures inside the warehouse.
11 On information and belief, Plaintiff, Class Members and the Aggrieved Employees were
12 systematically not authorized and permitted to take cool down recovery periods when needed, as
13 required.

14 43. Despite the above-mentioned Cool Down Recovery Period violations, Defendant did
15 not compensate Plaintiff, and on information and belief, did not pay Class Members and Aggrieved
16 Employees one additional hour of pay at their regular rate as required by California law, including
17 Labor Code section 226.7 and the applicable IWC wage order, for each day on which lawful Cool
18 Down Recovery Periods were not authorized and permitted

19 44. Defendant also failed to provide accurate, lawful itemized wage statements to
20 Plaintiff, Class Members and the Aggrieved Employees in part because of the above specified
21 violations. In addition, upon information and belief, Defendant omitted an accurate itemization of
22 total hours worked, including premiums due and owing for meal, rest and recovery period violations,
23 gross pay and net pay figures from Plaintiff and the Class Members and Aggrieved Employees '
24 wage statements. Defendant also failed to provide corresponding rate(s) and unit(s) for pay listed as
25 "Whse Incentives."

26 45. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, Defendant knew that at the time of termination of employment (or within 72 hours
28 thereof for resignations without prior notice as the case may be) they had a duty to accurately

1 compensate Plaintiff , Class Members and Aggrieved Employees for all wages owed including
2 minimum wages, overtime, meal, rest, and recovery period premiums, and sick pay, and that
3 Defendant had the financial ability to pay such compensation, but willfully, knowingly, recklessly,
4 and/or intentionally failed to do so in part because of the above-specified violations.

5 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
6 or should have known that Plaintiff and the other class members were entitled to receive all wages
7 owed to them during their employment. Plaintiff and the other class members did not receive
8 payment of all wages, including overtime and minimum wages and meal, rest and recovery period
9 premiums, and sick pay within any time permissible under California Labor Code section 204.

10 47. During the relevant time period, Defendants failed to pay Plaintiff and the other class
11 members all wages within any time permissible under California law, including, *inter alia*,
12 California Labor Code section 204.

13 48. Upon information and belief, Defendant knew and or should have known that it is
14 improper to implement policies and commit unlawful acts such as:

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

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

23 (c) failing to provide accurate itemized wage statements;

24 (d) failing to timely pay Plaintiff, Class Members and Aggrieved Employees all wages,
25 overtime, and other compensation upon separation and during employment;

26 (e) failing to accurately pay sick pay at the correct regular rate;

27 (f) failing to provide cool down recovery periods without compensating employees with
28 one (1) hour of pay at the regular rate of compensation for each workday that such a recovery period

1 was not provided;

2 (g) failing to pay Plaintiff, Class Members and Aggrieved employees all wages and
3 overtime due

4 49. In addition to the violations above, and on information and belief, Defendant knew
5 they had a duty to compensate Plaintiff, Class Members and Aggrieved Employees for the
6 allegations asserted herein, and that Defendant had the financial ability to pay such compensation,
7 but willfully, knowingly, recklessly, and/or intentionally failed to do so.

8 **V. CLASS ACTION CLAIMS**

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL PERIODS OR**

11 **COMPENSATION IN LIEU THEREOF**

12 **(Against All Defendants)**

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

15 51. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
16 period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes
17 in which the employee is relieved of all of his or her duties. An employer may not employ an
18 employee for a work period of more than ten (10) hours per day without providing the employee
19 with a second meal period of not less than thirty (30) minutes, except that if the total hours worked
20 is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the
21 employer and the employee only if the first meal period was not waived.

22 52. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
23 employment by Defendant, in order for an "on duty" meal period to be permissible, the nature of
24 the work of the employee must prevent an employee from being relieved of all duties relating to his
25 or her work for the employer and the employees must consent in writing to the "on duty" meal
26 period. On information and belief, Plaintiff and Class Members did not consent in writing to an "on
27 duty" meal period. Further, the nature of the work of Plaintiff and Class Members was not such that
28 they were prevented from being relieved of all duties. Despite the requirements of the IWC wage

1 orders applicable to Plaintiff's and Class Members' employment by Defendant and Labor Code §
2 512 and § 226.7, Defendant did not provide Plaintiff and Class Members with all their statutorily
3 authorized meal periods.

