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

ISIAH MALDONADO, individually, and
on behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

R L M K, INC., a California corporation;
DELPH ENTERPRISES, LLC, a California
limited liability company; and DOES 1
through 10, inclusive,

Defendants.

Case No.: BCV-23-103985

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);

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- (8) Violation of Labor Code § 1198 and California Code of Regulations, Title 8, Section 11050 Subdivision 5(A) (Failure to Provide Reporting Time Pay);
- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.*(Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Isiah Maldonado, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all other aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff’s share of damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice. There is no basis for federal diversity jurisdiction in this action because there is no
23 complete diversity, and this case falls within the statutory exceptions to “minimal diversity”
24 jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information
25 and belief, two-thirds or more of the class members and Defendants are citizens of California
26 and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the
27 alleged wage and hour violations occurred in California; (c) significant relief is being sought
28 against Defendants whose violations of California wage and hour laws form a significant basis

1 for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years
2 on behalf of the same proposed class against Defendants asserting the same or similar factual
3 allegations.

4 3. Venue is proper in this Court, because Defendants employ persons within the
5 County of Kern, and have violated the requirements of the California Labor Code and applicable
6 IWC Wage Order in this county which give rise to the penalties sought in this action. Cal. Code
7 Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor
8 Code and applicable IWC Wage Order in at least one location within the County of Kern,
9 including Defendants' restaurant location in Bakersfield (35102 Merle Haggard Drive,
10 Bakersfield, California 93308) and Oildale (225 North Chester Avenue, Oildale, California
11 93308). Pursuant to California Civil Code of Procedure section 393, venue is proper for the
12 recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or some
13 part of the cause, arose. Because Defendants have employees in Kern County and Plaintiff
14 could bring this action to recover penalties in Kern County, venue is proper.

15 **THE PARTIES**

16 4. Plaintiff Isiah Maldonado is a resident of Visalia, California. Defendants
17 employed Plaintiff as an hourly paid, non-exempt Crew Member from approximately April
18 2019 to June 2023. Plaintiff worked for Defendants at their McDonald's restaurant location in
19 Visalia, California. During his employment, Plaintiff typically worked seven (7) or more hours
20 per day and five (5) days per week. Plaintiff's primary job duties included, without limitation,
21 taking customer orders, preparing and serving food, cleaning, and taking out garbage.

22 5. R L M K, INC. was and is, upon information and belief, a California corporation,
23 and at all times hereinafter mentioned, an employer whose employees are engaged throughout
24 this county and the State of California.

25 6. DELPH ENTERPRISES, LLC was and is, upon information and belief, a
26 California limited liability company, and at all times hereinafter mentioned, an employer whose
27 employees are engaged throughout this county and the State of California.

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1 7. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
2 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
3 complaint and serve such fictitiously named Defendants once their names and capacities
4 become known.

5 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
6 were the partners, agents, owners, or managers of Defendants at all relevant times.

7 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
8 acts and omissions alleged herein was performed by, or is attributable to, R L M K, INC.;
9 DELPH ENTERPRISES, LLC; and/or DOES 1 through 10 (collectively, “Defendants” or
10 “RLMK”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in
11 concert with, each of the other co-Defendants and was acting within the course and scope of
12 such agency, employment, joint venture, or concerted activity with legal authority to act on the
13 others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the
14 official policy of Defendants.

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

19 11. Plaintiff is informed and believes, and thereon alleges, that each of said
20 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
21 omissions, occurrences, and transactions alleged herein.

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

1 employment relationship. As joint employers of Plaintiff and class members, Defendants are
2 jointly and severally liable for the civil penalties and all other relief available to Plaintiff and
3 class members under the law.

4 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
5 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
6 members because Defendants have:

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

22 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
23 there has existed a unity of interest and ownership between Defendants such that any
24 individuality and separateness between the entities has ceased.

25 15. R L M K, INC.; DELPH ENTERPRISES, LLC; and DOES 1 through 10 are
26 therefore alter egos of each other.

27 16. Adherence to the fiction of the separate existence of Defendants would permit an
28 abuse of the corporate privilege, and would promote injustice by protecting Defendants from

liability for the wrongful acts committed by them under the name RLMK.

17. Plaintiff further alleges, upon information and belief, that Defendants R L M K, INC. and DELPH ENTERPRISES, LLC are alter egos of each other for the following reasons:

(a) On the California Secretary of State's website (<https://bizfileonline.sos.ca.gov/>), R L M K, INC. and DELPH ENTERPRISES, LLC share the same principal address and mailing address of "7043 W[EST] PERSHING CT, VISALIA, CA 93291";

(b) According to Statement of Information forms filed with the California Secretary of State, R L M K, INC. and DELPH ENTERPRISES, LLC share the same manager and/or officer, Roger Delph; and

(c) On information and belief, R L M K, INC. and DELPH ENTERPRISES, LLC utilize the same standardized employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

18. Defendants own and operate a chain of McDonald's franchise restaurants, with around 15 locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their corporate headquarters in Visalia, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

19. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions.

20. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in Visalia, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations in

1 California, including Plaintiff and class members. Based upon information and belief,
2 Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees
3 in California, irrespective of their work locations. Upon information and belief, Defendants
4 process payroll for departing employees in the same manner throughout the State of California,
5 regardless of the manner in which each employee's employment ends.

6 21. Defendants continue to employ non-exempt or hourly paid employees in
7 California.

8 22. Plaintiff is informed and believes, and thereon alleges, that at all times herein
9 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
10 advisors knowledgeable about California labor and wage law, employment and personnel
11 practices, and about the requirements of California law.

12 23. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
13 members were not paid for all hours worked because all hours worked were not recorded.

14 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to receive certain wages for
16 overtime compensation and that they were not receiving certain wages for overtime
17 compensation.

18 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to receive at least minimum
20 wages for compensation and that they were not receiving at least minimum wages for work that
21 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and
22 class members were not paid at least minimum wages for work done off-the-clock.

23 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to meal periods in accordance
25 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
26 additional hour of pay at their regular rates of pay when they were not provided with timely,
27 uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members were not
28 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates

1 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

2 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to rest periods in accordance
4 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
5 additional hour of pay at their regular rates of pay when they were not authorized and permitted
6 to take a compliant rest period and that Plaintiff and class members were not authorized and
7 permitted to take compliant rest periods or provided with payment of one (1) additional hour of
8 pay at their regular rates of pay when they were not authorized and permitted to take a compliant
9 rest period.

10 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to receive complete and
12 accurate wage statements in accordance with California law. In violation of the California
13 Labor Code, Plaintiff and class members were not provided complete and accurate wage
14 statements.

15 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that they had a duty to maintain accurate and complete payroll records in
17 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
18 knowingly, and intentionally failed to do so.

19 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to timely payment of all
21 wages earned upon termination of employment. In violation of the California Labor Code,
22 Plaintiff and class members did not receive payment of all wages due, including, but not limited
23 to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay,
24 within permissible time periods.

25 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to timely payment of wages
27 during their employment. In violation of the California Labor Code, Plaintiff and class members
28 did not receive payment of all wages, including, but not limited to, overtime wages, minimum

1 wages, meal and rest period premiums, and/or reporting time pay, within permissible time
2 periods.

3 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive all reporting time
5 pay when Plaintiff and class members were required to report to work but were put to work for
6 less than half of their usual or scheduled shift. In violation of the California Labor Code and
7 applicable IWC Wage Order, Plaintiff and class members were not paid all reporting time pay.

8 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to suitable seating and/or
10 were entitled to sit when it did not interfere with the performance of their duties and also have
11 seats nearby to use during a lull in tasks that do require moving about or standing. In violation
12 of California Labor Code and applicable IWC Wage Order, Defendants failed to provide
13 Plaintiff and class members with suitable seating.

14 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to receive full reimbursement
16 for all business-related expenses and costs they incurred during the course and scope of their
17 employment and that they did not receive full reimbursement of applicable business-related
18 expenses and costs incurred.

19 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
21 and class members for all hours worked, and that Defendants had the financial ability to pay
22 such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
23 represented to Plaintiff and class members that they were properly denied wages, all in order to
24 increase Defendants' profits.

25 **PAGA REPRESENTATIVE ALLEGATIONS**

26 36. At all times herein set forth, PAGA provides that any provision of law under the
27 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
28 collected by the Labor and Workforce Development Agency ("LWDA") for violations of the

1 California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by
2 aggrieved employees in a civil action brought on behalf of themselves and other current or
3 former employees pursuant to procedures outlined in California Labor Code section 2699.3

4 37. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
5 person who was employed by the alleged violator and against whom one or more of the alleged
6 violations was committed.”

7 38. Plaintiff and other current and former employees of Defendants are “aggrieved
8 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
9 or former employees and one or more of the alleged violations were committed against them.

10 39. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
11 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
12 requirements have been met:

13 (a) The aggrieved employee or representative shall give written notice by
14 online filing with the LWDA and by certified mail to the employer of the
15 specific provisions of the California Labor Code alleged to have been
16 violated, including the facts and theories to support the alleged violation.

17 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
18 2699.3(a) and any employer response to that notice shall be accompanied
19 by a filing fee of seventy-five dollars (\$75).

20 (c) The LWDA shall notify the employer and the aggrieved employee or
21 representative by certified mail that it does not intend to investigate the
22 alleged violation (“LWDA Notice”) within sixty (60) calendar days of the
23 postmark date of the aggrieved employee’s notice. Upon receipt of the
24 LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)
25 calendar days of the postmark date of the aggrieved employee’s notice,
26 the aggrieved employee may commence a civil action pursuant to
27 California Labor Code section 2699 to recover civil penalties.