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

9 54. By their failure to provide a compliant meal period for each shift worked over five
10 (5) hours and their failure to provide a compliant second meal period for any shift worked over ten
11 (10) hours per day by Plaintiff and the Class Members, and by failing to provide compensation in
12 lieu of such non-provided meal periods, as alleged above, Defendant violated the provisions of
13 Labor Code §§ 226.7 and 512 and applicable IWC Wage Orders.

14 55. Plaintiff and the Class Members she seeks to represent did not voluntarily or willfully
15 waive meal periods and were regularly required to work shifts without being provided all of her
16 legally required meal periods. Defendant created a working environment in which Plaintiff and
17 Class Members were not provided all of their meal periods due to shift scheduling and/or work-
18 related demands placed upon them by Defendant as well as a lack of sufficient staffing to meet the
19 needs of Defendant's business as discussed above. On information and belief, Defendant
20 implemented a policy and practice which resulted in systematic and class-wide violations of the
21 Labor Code. On information and belief, Defendant's violations have been widespread throughout
22 the relevant period and will be evidenced by Defendant's time records for the Class Members.

23 56. As a result of the unlawful acts of Defendant described herein, Plaintiff and the Class
24 Members she seeks to represent have been deprived of premium wages in amounts to be determined
25 at trial. Pursuant to Labor Code § 226.7, Plaintiff and Class Members are entitled to recover one (1)
26 hour of premium pay for each day in which a meal period was not provided, along with interest and
27 penalties thereon, attorneys' fees, and costs.

28

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS OR
COMPENSATION IN LIEU THEREOF
(Against All Defendants)

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

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

59. Defendant were required to authorize and permit employees such as Plaintiff and Class Members to take rest periods, based upon the total hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof, with no deduction from wages. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendant, Defendant failed and refused to authorize and permit Plaintiff and Class Members to take ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof.

60. On information and belief Defendant created a working environment in which Plaintiff and Class Members were not provided all of their rest periods due to shift scheduling and/or work-related demands placed upon them by Defendant as well as a lack of sufficient staffing to meet the needs of Defendant's business as discussed above. Moreover, Plaintiff and Class Members were required to stay on premises during their rest breaks. On information and belief, Defendant implemented a policy and practice which resulted in systematic and class-wide violations of the Labor Code. On information and belief, Defendant's violations have been widespread throughout the relevant period.

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

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PAY TIMELY PAY WAGES DURING EMPLOYMENT AND UPON**
8 **SEPARATION**

9 **(Against All Defendants)**

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

12 63. Labor Code §§ 201-202 requires an employer who discharges an employee to pay
13 compensation due and owing to said employee immediately upon discharge and that if an employee
14 voluntarily leaves his or her employment, his or her wages shall become due and payable not later
15 than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours
16 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
17 wages on their last day of work.

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

21 65. During the relevant time period, Defendant willfully failed and refused, and continue
22 to willfully fail and refuse, to pay Plaintiff and Class Members their wages, earned and unpaid,
23 either at the time of discharge, or within seventy-two (72) hours of their voluntarily leaving
24 Defendant's employ. These wages include regular wages, overtime, meal, rest and recovery period
25 premiums, and sick pay.

26 66. As a result, Defendant is liable to Plaintiff and members of the Class for waiting time
27 penalties pursuant to Labor Code § 203, in an amount according to proof at the time of trial.

28 67. Plaintiff incorporates and re-alleges each and every allegation contained above as

1 though fully set forth herein.

2 68. At all times herein set forth, California Labor Code section 204 provides that all
3 wages earned by any person in any employment between the 1st and 15th days, inclusive, of any
4 calendar month, other than those wages due upon termination of an employee, are due and payable
5 between the 16th and the 26th day of the month during which the labor was performed.