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1 40. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
2 through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision
3 other than those listed in Section 2699.5 after the following requirements have been met:

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

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

12 (c) The employer may cure the alleged violation within thirty-three (33)
13 calendar days of the postmark date of the notice sent by the aggrieved
14 employee or representative. The employer shall give written notice
15 within that period of time by certified mail to the aggrieved employee or
16 representative and by online filing with the LWDA if the alleged violation
17 is cured, including a description of actions taken, and no civil action
18 pursuant to Section 2699 may commence. If the alleged violation is not
19 cured within the 33-day period, the aggrieved employee may commence
20 a civil action pursuant to Section 2699.

21 41. On December 18, 2023, Plaintiff provided written notice by online filing to the
22 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
23 Code alleged to have been violated, including facts and theories to support the alleged
24 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
25 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
26 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
27 PAGA Case Number LWDA-CM-1000437-23. A true and correct copy of Plaintiff's written
28 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

1 42. As of the filing date of this complaint, over 65 days have passed since Plaintiff
2 sent the notice described above to the LWDA, and the LWDA has not responded that it intends
3 to investigate Plaintiff's claims and Defendants have not cured the violations.

4 43. Thus, Plaintiff has satisfied the administrative prerequisites under California
5 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
6 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
7 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

8 44. Labor Code section 558(a) provides "[a]ny employer or other person acting on
9 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
10 provision regulating hours and days of work in any order of the Industrial Welfare Commission
11 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
12 each underpaid employee for each pay period for which the employee was underpaid (2)
13 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
14 each pay period for which the employee was underpaid" Labor Code section 558(c)
15 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
16 criminal penalty provided by law."

17 45. Defendants, at all times relevant to this complaint, were employers or persons
18 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
19 rights by violating various sections of the California Labor Code as set forth above.

20 46. As set forth below, Defendants have violated numerous provisions of both the
21 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
22 Order.

23 47. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
24 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
25 private attorney general, seeks assessment and collection of civil penalties for himself, all other
26 aggrieved employees, and the State of California against Defendants for violations of California
27 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
28 1197, 1197.1, 1198, and 2802.

CLASS ACTION ALLEGATIONS

48. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

49. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

50. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, at any time from July 22, 2021, until the date of trial ("Class").

51. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

52. Members of the Class and Subclass are referred to herein as "class members."

53. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

54. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;
- (c) Whether Defendants failed to provide Plaintiff and class members meal periods;
- (d) Whether Defendants failed to authorize and permit Plaintiff and class

- 1 members to take rest periods;
- 2 (e) Whether Defendants provided Plaintiff and class members with complete
- 3 and accurate wage statements as required by California Labor Code
- 4 section 226(a);
- 5 (f) Whether Defendants maintained accurate payroll records as required by
- 6 California Labor Code section 1174(d);
- 7 (g) Whether Defendants failed to pay earned overtime wages, minimum
- 8 wages, meal and rest period premiums, and/or reporting time pay due to
- 9 Plaintiff and class members upon their discharge;
- 10 (h) Whether Defendants failed to timely pay overtime wages, minimum
- 11 wages, meal and rest period premiums, and/or reporting time pay to
- 12 Plaintiff and class members during their employment;
- 13 (i) Whether Defendants required Plaintiff and class members to report to
- 14 work, but failed to provide them with work or provided them with less
- 15 than half their usual or scheduled day's work, without properly
- 16 compensating them as required by California Code of Regulations, Title
- 17 8, section 11050(5);
- 18 (j) Whether Defendants failed to provide Plaintiff and class members with
- 19 suitable seating;
- 20 (k) Whether Defendants failed to reimburse Plaintiff and class members for
- 21 necessary and required business-related expenditures and/or losses
- 22 incurred by them in the scope of their employment;
- 23 (l) Whether Defendants engaged in unlawful and unfair business practices in
- 24 violation of California Business & Professions Code sections 17200, *et*
- 25 *seq.*; and
- 26 (m) The appropriate amount of damages, restitution, or monetary penalties
- 27 resulting from Defendants' violations of California law.

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1 55. There is a well-defined community of interest in the litigation and the class
2 members are readily ascertainable:

3 (a) Numerosity: The class members are so numerous that joinder of all
4 members would be unfeasible and impractical. The membership of the
5 entire class is unknown to Plaintiff at this time; however, the class is
6 estimated to be greater than one hundred (100) individuals and the
7 identity of such membership is readily ascertainable by inspection of
8 Defendants' employment records.

9 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
10 the interests of each class member with whom he has a well-defined
11 community of interest, and Plaintiff's claims (or defenses, if any) are
12 typical of all class members as demonstrated herein.

13 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
14 the interests of each class member with whom he has a well-defined
15 community of interest and typicality of claims, as demonstrated herein.
16 Plaintiff acknowledges that he has an obligation to make known to the
17 Court any relationship, conflicts or differences with any class member.
18 Plaintiff's attorneys, the proposed class counsel, are versed in the rules
19 governing class action discovery, certification, and settlement. Plaintiff
20 has incurred, and throughout the duration of this action, will continue to
21 incur costs and attorneys' fees that have been, are, and will be necessarily
22 expended for the prosecution of this action for the substantial benefit of
23 each class member.

24 (d) Superiority: The nature of this action makes the use of class action
25 adjudication superior to other methods. A class action will achieve
26 economies of time, effort, and expense as compared with separate
27 lawsuits, and will avoid inconsistent outcomes because the same issues
28 can be adjudicated in the same manner and at the same time for the entire

class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. 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 might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

56. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

57. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

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

59. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

1 60. The applicable IWC Wage Order further provides that Defendants are and were
2 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
3 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
4 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
5 employee, including nondiscretionary bonuses and incentive pay.

6 61. California Labor Code section 510 codifies the right to overtime compensation
7 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
8 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
9 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
10 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
11 the seventh (7th) day of work.

12 62. During the relevant time period, Defendants willfully failed to pay all overtime
13 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class
14 members were not paid overtime premiums for all of the hours they worked in excess of eight
15 (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours
16 in a week, because all hours worked were not recorded.

17 63. First, during the relevant time period, Defendants had, and continue to have, a
18 company-wide policy and/or practice of discouraging and impeding Plaintiff and class members
19 from recording hours worked that were outside of their scheduled shifts in order to limit the
20 amount of overtime employees could accrue. This policy of limiting overtime, coupled with
21 Defendants' use of labor budgets and assignment of heavy workloads (*see infra*), led Plaintiff
22 and class members to work off-the-clock before and after their scheduled shift times. Indeed,
23 Defendants implemented a timekeeping system that prevented employees from clocking in until
24 their scheduled shift start-time so that they were prohibited from recording the time worked
25 prior to the start of their scheduled shifts. Consequently, on information and belief, Plaintiff
26 and class members performed work prior to the start of their shift, but were unable to record
27 this time. For example, approximately three (3) times per week when Plaintiff arrived early to
28 the restaurant, Defendants' management required him to start working immediately and before

1 he was able to clock in for the start of his shift because the restaurant was busy. Plaintiff would
2 work for up to 10 minutes completing tasks, such as taking orders and fixing broken equipment,
3 but was prevented from clocking in before his scheduled shift start-time. As a further example,
4 Defendants only provided Plaintiff and class members with one (1) timekeeping machine to
5 clock in for their shifts, thus forcing Plaintiff and class members to wait in line off-the-clock
6 and under Defendants' control, time for which they were not paid. Plaintiff and class members
7 would arrive early in order to clock in for the start of their shifts, and were required to wait in a
8 line for a few minutes to clock in, time for which they were not paid.

9 64. Additionally, during the relevant period, Defendants implemented, on a
10 company-wide basis, an employer-imposed requirement that Plaintiff and class members
11 undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in
12 for their scheduled shifts. Prior to his shift, Plaintiff was required to spend up to three (3)
13 minutes per instance waiting and then undergoing a mandatory temperature check and filling
14 out a health screening form, before being permitted to clock in for his shift. Even though
15 Defendants required these health screenings, Defendants did not provide Plaintiff and class
16 members a mechanism to record this time worked so they could be compensated for the time
17 spent undergoing mandatory temperature checks and/or health screenings.

18 65. Moreover, Defendants' company-wide policy of limiting overtime also forced
19 Plaintiff and class members to work after clocking out at the end of their scheduled shifts. For
20 example, about four (4) times per week, Plaintiff was required to clock out and continue working
21 for up to one (1) hour completing closing duties such as mopping, sweeping, taking out garbage,
22 locking doors, and shutting down equipment. This off-the-clock work could have been recorded
23 by Defendants, but they refused to do so to avoid payment of additional wages to Plaintiff and
24 class members. Thus, Defendants failed to track all of the time that employees spent performing
25 work-related tasks before and after their shifts, and Plaintiff and class members received no
26 compensation for this time.

27 66. Second, Defendants also had a company-wide security policy and/or practice for
28 closing shifts, requiring employees to leave the restaurant premises together in one (1) group.

1 After clocking out at the end of their shifts, Plaintiff and class members were required to wait
2 for all other employees to complete their own duties before they were released by a managerial
3 employee and could leave Defendants' premises together. For example, when scheduled for
4 closing shifts, Plaintiff would complete his own closing tasks, clock out, and then have to wait
5 until his supervisor and/or other coworkers had completed their own respective closing duties,
6 before being released. As a result, Plaintiff and class members were subject to Defendants'
7 control after they had clocked out for their shifts, but were not compensated for this time.

8 67. Third, as stated, Defendants had, and continue to have, a company-wide policy
9 of strictly staffing their restaurant locations based on the labor hours allocated by each location's
10 labor or payroll budget set by corporate. This practice of labor budgeting and/or limited payroll
11 allocation, combined with the assignment of heavy workloads, has resulted in chronic
12 understaffing and a lack of adequate meal period coverage, because there were too few
13 employees on duty to handle the workload and attend to customers. Because Defendants did
14 not employ or staff a sufficient number of employees to meet customer demand, there was no
15 one available to relieve employees needing meal period coverage, and Plaintiff and class
16 members were not always afforded uninterrupted 30-minute meal periods during shifts when
17 they were entitled to receive a meal period. Moreover, Defendants have a practice of failing to
18 schedule meal periods, which further caused Plaintiff and class members to not be relieved of
19 their duties for compliant meal periods. For example, Plaintiff missed his meal periods
20 approximately once per week due to lack of coverage and heavy workload. As a further
21 example, Defendants' management frequently interrupted Plaintiff's meal periods to ask him
22 work-related questions or ask that Plaintiff cut his meal period short and return to work for the
23 same reasons mentioned above.

24 68. Fourth, Defendants had, and continue to have, a company-wide policy and/or
25 practice of requiring employees to wear a radio headset to continue taking customer orders,
26 including during unpaid meal periods. For example, Plaintiff had his meal periods interrupted
27 by customers at the drive thru placing food orders; Defendants expected Plaintiff and class
28 members to accept the orders and continue serving customers, including during their unpaid

1 meal periods, if there were no other employees available to do so. However, Defendants did
2 not compensate Plaintiff and class members for the time they spent working during meal periods
3 while off-the-clock.

4 69. Fifth, on information and belief, because Defendants frowned upon employees
5 accruing meal period penalties, Defendants' management pressured Plaintiff and class members
6 to clock out for meal periods to reflect compliant meal periods, regardless of whether they had
7 received a compliant meal period or not, in order to strictly limit the meal penalties that would
8 need to be paid by Defendants. Additionally, Defendants' timekeeping system prevented
9 Plaintiff and class members from recording all hours worked when their meal periods were
10 shortened or interrupted, because the system locked out Plaintiff and class members once they
11 clocked out for a meal period, and would not permit them to clock back in from a meal period
12 until 30 minutes had elapsed. Thus, Defendants did not record all hours worked during meal
13 periods, and Plaintiff and class members performed work during meal periods for which they
14 were not paid.

15 70. Sixth, on information and belief, Defendants maintained a company-wide on-
16 premises meal period policy, which mandated that Plaintiff and class members remain on
17 Defendants' premises during their unpaid meal periods. Because Plaintiff and class members
18 were restricted from leaving the premises during meal periods, they were denied the ability to
19 use their meal periods freely for their own purposes. For example, Plaintiff and class members
20 were unable to take compliant meal periods because they were not permitted to leave the
21 restaurant premises after 10:00 p.m. Thus, Defendants effectively maintained control over
22 Plaintiff and class members during their unpaid meal periods.

23 71. Seventh, during the relevant period, Defendants had a company-wide "on-call"
24 policy, whereby they scheduled Plaintiff and class members to work "on-call," or on standby.
25 These "on-call" shifts worked to Defendants' benefit and to the detriment of Plaintiff and class
26 members. By utilizing "on-call" shifts, Defendants received the benefit of being able to
27 maximize revenue by having a standby workforce they could choose to utilize or not, depending
28 on restaurant traffic and sales metrics, without incurring the cost of compensating employees

1 who show up to work and work a full or partial scheduled day's work.

2 72. When scheduled for an "on-call" or standby shift, Plaintiff and class members
3 were required to wait for the restaurant to call them approximately two (2) hours prior to their
4 scheduled standby shift; sometimes Plaintiff would call in himself to confirm if he was required
5 to report to work that day. Plaintiff and class members were engaged to wait and could not
6 engage in personal activities as they had to be ready to travel to their respective restaurant
7 locations on short notice and work their standby shift. When scheduled to be "on-call" for a
8 standby shift, Plaintiff and class members were controlled by Defendants because they were
9 forced to put their lives on hold and could not use that time freely for their own purposes. For
10 example, Plaintiff refrained from making plans altogether while "on-call" for a standby shift
11 because he knew that he had to drop whatever he was doing at a moment's notice if he was
12 instructed to work his standby shift. Defendants did not pay Plaintiff and class members for the
13 time they spent waiting to hear whether they needed to report for work at their restaurant
14 locations on days they ultimately were not called in. Defendants also did not compensate
15 Plaintiff and class members for the time they spent calling in to see if they were needed.

16 73. Defendants knew or should have known that as a result of these company-wide
17 practices and/or policies, Plaintiff and class members were performing their assigned duties off-
18 the-clock before and after their shifts and during meal periods, and were suffered or permitted
19 to perform work for which they were not paid. Because Plaintiff and class members sometimes
20 worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this
21 off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class members
22 were not paid overtime wages for all of the overtime hours they actually worked.

23 74. Defendants' failure to pay Plaintiff and class members the balance of overtime
24 compensation as required by California law, violates the provisions of California Labor Code
25 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
26 members are entitled to recover from Defendants their unpaid overtime compensation, as well
27 as interest, costs, and attorneys' fees.

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SECOND CAUSE OF ACTION
Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)

75. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

76. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. Tit. 8, § 11050(2)(K) (defining “Hours Worked”).

77. First, as set forth above, as a result of Defendants’ policy of limiting the amount of overtime employees could accrue, pursuant to their labor budget practices, Defendants required Plaintiff and class members to perform work off-the-clock. As stated, due to Defendants’ implementation of a timekeeping system that prevented employees from clocking in until their scheduled shift start-time, Plaintiff and class members were prevented from recording time worked prior to the start of their scheduled shifts, and thus were not paid for this time. Further, as stated, Defendants required Plaintiff and class members to perform work off-the-clock before and after their scheduled shift start and end times to complete work-related tasks, such as assisting with taking orders, fixing equipment, waiting to clock in for their shifts due to an inadequate number of timekeeping devices available, submitting to COVID-19 health screenings, completing closing duties, and waiting to leave the premises in a group. As a result, Defendants failed to track this time that Plaintiff and class members spent working off-the-clock, and thus, Plaintiff and class members received no compensation for this time.

78. Second, as set forth above, due to Defendants’ company-wide policies and/or practices of utilizing labor budgets, understaffing their locations, assigning heavy workloads,

1 failing to schedule meal periods, requiring employees to respond to headset communications at
2 all times, and/or requiring employees to stay on the work premises during meal periods, Plaintiff
3 and class members were impeded from taking all uninterrupted meal periods to which they were
4 entitled and were required to work off-the-clock. Further, to limit the meal penalties that
5 Defendants would otherwise owe, Defendants pressured Plaintiff and class members to clock
6 out for meal periods to reflect compliant meal periods, but required them to continue working,
7 time for which they were not paid. Also, as set forth above, Defendants' timekeeping system
8 locked out Plaintiff and class members for 30 minutes when they clocked out for a meal period
9 and would not permit them to clock back in from a meal period until 30 minutes had elapsed.
10 Thus, Defendants systematically failed to pay Plaintiff and class members for actual hours
11 worked during unpaid meal periods because these hours were not always correctly recorded.

12 79. Third, as stated above, Defendants had a company-wide "on-call" policy,
13 whereby they required Plaintiff and class members to wait to be called by Defendants when
14 scheduled for "on-call" or standby shifts. However, Defendants did not pay Plaintiff and class
15 members at least minimum wages for the time they spent calling in or waiting to see if they
16 were needed at the restaurant.

17 80. Defendants did not pay minimum wages for all hours worked by Plaintiff and
18 class members. To the extent that these off-the-clock hours did not qualify for overtime
19 premium payment, Defendants did not pay at least minimum wages for those hours worked off-
20 the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

21 81. Defendants' failure to pay Plaintiff and class members minimum wages violates
22 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California
23 Labor Code section 1194.2, Plaintiff and class members are entitled to recover from Defendants
24 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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THIRD CAUSE OF ACTION
Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period
Violations
(Against all Defendants)

82. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

83. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

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

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

86. First, during the relevant time period, as stated above, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads and a failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Plaintiff and class members from taking all timely, uninterrupted meal periods to which they were entitled. Moreover, as stated, due to Defendants’ company-wide policy and/or

1 practice of requiring that Plaintiff and class members wear a radio headset at all times, Plaintiff
2 and class members were sometimes required to take drive thru orders during their meal periods
3 if there were no other employees available to do so. As a result, Plaintiff and class members
4 had to work through all or part of their meal periods, had their meal periods interrupted, and/or
5 had to wait extended periods of time before taking meal periods. For example, Plaintiff was
6 required to work through his meal periods or could not take his meal periods until after five (5)
7 hours into his shifts, due to the heavy workload and lack of coverage. Thus, Defendants failed
8 to provide Plaintiff and class members with compliant, 30-minute meal periods.

9 87. Second, as set forth above, on information and belief, because Defendants
10 frowned upon employees accruing meal period penalties, Defendants' management pressured
11 employees to clock out for meal periods to reflect compliant meal periods, regardless of whether
12 they had received a compliant meal period or not, in order to strictly limit the meal penalties
13 that would need to be paid by Defendants. Also, as stated, Defendants' company-wide
14 timekeeping system prevented Plaintiff and class members from recording when their meal
15 periods were shortened or interrupted, because the system locked out Plaintiff and class
16 members once they clocked out for a meal period, and would not permit them to clock back in
17 from a meal period before 30 minutes had elapsed. For example, Plaintiff was unable to record
18 when his meal periods were interrupted or shortened by Defendants' management wanting to
19 discuss work-related matters, asking him to cut his meal periods short and return to work, or
20 communications on their headsets.