6 69. At all times herein set forth, California Labor Code section 204 provides that all
7 wages earned by any person in any employment between the 16th and the last day, inclusive, of any
8 calendar month, other than those wages due upon termination of an employee, are due and payable
9 between the 1st and the 10th day of the following month.

10 70. At all times herein set forth, California Labor Code section 204 provides that all
11 wages earned for labor in excess of the normal work period shall be paid no later than the payday
12 for the next regular payroll period.

13 71. During the relevant time period, Defendants intentionally and willfully failed to pay
14 Plaintiff and the other class members all wages due to them, within any time period permissible
15 under California Labor Code section 204.

16 72. Plaintiff and the other class members are entitled to recover all remedies available
17 for violations of California Labor Code section 204, including unpaid wages, overtime, meal, rest,
18 and recovery period premiums, and sick pay.

19 **FOURTH CAUSE OF ACTION**

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

21 **(Against All Defendants)**

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

24 74. Section 226(a) of the California Labor Code requires Defendant to itemize in wage
25 statements all deductions from payment of wages and to accurately report total hours worked by
26 Plaintiff and the Class including applicable hourly rates and reimbursement expenses among other
27 things. Defendant have knowingly and intentionally failed to comply with Labor Code section 226
28 and 204 on wage statements that have been provided to Plaintiff and the Class.

1 79. Labor Code Section 246(i) provides that: “an employer shall provide an employee with
2 written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer
3 provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in
4 Section 226 or in a separate writing provided on the designated pay date with the employee’s payment
5 of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee,
6 the employer may satisfy this section by indicating on the notice or the employee’s itemized wage
7 statement ‘unlimited.’ The penalties described in this article for a violation of this subdivision shall be
8 in lieu of the penalties for a violation of Section 226.”

9 80. Labor Code § 246 provides that the employer shall calculate paid sick leave by using
10 one of two calculations: (1) “Paid sick time for nonexempt employees shall be calculated in the
11 same manner as the regular rate of pay for the workweek in which the employee uses paid sick time,
12 whether or not the employee actually works overtime in that workweek;” or (2) “Paid sick time for
13 nonexempt employees shall be calculated by dividing the employee’s total wages, not including
14 overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
15 days of employment.”

16 81. Whenever Defendant paid Plaintiff and Class Members sick time pursuant to
17 California Labor Code § 246, Defendant did so at the incorrect rate of pay. Defendant paid Plaintiff
18 and the Class Members at the incorrect rate of pay and/or base hourly rate of pay, as opposed to the
19 regular rate of pay, which would take into account all night premiums and/or shift differentials, or
20 by dividing the employees’ total wages, not including overtime premium pay, by the employees’
21 total hours worked in the full pay periods of the prior 90 days of employment, as required by Labor
22 Code § 246. This resulted in the employees being underpaid for sick time, and resulted in violations
23 of California Labor Code §§ 201, 202, and 203, and other derivative Labor Code violations, because
24 Defendant did not pay, or timely pay, Plaintiff and the unpaid wages for work performed by them
25 during their employment and at the end of their employment.

26 82. As a result of the unlawful acts of Defendant, Plaintiff and Class Members have been
27 deprived of sick pay in amounts to be determined at trial, and are entitled to the recovery of such
28 amounts, plus interest and penalties thereon, attorneys' fees, and costs.

1 **SIXTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

6 84. Defendant's conduct, as alleged in this complaint, has been, and continues to be,
7 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendant's competitors, and the
8 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
9 meaning of the California Code of Civil Procedure §1021.5.