21 88. Third, as stated, on information and belief, Defendants maintained and
22 implemented a company-wide on-premises meal period policy for employees, which mandated
23 that Plaintiff and class members remain on the work premises during the meal periods. Because
24 Plaintiff and class members were restricted from leaving the premises during meal periods, they
25 were denied the ability to use their meal periods freely for their own purposes. Thus, Defendants
26 effectively maintained control over Plaintiff and class members during meal periods.

27 89. Fourth, Defendants did not provide Plaintiff and class members with second 30-
28 minute meal periods on days that they worked in excess of 10 hours in one day. For example,

1 during the relevant time period, Plaintiff worked shifts in excess of 10 hours in one day and
2 never took a second meal period. Plaintiff and class members did not sign valid meal period
3 waivers on days that they were entitled to meal periods and were not relieved of all duties.

4 90. At all times herein mentioned, Defendants knew or should have known that, as a
5 result of these policies, Plaintiff and class members were prevented from being relieved of all
6 duties and were required to perform some of their assigned duties during meal periods.
7 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
8 members all meal period premiums when meal periods were late, missed, shortened, or
9 interrupted.

10 91. Furthermore, Defendants engaged in a company-wide practice and/or policy of
11 not paying all meal period premiums owed when compliant meal periods were not provided.
12 Because of this practice and/or policy, Plaintiff and class members have not received premium
13 pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide
14 Plaintiff and class members compliant meal periods in violation of California Labor Code
15 sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

16 92. Defendants' conduct violates the applicable IWC Wage Order and California
17 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
18 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
19 rate of compensation for each work day that the meal period was not provided.

20 **FOURTH CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 22 **(Against all Defendants)**

23 93. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 94. At all relevant times herein set forth, the applicable IWC Wage Order and
26 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
27 members' employment by Defendants.

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

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

6 96. At all relevant times, California Labor Code section 226.7 provides that no
7 employer shall require an employee to work during any rest period mandated by an applicable
8 order of the California IWC. To comply with its obligation to authorize and permit rest periods
9 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
10 must “relinquish any control over how employees spend their break time, and relieve their
11 employees of all duties—including the obligation that an employee remain on call. A rest
12 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
13 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code
14 section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1)
15 additional hour of pay at their regular rates of pay for each work day that a required rest period
16 was not authorized and permitted.

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

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98. Furthermore, upon information and belief, during the relevant time period, Defendants maintained and implemented a company-wide on-premises rest period policy, which mandated that Plaintiff and class members remain on the work premises during their rest periods. Because Plaintiff and class members were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, Defendants effectively maintained control over Plaintiff and class members during rest periods.

99. As a result of Defendants' practices and policies, Plaintiff and class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Plaintiff had to occasionally forego his rest periods because the restaurant was busy and did not have coverage. When Plaintiff was able to take his rest periods, they were sometimes interrupted by headset communications.

100. Defendants have also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because of this practice and/or policy, Plaintiff and class members have not received premium pay for all missed rest periods.

101. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FIFTH CAUSE OF ACTION

**Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage
Statements and Failure to Maintain Accurate Payroll Records
(Against all Defendants)**

102. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

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

6 104. At all relevant times, Defendants have knowingly and intentionally provided
7 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For
8 example, Defendants issued uniform wage statements to Plaintiff and Subclass members that
9 fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
10 applicable hourly rates in effect during the pay period, including rates of pay for overtime
11 wages, and the corresponding number of hours worked at each hourly rate. Specifically,
12 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

13 105. Because Defendants did not accurately record the time Plaintiff and Subclass
14 members spent working off-the-clock and deducted time from their records for meal periods
15 that were interrupted and/or missed (and therefore time for which they should have been paid),
16 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and
17 Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same reason,
18 Defendants failed to accurately list the total number of hours worked by Plaintiff and Subclass
19 members in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay
20 in effect during the pay period and corresponding accurate number of work hours worked at
21 each hourly rate in violation of section 226(a)(9).

22 106. The wage statement deficiencies also include, without limitation, failing to list
23 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
24 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for
25 which employees were paid; failing to list the name of the employee and only the last four digits
26 of his or her social security number or an employee identification number other than a social
27 security number; failing to list the name and address of the legal entity that is the employer;
28 and/or failing to state all hours worked as a result of not recording or stating hours worked off-

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

5 107. California Labor Code section 1174(d) provides that “[e]very person employing
6 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
7 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
8 plants or establishments at which employees are employed, payroll records showing the hours
9 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
10 applicable piece rate paid to, employees employed at the respective plants or
11 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
12 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
13 members showing the daily hours they worked and the wages paid thereto as a result of failing
14 to record the off-the-clock hours that they worked.

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

27 109. Plaintiff and Subclass members are entitled to recover from Defendants the
28 greater of their actual damages caused by Defendants’ failure to comply with California Labor

Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)

110. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

111. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

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

113. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

114. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the

1 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
2 thirty (30) day maximum pursuant to California Labor Code section 203.

3 **SEVENTH CAUSE OF ACTION**

4 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
5 **Employment**
6 **(Against all Defendants)**

7 115. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
8 and every allegation set forth above.

9 116. This cause of action is dependent upon, and wholly derivative of, the overtime
10 wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were
11 not timely paid to Plaintiff and class members during their employment.

12 117. At all times relevant herein set forth, Labor Code section 204 provides that all
13 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
14 days, inclusive, of any calendar month, other than those wages due upon termination of an
15 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
16 the month during which the labor was performed. Labor Code section 204 further provides that
17 all wages earned by any person in any employment between the sixteenth (16th) and the last
18 day, inclusive, of any calendar month, other than those wages due upon termination of an
19 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
20 month.

21 118. At all times relevant herein, Labor Code section 204 provides that all wages
22 earned for labor in excess of the normal work period shall be paid no later than the payday for
23 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
24 204 provides that the requirements of this section are deemed satisfied by the payment of wages
25 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7)
26 calendar days following the close of the payroll period.

27 119. During the relevant time period, Defendants willfully failed to pay Plaintiff and
28 class members all wages due including, but not limited to, overtime wages, minimum wages,

1 meal and rest period premiums, and/or reporting time pay, within the time periods specified by
2 California Labor Code section 204.

3 120. Defendants' failure to pay Plaintiff and class members all wages due violates
4 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
5 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

6 **EIGHTH CAUSE OF ACTION**

7 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section**
8 **11050 Subdivision 5(A)—Failure to Provide Reporting Time Pay**
9 **(Against all Defendants)**

10 121. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
11 and every allegation set forth above.

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

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

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1 124. During the relevant time period, Defendants violated California Labor Code
2 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
3 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
4 work for their usual or scheduled shift but were put to work for less than half of their usual or
5 scheduled day's work.

6 125. As stated, Defendants had a company-wide "on-call" policy, whereby they
7 scheduled Plaintiff and class members to work "on-call," or on standby. When scheduled for a
8 "on-call" or standby shift, Plaintiff and class members regularly presented themselves as ready
9 for work by waiting for the restaurant to call them before their scheduled standby shift or by
10 calling into the restaurant themselves prior to their scheduled standby shift and would await
11 instructions on whether to report to the restaurant. When this occurred, Defendants did not pay
12 Plaintiff and class members for at least half of their scheduled day's work or the minimum
13 reporting time pay when they were subject to Defendants' "on-call" policy and were ultimately
14 not called.

15 126. Defendants also had a company-wide practice of sending Plaintiff and class
16 members home early from their shifts, including before they had worked at least half of their
17 usual or scheduled shift, but would not pay Plaintiff and class members for half of their usual
18 or scheduled shift. For example, when scheduled to work an eight (8) hour shift, Defendants'
19 managers sent Plaintiff home two (2) hours after the start of his shift because business was slow.
20 Although Plaintiff and class members reported to work based on the schedule that was provided
21 to them, Defendants would send them home before they worked at least half of their usual or
22 scheduled shifts. When this occurred, Defendants did not pay Plaintiff and class members for
23 at least half of their scheduled day's work or the minimum reporting time pay.

24 127. Accordingly, Plaintiff and class members were not properly compensated with
25 reporting time pay in violation of California Labor Code section 1198 and California Code of
26 Regulations, Title 8, section 11050(5)(A). Plaintiff and class members are therefore entitled to
27 recover from Defendants unpaid wages and interest.

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1 **NINTH CAUSE OF ACTION**

2 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**
3 **(Against all Defendants)**

4 128. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 129. At all times herein set forth, California Labor Code section 2802 provides that
7 an employer must reimburse employees for all necessary expenditures and losses incurred by
8 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
9 to prevent employers from passing off their cost of doing business and operating expenses on
10 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
11 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen tools
12 or equipment are required by the employer or are necessary to the performance of a job, such
13 tools and equipment shall be provided and maintained by the employer, except that an employee
14 whose wages are at least two (2) times the minimum wage provided herein may be required to
15 provide and maintain hand tools and equipment customarily required by the trade or craft.”
16 IWC Wage Order No. 5-2001 further provides that: “[w]hen uniforms are required by the
17 employer to be worn by the employee as a condition of employment, such uniforms shall be
18 provided and maintained by the employer.”

19 130. First, during the relevant time period, Defendants, on a company-wide basis,
20 required that Plaintiff and class members use their own personal mobile devices, including, but
21 not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to
22 reimburse them for the costs of their work-related mobile device expenses. For example,
23 Plaintiff and class members would be contacted on their personal mobile devices by their
24 managers and/or supervisors to discuss work-related matters such as any incidents that occurred
25 during their shifts. Although Defendants required Plaintiff and class members to utilize their
26 personal mobile devices to carry out their work-related responsibilities, Defendants failed to
27 reimburse them for this cost.

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1 131. Second, during the relevant time period, Defendants, on a company-wide basis,
2 required that Plaintiff and class members use their own personal vehicles to run company
3 errands. For example, on a number of occasions throughout his employment, Plaintiff was
4 required to use his personal vehicle and drive to Defendants' other restaurant locations to pick
5 up ingredients or supplies. Additionally, during the relevant time period, Plaintiff was required
6 to use his personal vehicle to drive to a bank to obtain change for the cash registers. Although
7 Defendants required Plaintiff and class members to utilize their personal vehicles to carry out
8 their work-related responsibilities, Defendants failed to reimburse them for their mileage or
9 travel expenses.

10 132. Third, during the relevant time period, Defendants required Plaintiff and class
11 members to wear uniforms bearing the McDonald's company logo, including uniform shirts and
12 hats. However, Defendants did not provide their employees with sufficient uniforms to wear
13 for their shifts throughout the week. For example, Defendants only provided Plaintiff and class
14 members with two (2) shirts and one (1) hat at the time of hire. Because Defendants failed to
15 provide Plaintiff and class members with an adequate number of uniform items in relation to
16 their scheduled shifts and for the tasks they were required to perform, Plaintiff and class
17 members had to wash their uniforms more frequently than they otherwise do laundry, and incur
18 expenses in doing so. For example, due to the nature of restaurant work, Plaintiff's uniform
19 items would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such
20 that he was unable to mix these clothes in with other laundry. As a result, Plaintiff had to wash
21 his uniform items separately from his regular clothing, thus incurring additional laundry
22 expenses for the upkeep of his uniforms. Thus, Defendants failed to maintain uniforms they
23 required Plaintiff and class members to wear during their shifts and forced them to incur the
24 cost of maintaining employee uniforms.

25 133. Fourth, during the relevant time period, Defendants, on a company-wide basis,
26 required Plaintiff and class members to obtain and pay for certain certifications, such as an
27 eFood Handlers certificate, which was required for their continued employment, as well as
28 associated costs such as training and/or examination fees. For example, Plaintiff complied with

1 this requirement and spent approximately \$13 to obtain an eFood Handlers certificate, but
2 Defendants did not reimburse him for the costs of obtaining the certification. Thus, Defendants
3 failed to reimburse Plaintiff and class members for the costs of obtaining these certifications,
4 including training and/or examination fees.

5 134. Defendants could have provided Plaintiff and class members with the actual
6 equipment for use on the job, such as company mobile devices and company vehicles, as well
7 as an adequate number of uniform items or access to laundering services; or Defendants could
8 have reimbursed employees for the costs of their mobile device usage, mileage, travel expenses,
9 certifications, and laundering expenses or provided a uniform maintenance allowance. Instead,
10 Defendants passed these operating costs off onto Plaintiff and class members. At all relevant
11 times, Plaintiff did not earn at least two (2) times the minimum wage.

12 135. Defendants' company-wide policy and/or practice of not reimbursing employees
13 for expenses necessarily incurred and passing on their operating costs to Plaintiff and class
14 members violates California Labor Code section 2802. Defendants have intentionally and
15 willfully failed to reimburse Plaintiff and class members for necessary business-related
16 expenses and costs.

17 136. Plaintiff and class members are entitled to recover from Defendants their
18 business-related expenses incurred during the course and scope of their employment, plus
19 interest.

20 **TENTH CAUSE OF ACTION**

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

22 **(Against all Defendants)**

23 137. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 138. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
26 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
27 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510,
28 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits

aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

139. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other aggrieved employees with all required overtime pay, as alleged herein;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;
- (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;
- (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
- (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;

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- 1 (i) Violation of Labor Code section 1198 and the applicable IWC Wage
2 Order for failing to pay reporting time pay to Plaintiff and other aggrieved
3 employees, as alleged herein;
- 4 (j) Violation of Labor Code section 1198 and the applicable IWC Wage
5 Order for failure to provide suitable seating, as set forth below; and
- 6 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
7 and other aggrieved employees for all business expenses necessarily
8 incurred, as alleged herein.

9 140. At all relevant times herein, California Labor Code section 1198 makes it illegal
10 to employ an employee under conditions of labor that are prohibited by the applicable IWC
11 Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of
12 labor fixed by the commission shall be the . . . standard conditions of labor for employees. The
13 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

14 141. California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll
15 working employees shall be provided with suitable seats when the nature of the work reasonably
16 permits the use of seats.”

17 142. Defendants’ restaurants are generally similar in their layout and design and there
18 was, and continues to be, space at the drive-thru ordering windows to allow for the presence
19 and use of a seat or stool by Plaintiff and other aggrieved employees (with reasonable or no
20 modification to these work areas) during the performance of their work duties. Defendants
21 could have provided Plaintiff and other aggrieved employees with a seat or stool at the drive-
22 thru ordering windows, but instead denied employees seating and forced Plaintiff and other
23 aggrieved employees to stand throughout the day.

24 143. Plaintiff and other aggrieved employees spent a substantial portion of their day
25 behind or at these drive-thru ordering windows. The nature of the work of an employee
26 performing cashier/drive-thru duties can reasonably be accomplished from a seated position.
27 However, as set forth herein, Defendants systematically, and on a company-wide basis, do not
28 provide seats or stools at or near drive-thru ordering windows, forcing Plaintiff and other

1 aggrieved employees to stand throughout their work shifts.

2 144. Defendants violated California Labor Code section 1198 and California Code of
3 Regulations, Title 8, section 11050(14)(A) because Plaintiff and other aggrieved employees
4 were not allowed to sit, even when the nature of their work would reasonably permit the use of
5 seats, nor were they provided with suitable seats. Defendants' management did not inform
6 Plaintiff and other aggrieved employees that they were allowed to sit down, provide any means
7 for them to sit down, or mention any policy regarding sitting.

8 145. As a result of Defendants' company-wide policy and/or practice of prohibiting
9 employees from sitting during their shifts and company-wide failure to provide suitable seating,
10 Plaintiff and other aggrieved employees were forced to stand during shifts and denied seats.
11 Defendants' failure to provide suitable seating to Plaintiff and other aggrieved employees
12 violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision
13 14(A). Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties
14 pursuant to Labor Code sections 2699(a), (f), and (g).

15 146. California Code of Regulations, Title 8, section 11050(14)(B) provides that
16 "[w]hen employees are not engaged in the active duties of their employment and the nature of
17 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
18 proximity to the work area and employees shall be permitted to use such seats when it does not
19 interfere with the performance of their duties."

20 147. During the relevant time period, Defendants violated California Labor Code
21 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because
22 Plaintiff and other aggrieved employees were not allowed to sit, even during lulls in their work
23 duties, nor were they provided with suitable seats in reasonable proximity to their work areas.

24 148. Defendants' California restaurants are generally similar in their layout and
25 design and there was, and continues to be, space near their work areas (with reasonable or no
26 modification to these work areas) to allow for the presence and use of a seat or stool by Plaintiff
27 and other aggrieved employees during lulls in operation. Defendants could have provided
28 Plaintiff and other aggrieved employees with a seat or stool in their work areas, but instead

denied, and continue to deny, employees seating, forcing them to stand throughout the day.

149. Defendants did not provide Plaintiff and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Plaintiff and other aggrieved employees engaged in duties in which the nature of the work required standing, Defendants denied them the use of seats nearby during lulls in their work duties. Moreover, Defendants did not inform Plaintiff and other aggrieved employees of their rights to a seat or stool under California law.

150. As a result of Defendants' company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Plaintiff and other aggrieved employees were forced to stand during shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiff and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B). Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

ELEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unlawful Business Practices

(Against all Defendants)

151. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

152. Defendants are "persons" as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

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153. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

154. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

155. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices have violated state law in at least the following respects:

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198, and the applicable IWC Wage Order, as alleged herein;
- (b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (c) Failing to provide all meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiff and class members to take all rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;

- 1 (f) Failing timely to pay all earned wages to Plaintiff and class members in
2 violation of California Labor Code section 204, as alleged herein;
- 3 (g) Failing to pay reporting time pay in violation of California Labor Code
4 section 1198 and the applicable IWC Wage Order, as alleged herein; and
- 5 (h) Failing to reimburse Plaintiff and class members for all business expenses
6 necessarily incurred in violation of California Labor Code section 2802,
7 as alleged herein.

8 156. As a result of the violations of California law herein described, Defendants
9 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have
10 suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

11 157. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
12 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
13 Defendants during a period that commences four years prior to the filing of the initial complaint;
14 a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
15 class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure
16 section 1021.5 and other applicable laws; and an award of costs.

17 **TWELFTH CAUSE OF ACTION**

18 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

19 **Unfair Business Practices**

20 **(Against all Defendants)**

21 158. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 159. Defendants are "persons" as defined by California Business & Professions Code
24 section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
25 associations.

26 160. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and
27 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in
28 fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to

1 enforce important rights affecting the public interest within the meaning of Code of Civil
2 Procedure section 1021.5.