10 85. Defendant's policies, activities, and actions as alleged herein, are violations of
11 California law and constitute unlawful business acts and practices in violation of California Business
12 and Professions Code §§ 17200, *et seq.*

13 86. A violation of California Business and Professions Code §§17200, *et seq.*, may be
14 predicated on the violation of any state or federal law. Defendant's policies and practices have
15 violated state law in at least the following respects:

16 (a) Failing to pay all lawful wages owed to Plaintiff and Class
17 Members in violation of Labor Code §§ 510, 1194, 1197 and 1198;

18 (b) Failing to provide lawful uninterrupted meal periods
19 without paying Plaintiff and Class Members premium wages for every day
20 said meal periods were not provided in violation of Labor Code §§ 226.7 and
21 512;

22 (c) Failing to authorize or permit lawful rest breaks without
23 paying Plaintiff and Class Members premium wages for every day said rest
24 breaks were not authorized or permitted in violation of Labor Code § 226.7;

25 (d) Failing to provide recovery periods without paying Plaintiff
26 and Class Members premium wages in violation of Labor Code § 226.7;

27 (e) Unlawfully withholding Plaintiff's and Class Members'
28 wages in violation of Labor Code §§ 221, 223, 224 and 225.5;

1 (f) Failing to timely pay all earned wages and overtime to
2 Plaintiff and Class Members during employment in violation of Labor Code
3 § 204;

4 (g) Failing to timely pay all earned wages, overtime, meal, rest
5 and recovery period premiums, and sick pay to Plaintiff and Class Members
6 upon separation of employment in violation of Labor Code §§ 201, 202 and
7 203;

8 (h) Failing to provide Plaintiff and Class Members with
9 accurate itemized wage statements in violation of Labor Code § 226; and

10 (i) Failing to pay sick time using the proper regular rate
11 pursuant to Labor Code section Labor Code § 246.

12 87. Defendant intentionally avoided paying Plaintiff and Class Members' wages and
13 monies, thereby creating for Defendant an artificially lower cost of doing business in order to
14 undercut their competitors and establish and gain a greater foothold in the marketplace.

15 88. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and Class
16 Members are entitled to restitution of the wages unlawfully withheld and retained by Defendant
17 during a period that commences four years prior to the filing of the Complaint; an award of
18 attorney's fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an
19 award of costs.

20 **SEVENTH CAUSE OF ACTION**

21 **REPRESENTATIVE CLAIMS**

22 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.***

23 89. Plaintiff incorporates by reference and re-alleges each and every allegation contained
24 above, as though fully set forth herein.

25 90. On or about December 9, 2021, Plaintiff complied with notice requirements pursuant
26 to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit**
27 **A**, indicating that the LWDA and Defendant were put on notice of the claims alleged here and that
28 the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not

1 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
2 representative capacity. The substance and violations set forth in this Complaint of which the
3 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
4 Action Complaint to the LWDA.

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

8 92. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
9 which Defendant are liable due to numerous Labor Code violations as set forth in this Complaint,
10 including without limitation Labor Code section 201-204, 246, 510, 512, 558, 226, 226.3, 226.7,
11 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, and 2698 *et seq.*, applicable IWC Wage Orders and
12 California Code of Regulations, Title 8, section 11000 *et seq.*

13 93. At all times relevant, Plaintiff and all other aggrieved employees regularly performed
14 non-exempt work in excess of 50% of the time, and thus, were subject to the overtime, meal and
15 rest break requirements of the applicable IWC wage order and the Labor Code.

16 94. Defendant also failed to accurately pay sick pay at Plaintiff and Aggrieved
17 Employees' regular rates. Labor Code § 246 provides that the employer shall calculate paid sick
18 leave by using one of two calculations: (1) "Paid sick time for nonexempt employees shall be
19 calculated in the same manner as the regular rate of pay for the workweek in which the employee
20 uses paid sick time, whether or not the employee actually works overtime in that workweek;" or (2)
21 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's total
22 wages, not including overtime premium pay, by the employee's total hours worked in the full pay
23 periods of the prior 90 days of employment."