3 161. Defendants' activities, namely Defendants' company-wide practice and/or policy
4 of not paying Plaintiff and class members all meal and rest period premiums due to them under
5 Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee
6 and enhanced enforcement implemented by section 226.7. The statutory remedy provided by
7 section 226.7 is a "dual-purpose" remedy intended primarily to compensate employees, and
8 secondarily to shape employer conduct." *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th
9 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and
10 class members as part of their employment with Defendants, and thus Defendants' practice
11 and/or policy of denying these statutory benefits constitutes an unfair business practice in
12 violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

13 162. A violation of California Business & Professions Code sections 17200, *et seq.*
14 may be predicated on any unfair business practice. In the instant case, Defendants' policies and
15 practices have violated the spirit of California's meal and rest period laws and constitute acts
16 against the public policy behind these laws.

17 163. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
18 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
19 benefits implemented by section 226.7 withheld and retained by Defendants during a period that
20 commences four years prior to the filing of the initial complaint; a permanent injunction
21 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff
22 and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure
23 section 1021.5 and other applicable laws; and an award of costs.

24 **REQUEST FOR JURY TRIAL**

25 Plaintiff requests a trial by jury.

26 **PRAYER FOR RELIEF**

27 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against
28 Defendants, jointly and severally, as follows:

1 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
2 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
3 reserves the right to amend his prayer for relief to seek a different amount.

4 **Class Certification**

5 2. That this case be certified as a class action;

6 3. That Plaintiff be appointed as the representative of the Class and Subclass;

7 4. That counsel for Plaintiff be appointed as class counsel.

8 **As to the First Cause of Action**

9 5. That the Court declare, adjudge, and decree that Defendants violated California
10 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
11 pay all overtime wages due to Plaintiff and class members;

12 6. For general unpaid wages at overtime wage rates and such general and special
13 damages as may be appropriate;

14 7. For pre-judgment interest on any unpaid overtime compensation commencing
15 from the date such amounts were due, or as otherwise provided by law;

16 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
17 California Labor Code section 1194(a); and

18 9. For such other and further relief as the Court may deem equitable and
19 appropriate.

20 **As to the Second Cause of Action**

21 10. That the Court declare, adjudge and decree that Defendants violated California
22 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
23 Order by willfully failing to pay minimum wages to Plaintiff and class members;

24 11. For general unpaid wages and such general and special damages as may be
25 appropriate;

26 12. For pre-judgment interest on any unpaid compensation from the date such
27 amounts were due, or as otherwise provided by law;

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1 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
2 California Labor Code section 1194(a);

3 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

4 15. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Third Cause of Action**

7 16. That the Court declare, adjudge, and decree that Defendants violated California
8 Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by
9 willfully failing to provide all meal periods to Plaintiff and class members;

10 17. That the Court make an award to the Plaintiff and class members of one (1) hour
11 of pay at each employee's regular rate of pay for each workday that a meal period was not
12 provided;

13 18. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 19. For premiums pursuant to California Labor Code section 226.7(c);

16 20. For pre-judgment interest on any unpaid meal period premiums from the date
17 such amounts were due, or as otherwise provided by law;

18 21. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and

20 22. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Fourth Cause of Action**

23 23. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully
25 failing to authorize and permit Plaintiff and class members to take all rest periods;

26 24. That the Court make an award to the Plaintiff and class members of one (1) hour
27 of pay at each employee's regular rate of pay for each workday that a rest period was not
28 authorized and permitted;

1 25. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 26. For premiums pursuant to California Labor Code section 226.7(c);

4 27. For pre-judgment interest on any unpaid rest period premiums from the date such
5 amounts were due, or as otherwise provided by law;

6 28. For attorneys' fees pursuant to California Code of Civil Procedure section
7 1021.5, or as otherwise provided by law; and

8 29. For such other and further relief as the Court may deem equitable and
9 appropriate.

10 **As to the Fifth Cause of Action**

11 30. That the Court declare, adjudge and decree that Defendants violated the
12 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
13 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate
14 itemized wage statements thereto;

15 31. For all actual, consequential, and incidental losses and damages, according to
16 proof;

17 32. For injunctive relief pursuant to California Labor Code section 226(h);

18 33. For statutory penalties pursuant to California Labor Code section 226(e);

19 34. For attorneys' fees and costs pursuant to California Labor Code section
20 226(e)(1); and

21 35. For such other and further relief as the Court may deem equitable and
22 appropriate.

23 **As to the Sixth Cause of Action**

24 36. That the Court declare, adjudge and decree that Defendants violated California
25 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
26 meal and rest period premiums, and/or reporting time pay owed at the time of termination of
27 the employment of Plaintiff and other terminated class members;

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37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

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

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

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

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A) by

1 failing to provide Plaintiff and class members with reporting time pay;

2 49. For all actual, consequential and incidental losses and damages, according to
3 proof;

4 50. For pre-judgment interest on any unpaid wages from the date such amounts were
5 due, or as otherwise provided by law; and

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

8 **As to the Ninth Cause of Action**

9 52. That the Court declare, adjudge and decree that Defendants violated California
10 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related
11 expenses and costs incurred by Plaintiff and class members;

12 53. For unpaid business-related expenses and such general and special damages as
13 may be appropriate;

14 54. For pre-judgment interest on any unpaid business-related expenses from the date
15 such amounts were due, or as otherwise provided by law;

16 55. For all actual, consequential, and incidental losses and damages, according to
17 proof;

18 56. For attorneys' fees and costs pursuant to California Labor Code section 2802(c),
19 or as otherwise provided by law; and

20 57. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Tenth Cause of Action**

23 58. That the Court declare, adjudge and decree that Defendants violated the
24 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
25 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
26 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
27 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
28 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage

statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 1198 and the applicable IWC Wage Order (by failing to provide reporting time pay); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); and 2802 (by failing to reimburse business expenses);

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

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

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

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

As to the Eleventh Cause of Action

63. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, failing to pay Plaintiff and class members reporting time pay, and failing to reimburse Plaintiff and class members for business-related expenses, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

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64. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

65. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

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

As to the Twelfth Cause of Action

68. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

69. For restitution of the statutory benefits under section 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the day such amounts were due and payable;

70. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

71. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

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

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1 73. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: February 23, 2024,

Respectfully submitted,

5 Capstone Law APC

6
7 By: 
8 Bevin A. Pike
9 Daniel S. Jonathan
Trisha Monesi
Shealene P. Mancuso

10 Attorneys for Plaintiff Isiah Maldonado
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EXHIBIT “1”



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December 18, 2023

VIA ONLINE SUBMISSION

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

Subject: *Isiah Maldonado v. R L M K, Inc., et al.*

Dear PAGA Administrator:

This office represents Isiah Maldonado in connection with his claims under the California Labor Code. Mr. Maldonado was an employee of R L M K, INC. and/or DELPH ENTERPRISES, LLC. For the purpose of this letter, Mr. Maldonado collectively refers to these entities as "RLMK."

The employers may be contacted directly at the addresses below:

R L M K, INC.
7043 WEST PERSHING CT
VISALIA, CA 93291

DELPH ENTERPRISES, LLC
7043 W PERSHING CT
VISALIA, CA 93291

Mr. Maldonado intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Maldonado seeks relief on behalf of himself, the State of California, and other persons who are or were employed by RLMK as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

RLMK employed Mr. Maldonado as an hourly paid, non-exempt Crew Member from approximately April 2019 to June 2023. Mr. Maldonado worked for RLMK at its McDonald's restaurant location in Visalia, California. During his employment, Mr. Maldonado typically worked seven (7) or more hours per day and five (5) days per week. At the time his employment ended, Mr. Maldonado was compensated approximately \$16.00 per hour. His primary job duties included, without limitation, taking customer orders, preparing and serving food, cleaning, and taking out garbage.

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

RLMK’s Company-Wide and Uniform Payroll and HR Practices

R L M K, INC. is a California corporation and DELPH ENTERPRISES, LLC is a California limited liability company. Together, they operate a chain of McDonald’s restaurants with approximately 15 locations in California. Upon information and belief, RLMK maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Visalia, California, for all non-exempt, hourly paid employees working for RLMK in California, including Mr. Maldonado and other aggrieved employees. At all relevant times, RLMK issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Maldonado and other aggrieved employees, regardless of their location or position.

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

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

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

RLMK willfully failed to pay all overtime wages owed to Mr. Maldonado and other aggrieved employees. During the relevant time period, Mr. Maldonado and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

¹ These facts, theories, and claims are based on Mr. Maldonado’s experience and counsel’s review of those records currently available relating to Mr. Maldonado’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Maldonado reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

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

First, during the relevant time period, RLMK had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Maldonado and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with RLMK's use of labor budgets and assignment of heavy workloads (*see infra*), led Mr. Maldonado and other aggrieved employees to work off-the-clock before and after their scheduled shift times. Indeed, RLMK implemented a timekeeping system that prevented employees from clocking in until their scheduled shift start-time so that they were prohibited from recording the time worked prior to the start of their scheduled shifts. Consequently, on information and belief, Mr. Maldonado and other aggrieved employees performed work prior to the start of their shift, but were unable to record this time. For example, approximately three (3) times per week when Mr. Maldonado arrived early to the restaurant, RLMK's management required him to start working immediately and before he was able to clock in for the start of his shift because the restaurant was busy. Mr. Maldonado would work for up to 10 minutes completing tasks, such as taking orders and fixing broken equipment, but was prevented from clocking in before his scheduled shift start-time. As a further example, RLMK only provided Mr. Maldonado and other aggrieved employees with one (1) timekeeping machine to clock in for their shifts, thus forcing Mr. Maldonado and other aggrieved employees to wait in line off-the-clock and under RLMK's control, time for which they were not paid. Mr. Maldonado and other aggrieved employees would arrive early in order to clock in for the start of their shifts, and were required to wait in a line for a few minutes to clock in, time for which they were not paid.

Additionally, during the relevant period, RLMK implemented, on a company-wide basis, an employer-imposed requirement that Mr. Maldonado and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. Prior to his shift, Mr. Maldonado was required to spend up to three (3) minutes per instance waiting and then undergoing a mandatory temperature check and filling out a health screening form, before being permitted to clock in for his shift. Even though RLMK required these health screenings, RLMK did not provide Mr. Maldonado and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks and/or health screenings.

Moreover, RLMK's company-wide policy of limiting overtime also forced Mr. Maldonado and other aggrieved employees to work after clocking out at the end of their scheduled shifts. For example, about four (4) times per week, Mr. Maldonado was required to clock out and continue working for up to one (1) hour completing closing duties such as mopping, sweeping, taking out garbage, locking doors, and shutting down equipment. This off-the-clock work could have been recorded by RLMK, but it refused to do so to avoid payment of additional wages to Mr. Maldonado and other aggrieved employees. Thus, RLMK failed to track all of the time that employees spent performing work-related tasks before and after their shifts, and Mr. Maldonado and other aggrieved employees received no compensation for this time.

Second, RLMK also had a company-wide security policy and/or practice for closing shifts, requiring employees to leave the restaurant premises together in one (1) group. After clocking out at the end of their shifts, Mr. Maldonado and other aggrieved employees were required to wait for all other employees to complete their own duties before they were released by a managerial employee and could leave RLMK's premises together. For example, when scheduled for closing shifts, Mr.

Maldonado would complete his own closing tasks, clock out, and then have to wait until his supervisor and/or other coworkers had completed their own respective closing duties, before being released. As a result, Mr. Maldonado and other aggrieved employees were subject to RLMK's control after they had clocked out for their shifts, but were not compensated for this time.

Third, as stated, RLMK had, and continues to have, a company-wide policy of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. This practice of labor budgeting and/or limited payroll allocation, combined with the assignment of heavy workloads, has resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. Because RLMK did not employ or staff a sufficient number of employees to meet customer demand, there was no one available to relieve employees needing meal period coverage, and Mr. Maldonado and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, RLMK have a practice of failing to schedule meal periods, which further caused Mr. Maldonado and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Maldonado missed his meal periods approximately once per week due to lack of coverage and heavy workload. As a further example, RLMK's management frequently interrupted Mr. Maldonado's meal periods to ask him work-related questions or ask that Mr. Maldonado cut his meal period short and return to work for the same reasons mentioned above.

Fourth, RLMK had, and continues to have, a company-wide policy and/or practice of requiring employees to wear a radio headset to continue taking customer orders, including during unpaid meal periods. For example, Mr. Maldonado had his meal periods interrupted by customers at the drive thru placing food orders; RLMK expected Mr. Maldonado and other aggrieved employees to accept the orders and continue serving customers, including during their unpaid meal periods, if there were no other employees available to do so. However, RLMK did not compensate Mr. Maldonado and other aggrieved employees for the time they spent working during meal periods while off-the-clock.

Fifth, on information and belief, because RLMK frowned upon employees accruing meal period penalties, RLMK's management pressured Mr. Maldonado and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by RLMK. Additionally, RLMK's timekeeping system prevented Mr. Maldonado and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Maldonado and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, RLMK did not record all hours worked during meal periods, and Mr. Maldonado and other aggrieved employees performed work during meal periods for which they were not paid.

Sixth, on information and belief, RLMK maintained a company-wide on-premises meal period policy, which mandated that Mr. Maldonado and other aggrieved employees remain on RLMK's premises during their unpaid meal periods. Because Mr. Maldonado and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. For example, Mr. Maldonado and other aggrieved employees were unable to take compliant meal periods because they were not permitted to leave the restaurant premises after 10:00 p.m. Thus, RLMK effectively maintained control over Mr. Maldonado and other aggrieved employees during their unpaid meal periods.

Seventh, during the relevant period, RLMK had a company-wide “on-call” policy, whereby it scheduled Mr. Maldonado and other aggrieved employees to work “on-call,” or on standby. These “on-call” shifts worked to RLMK’s benefit and to the detriment of Mr. Maldonado and other aggrieved employees. By utilizing “on-call” shifts, RLMK received the benefit of being able to maximize revenue by having a standby workforce it could choose to utilize or not, depending on restaurant traffic and sales metrics, without incurring the cost of compensating employees who show up to work and work a full or partial scheduled day’s work.

When scheduled for an “on-call” or standby shift, Mr. Maldonado and other aggrieved employees were required to wait for the restaurant to call them approximately two (2) hours prior to their scheduled standby shift; sometimes Mr. Maldonado would call in himself to confirm if he was required to report to work that day. Mr. Maldonado and other aggrieved employees were engaged to wait and could not engage in personal activities as they had to be ready to travel to their respective restaurant locations on short notice and work their standby shift. When scheduled to be “on-call” for a standby shift, Mr. Maldonado and other aggrieved employees were controlled by RLMK because they were forced to put their lives on hold and could not use that time freely for their own purposes. For example, Mr. Maldonado refrained from making plans altogether while “on-call” for a standby shift because he knew that he had to drop whatever he was doing at a moment’s notice if he was instructed to work his standby shift. RLMK did not pay Mr. Maldonado and other aggrieved employees for the time they spent waiting to hear whether they needed to report for work at their restaurant locations on days they ultimately were not called in. RLMK also did not compensate Mr. Maldonado and other aggrieved employees for the time they spent calling in to see if they were needed.

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

Furthermore, RLMK did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, on information and belief, RLMK paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, RLMK failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, RLMK failed to pay all overtime wages by paying a lower overtime rate than required.

RLMK’s failure to pay Mr. Maldonado and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Maldonado and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

First, as set forth above, as a result of RLMK’s policy of limiting the amount of overtime employees could accrue, pursuant to their labor budget practices, RLMK required Mr. Maldonado and other aggrieved employees to perform work off-the-clock. As stated, due to RLMK’s implementation of a timekeeping system that prevented employees from clocking in until their scheduled shift start-time, Mr. Maldonado and other aggrieved employees were prevented from recording time worked prior to the start of their scheduled shifts, and thus were not paid for this time. Further, as stated, RLMK required Mr. Maldonado and other aggrieved employees to perform work off-the-clock before and after their scheduled shift start and end times to complete work-related tasks, such as assisting with taking orders, fixing equipment, waiting to clock in for their shifts due to an inadequate number of timekeeping devices available, submitting to COVID-19 health screenings, completing closing duties, and waiting to leave the premises in a group. As a result, RLMK failed to track this time that Mr. Maldonado and other aggrieved employees spent working off-the-clock, and thus, Mr. Maldonado and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to RLMK’s company-wide policies and/or practices of utilizing labor budgets, understaffing its locations, assigning heavy workloads, failing to schedule meal periods, requiring employees to respond to headset communications at all times, and/or requiring employees to stay on the work premises during meal periods, Mr. Maldonado and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Further, to limit the meal penalties that RLMK would otherwise owe, RLMK pressured Mr. Maldonado and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Also, as set forth above, RLMK’s timekeeping system locked out Mr. Maldonado and other aggrieved employees for 30 minutes when they clocked out for a meal period and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, RLMK systematically failed to pay Mr. Maldonado and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Third, as stated above, RLMK had a company-wide “on-call” policy, whereby it required Mr. Maldonado and other aggrieved employees to wait to be called by RLMK when scheduled for “on-call” or standby shifts. However, RLMK did not pay Mr. Maldonado and other aggrieved employees at least minimum wages for the time they spent calling in or waiting to see if they were needed at the restaurant.

Accordingly, RLMK regularly failed to pay at least minimum wages to Mr. Maldonado and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Maldonado and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, as stated above, RLMK had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads and a failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Mr. Maldonado and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Moreover, as stated, due to RLMK's company-wide policy and/or practice of requiring that Mr. Maldonado and other aggrieved employees wear a radio headset at all times, Mr. Maldonado and other aggrieved employees were sometimes required to take drive thru orders during their meal periods if there were no other employees available to do so. As a result, Mr. Maldonado and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Maldonado was required to work through his meal periods or could not take his meal periods until after five (5) hours into his shifts, due to the heavy workload and lack of coverage. Thus, RLMK failed to provide Mr. Maldonado and other aggrieved employees with compliant, 30-minute meal periods.

Second, as set forth above, on information and belief, because RLMK frowned upon employees accruing meal period penalties, RLMK's management pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by RLMK. Also, as stated, RLMK's company-wide timekeeping system prevented Mr. Maldonado and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Maldonado and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Mr. Maldonado was unable to record when his meal periods were interrupted or shortened by RLMK's management wanting to discuss work-related matters, asking him to cut his meal periods short and return to work, or communications on his headset.

Third, as stated, on information and belief, RLMK maintained and implemented a company-wide on-premises meal period policy for employees, which mandated that Mr. Maldonado and other aggrieved employees remain on the work premises during the meal periods. Because Mr. Maldonado and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, RLMK effectively maintained control over Mr. Maldonado and other aggrieved employees during meal periods.