24 95. Whenever Defendant paid Plaintiff and Aggrieved Employees sick time pursuant to
25 California Labor Code § 246, Defendant did so at the incorrect rate of pay. Defendant paid Plaintiff
26 and the Aggrieved Employees at the base hourly rate of pay, as opposed to the regular rate of pay,
27 which would take into account and include non-discretionary wages, including, but not limited to,
28 shift differentials and/or other incentive pay in the computation of their overtime rate of pay, or by

1 dividing the employees' total wages, not including overtime premium pay, by the employees' total
2 hours worked in the full pay periods of the prior 90 days of employment, as required by Labor Code
3 § 246. This resulted in the employees being underpaid for sick time, and resulted in violations of
4 California Labor Code §§ 201, 202, and 203, and other derivative Labor Code violations, because
5 Defendant did not pay, or timely pay, Plaintiff and the unpaid wages for work performed by them
6 during their employment and at the end of their employment.

7 96. Defendant failed to provide Plaintiff and all other aggrieved employees uninterrupted
8 duty free meal periods of not less than thirty (30) minutes. Defendant implemented and enforced
9 policies of on duty meal period practices which required employees to work during their meal
10 periods, to forego their meal periods, and/or to return to work from meal periods prior to thirty (30)
11 uninterrupted minutes. As a proximate result of the aforementioned violations, Plaintiff and all other
12 aggrieved employees have been damaged in an amount according to proof at time of trial.

13 97. Plaintiff, and on information and belief, all aggrieved employees, were
14 systematically not permitted or authorized to take ten minute rest periods for every four hours
15 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.
16 Plaintiff and on information and belief, aggrieved employees, were not compensated with one hour
17 of wages for every day in which a rest period was missed or untimely as a result of Defendant'
18 policies, practices, or work demands. By failing to authorize and permit a ten-minute rest period for
19 every four hours or major fraction thereof worked per day by its Non-Exempt Employees, and by
20 failing to provide compensation for such non-provided or shortened rest periods, as alleged above,
21 Defendant willfully violated the provisions of Labor Code sections 226.7, 512 and the applicable
22 IWC Wage Order.

23 98. Defendant also willfully violated Labor Code sections 201-203 by failing to provide
24 all owed wages at separation from employment. Labor Code sections 201 and 202 require Defendant
25 to pay their employees all wages due either at time of firing, or within seventy-two (72) hours of
26 voluntary separation, if not sooner. Section 203 of the Labor Code provides that if an employer
27 willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject
28 employee's wages until the back wages are paid in full or an action is commenced. The penalty

1 cannot exceed 30 days of wages.

2 99. Plaintiff and all other aggrieved employees who were separated from employment
3 are entitled to compensation for all forms of wages earned, including but not limited to
4 compensation regular and overtime wages, and for non-provided meal and rest periods, but to date
5 have not received such compensation, therefore entitling them to penalties under PAGA for
6 violations of Labor Code sections 201-203.

7 100. On information and belief, Defendant willfully failed to pay all wages due and owing
8 during employment and upon separation from employment. These wages include regular and
9 overtime wages, and meal, rest and recovery period premiums, and sick pay.

10 101. On information and belief, Defendant failed to provide accurate itemized wage
11 statements which failed to include the rate of pay and total hours worked per pay period, failed to
12 account for all hours worked, including overtime, and lastly the accurate accounting of, the lawful
13 meal and rest period premiums due and owing to Plaintiff and the aggrieved employees, pursuant to
14 Labor Code section 226(a).

15 102. Defendant have failed to provide Plaintiff and Aggrieved Employees rates of pay and
16 the hours for which they worked for any given pay period.

17 103. Defendant have failed to accurately record all time worked.

18 104. Defendant have also failed to accurately record the meal, rest and recovery period
19 premiums owed and all wages owed per pay period.

20 105. Defendant also failed to provide corresponding rate(s) and unit(s) for pay listed as
21 “Whose Incentives.”

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

25 107. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a) of
26 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
27 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
28 violation in a subsequent citation, for which the employer fails to provide the employee a wage

1 deduction statement or fails to keep the records required in subdivision (a) of Section 226.