Fourth, RLMK did not provide Mr. Maldonado and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, during the relevant time period, Mr. Maldonado worked shifts in excess of 10 hours in one day and never took a second meal period. Mr. Maldonado and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

Moreover, RLMK engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Maldonado and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that RLMK did pay other aggrieved employees for missed, late, and interrupted meal periods, RLMK did not pay other aggrieved employees at the correct rate of pay for premiums because RLMK systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, RLMK failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Maldonado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, RLMK regularly failed to authorize and permit Mr. Maldonado and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, RLMK’s company-wide use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads resulted in a lack of rest period coverage and prevented Mr. Maldonado and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. RLMK also failed to schedule rest periods, which, coupled with RLMK’s failure to provide adequate rest period coverage, further led to Mr. Maldonado and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, Mr. Maldonado and other aggrieved employees were sometimes required to wear a radio headset during their rest periods to respond to requests from drive thru customers, resulting in interrupted rest periods.

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

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

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

Accordingly, RLMK failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Maldonado and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. RLMK has not provided Mr. Maldonado and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, RLMK has knowingly and intentionally provided Mr. Maldonado and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, RLMK issued uniform wage statements to Mr. Maldonado and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, RLMK violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because RLMK did not record the time Mr. Maldonado and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), RLMK did not list the correct amount of gross wages and net wages earned by Mr. Maldonado and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, RLMK failed to accurately list the total number of hours worked by Mr. Maldonado and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9)).

Additionally, because RLMK did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, RLMK did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, RLMK failed to list the correct amount of net wages in violation of section 226(a)(5). RLMK also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

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

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, RLMK engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Maldonado and other aggrieved employees, in violation of section 1198. Furthermore, in light of RLMK’s failure to provide Mr. Maldonado and other aggrieved employees with second 30-minute meal periods to which they were entitled, RLMK kept no records of meal start and end times for second meal periods.

Mr. Maldonado and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, RLMK willfully failed to pay Mr. Maldonado and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

Mr. Maldonado and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

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

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

Mr. Maldonado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

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

RLMK's California restaurants are generally similar in their layout and design and there was, and continues to be, space at the drive-thru ordering windows to allow for the presence and use of a seat or stool by Mr. Maldonado and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. RLMK could provide Mr. Maldonado and other aggrieved employees with a seat or stool at the drive-thru ordering windows, but instead

denies employees seating and forces Mr. Maldonado and other aggrieved employees to stand throughout the day.

Mr. Maldonado and other aggrieved employees spent a substantial portion of their day behind or at these drive-thru ordering windows. The nature of the work of an employee performing cashier/drive-thru duties can reasonably be accomplished from a seated position. However, as set forth herein, RLMK systematically, and on a company-wide basis, does not provide seats or stools at or near the drive-thru ordering windows, forcing Mr. Maldonado and other aggrieved employees to stand throughout their work shifts.

RLMK violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because Mr. Maldonado and other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. RLMK's management did not inform Mr. Maldonado and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of RLMK's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Mr. Maldonado and other aggrieved employees were forced to stand during shifts and denied seats. RLMK's failure to provide suitable seating to Mr. Maldonado and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

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

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

RLMK's California restaurants are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Maldonado and other aggrieved employees during lulls in operation. RLMK could have provided Mr. Maldonado and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

RLMK did not provide Mr. Maldonado and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Maldonado and other aggrieved employees engaged in duties in which the nature of the work required standing, RLMK denied them the use of seats nearby during lulls in their work duties. Moreover, RLMK did not inform Mr. Maldonado and other aggrieved employees of their rights to a seat or stool under California law.

As a result of RLMK's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Maldonado and other aggrieved employees were forced to stand during shifts and denied seats. RLMK's failure to provide suitable seating to Mr. Maldonado and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

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

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

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

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

During the relevant time period, RLMK violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because RLMK failed to pay Mr. Maldonado and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day's work.

As stated, RLMK had a company-wide “on-call” policy, whereby it scheduled Mr. Maldonado and other aggrieved employees to work “on-call,” or on standby. When scheduled for a “on-call” or standby shift, Mr. Maldonado and other aggrieved employees regularly presented themselves as ready for work by waiting for the restaurant to call them before their scheduled standby shift or by calling into the restaurant themselves prior to their scheduled standby shift and would await instructions on whether to report to the restaurant. When this occurred, RLMK did not pay Mr. Maldonado and other aggrieved employees for at least half of their scheduled day’s work or the minimum reporting time pay when they were subject to RLMK’s “on-call” policy and were ultimately not called.

RLMK also had a company-wide practice of sending Mr. Maldonado and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. Maldonado and other aggrieved employees for half of their usual or scheduled shift. For example, when scheduled to work an eight (8) hour shift, RLMK’s managers sent Mr. Maldonado home two (2) hours after the start of his shift because business was slow. Although Mr. Maldonado and other aggrieved employees reported to work based on the schedule that was provided to them, RLMK would send them home before they worked at least half of their usual or scheduled shifts. When this occurred, RLMK did not pay Mr. Maldonado and other aggrieved employees for at least half of their scheduled day’s work or the minimum reporting time pay.

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

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.” IWC Wage Order No. 5-2001 further provides that: “[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.”

First, during the relevant time period, RLMK, on a company-wide basis, required that Mr. Maldonado and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Maldonado and other aggrieved employees would be contacted on their personal mobile devices by their managers

and/or supervisors to discuss work-related matters such as any incidents that occurred during their shifts. Although RLMK required Mr. Maldonado and other aggrieved employees to utilize their personal mobile devices to carry out their work-related responsibilities, RLMK failed to reimburse them for this cost.

Second, during the relevant time period, RLMK, on a company-wide basis, required that Mr. Maldonado and other aggrieved employees use their own personal vehicles to run company errands. For example, on a number of occasions throughout his employment, Mr. Maldonado was required to use his personal vehicle and drive to RLMK's other restaurant locations to pick up ingredients or supplies. Additionally, during the relevant time period, Mr. Maldonado was required to use his personal vehicle to drive to a bank to obtain change for the cash registers. Although RLMK required Mr. Maldonado and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, RLMK failed to reimburse them for their mileage or travel expenses.

Third, during the relevant time period, RLMK required Mr. Maldonado and other aggrieved employees to wear uniforms bearing the McDonald's company logo, including uniform shirts and hats. However, RLMK did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, RLMK only provided Mr. Maldonado and other aggrieved employees with two (2) shirts and one (1) hat at the time of hire. Because RLMK failed to provide Mr. Maldonado and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Mr. Maldonado and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of restaurant work, Mr. Maldonado's uniform items would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with other laundry. As a result, Mr. Maldonado had to wash his uniform items separately from his regular clothing, thus incurring additional laundry expenses for the upkeep of his uniforms. Thus, RLMK failed to maintain uniforms it required Mr. Maldonado and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Fourth, during the relevant time period, RLMK, on a company-wide basis, required Mr. Maldonado and other aggrieved employees to obtain and pay for certain certifications, such as an eFood Handlers certificate, which was required for their continued employment, as well as associated costs such as training and/or examination fees. For example, Mr. Maldonado complied with this requirement and spent approximately \$13 to obtain an eFood Handlers certificate, but RLMK did not reimburse him for the costs of obtaining the certification. Thus, RLMK failed to reimburse Mr. Maldonado and other aggrieved employees for the costs of obtaining these certifications, including training and/or examination fees.

RLMK could have provided Mr. Maldonado and other aggrieved employees with the actual tools for use on the job, such as company mobile devices and company vehicles, as well as an adequate number of uniform items or access to laundering services; or RLMK could have reimbursed employees for the costs of their mobile device usage, mileage, travel expenses, certifications, and laundering expenses or provided a uniform maintenance allowance. Instead, RLMK passed these operating costs off onto Mr. Maldonado and other aggrieved employees. At all relevant times, Mr. Maldonado did not earn at least two (2) times the minimum wage.

Thus, RLMK had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr.

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

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” RLMK, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Maldonado’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Maldonado seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Maldonado, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against RLMK for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

Best Regards,



Ninel Kocharyan

Copy: R L M K, INC. (via U.S. Certified Mail); DELPH ENTERPRISES, LLC (via U.S. Certified Mail)

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



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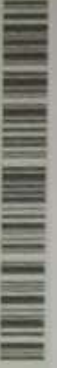
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7043 W PERSHING CT
VISALIA, CA 93291

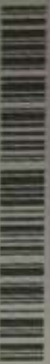
SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

COMPLETE THIS SECTION ON DELIVERY

- A. Signature
☒ X
- B. Agent
☐ Addressee
- C. Date of Delivery

Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No



9590 9402 7690 2122 7196 97

2. Article Number (Transfer from service label)

7022 2410 0000 2406 1061

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

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

1. **DELPH ENTERPRISES, LLC**
7043 W PERSHING CT
VISALIA, CA 93291



9590 9402 7690 2122 7196 97

2. Article Number (Transfer from service label)

7022 2410 0000 2406 1061

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *SAVED*

☒ Agent

☐ Addressee

Received by (Printed Name)

SAVED

C. Date of Delivery

12/29/23

Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☒ No

3. Service Type

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

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

restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you

R L M K, INC.
7043 WEST PERSHING CT
VISALIA, CA 93291



9590 9402 7690 2122 7196 80

2. Article Number (Transfer from service label)

7022 2410 0000 2406 1054

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Restricted Delivery

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **February 23, 2024**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Vickie V. Grasu (SBN: 224278)
vgrasu@ohaganmeyer.com
Jessica M. Abreu (SBN: 343366)
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Attorneys for Defendant(s)
R L M K, INC., and
DELPH ENTERPRISES, LLC,

Erica Berkovics
eberkovics@ohaganmeyer.com

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **February 23, 2024**, at Los Angeles, California.

Xochitl Tapia

Type/Print Name



Signature