2 108. Plaintiff, and on information and belief, all aggrieved employees, were
3 systematically not permitted or authorized to take cool down recovery periods, which is a violation
4 of the Labor Code and IWC wage order. Plaintiff and on information and belief, aggrieved
5 employees, were not compensated with one hour of wages for every day in which a cool down
6 recovery period was missed as a result of Defendant' policies, practices, or work demands. By
7 failing to authorize and permit a cool down recovery period when needed by its Non-Exempt
8 Employees, and by failing to provide compensation for such non-provided cool down recovery
9 periods, as alleged above, Defendant willfully violated the provisions of Labor Code section 226.7
10 and the applicable regulation, standard, or order of the Industrial Welfare Commission, the
11 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
12 Health.

13 109. Additionally, Defendant have no accurate records relating to aggrieved employees'
14 work periods, meal periods, total daily hours worked, total hours worked per payroll period and
15 applicable pay rates, in violation of Wage Order. Similarly, Defendant failed to maintain accurate
16 records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

17 110. As a result of Defendant' unlawful conduct, Plaintiff and Aggrieved employees are
18 entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours worked.

19 111. Plaintiff and the Representative Aggrieved Employees are entitled to recover
20 Penalties and attorneys' fees and costs under Labor Code section 2698, et seq.

21
22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

24 **Class Certification**

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

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On the First Cause of Action

1. For one (1) hour of premium pay for each day in which a required meal period was not provided or not provided in a timely manner; and
2. For such other and further relief as the Court deems proper.

On the Second Cause of Action

1. For one (1) hour of premium pay for each day in which a required rest period was not authorized or permitted; and
2. For such other and further relief as the Court deems proper.

On the Third Cause of Action

1. For statutory penalties pursuant to Labor Code §§ 203 and 204;
2. For wages and overtime;
3. For interest for wages untimely paid; and
4. For such other and further relief as the Court deems proper.

On the Fourth Cause of Action

1. For statutory penalties pursuant to Labor Code §226;
2. For interest for wages untimely paid;
3. For penalties pursuant to Labor Code §266.3; and
4. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

1. For penalties pursuant to Labor Code §246; and
2. For such other and further relief as the Court deems proper

On the Sixth Cause of Action

1. That Defendant, jointly and/or severally, pay restitution of sums to Plaintiff and Class Members for their past failure to accurately pay overtime, failing to pay minimum wages, failing to reimburse expenses, failing to provide a day’s rest in seven, failing to pay sick pay, failing to provide accurate itemized wage statements and failing to provide Plaintiff and the Class with meal periods and rest breaks or the one (1) hour of premium pay when a meal, rest break or recovery period was

1 not provided or provided outside of the required time frames as described herein to Plaintiff and
2 Class Members over the last four (4) years in an amount according to proof;

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

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

7 4. For costs of suit incurred herein; and

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

9 On the Seventh Cause of Action

10 WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

11 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;

12 2. For reasonable attorneys' fees and costs; and

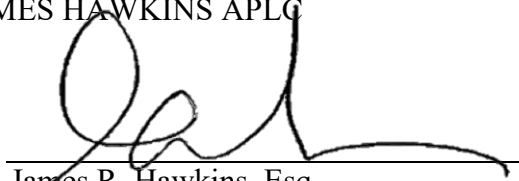
13 3. For such other and further relief as the Court deems proper.

14
15 **DEMAND FOR JURY TRIAL**

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

17
18 Dated: December 21, 2022

JAMES HAWKINS APLG

19
20
21 By: 

James R. Hawkins, Esq.

Gregory Mauro, Esq.

Michael Calvo, Esq.

Lauren Falk, Esq.

Ava Issary, Esq.

22
23
24 Attorneys for Plaintiff THOMAS
25 LONGACRE,
26 individually and on behalf of all others
27 similarly situated
28

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On December 21, 2022, I served on the interested parties in this action the following document(s) entitled:

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Alma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST

Attorneys for Defendant
KEHE DISTRIBUTORS, INC.

Executed on December 21, 2022, at Irvine, California

Alma Chavarin
Alma Chavarin