

MICHAEL RUBIN (SBN 80618)  
BARBARA J. CHISHOLM (SBN 224656)  
MATTHEW J. MURRAY (SBN 271461)  
Altshuler Berzon LLP  
177 Post Street, Suite 300  
San Francisco, California 94108  
Telephone: (415) 421-7151  
Facsimile: (415) 362-8064  
E-mail: mrubin@altber.com  
bchisholm@altber.com  
mmurray@altber.com

ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 12 2014

CLERK OF THE SUPERIOR COURT  
By Molly Kautz

JOSEPH M. SELLERS (*pro hac vice* application to be filed)  
ABIGAIL E. SHAFROTH (*pro hac vice* application to be filed)  
Cohen Milstein Sellers & Toll, PLLC  
1100 New York Ave NW, Suite 500  
Washington, DC 20005  
Telephone: (202) 408-4600  
Facsimile: (202) 408-4699  
E-mail: jsellers@cohenmilstein.com  
ashafroth@cohenmilstein.com

Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

JASON HUGHES and RYAN SCHUETZ, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

vs.

MCDONALD'S CORP., a corporation,  
MCDONALD'S U.S.A., LLC, a limited  
liability company, MCDONALD'S  
RESTAURANTS OF CALIFORNIA, INC., a  
corporation, FREMAK ARCHES, INC. d/b/a  
MCDONALD'S, a corporation, and DOES 1  
through 100, inclusive,

Defendants.

CASE NO.

**RG 14717085**

Unlimited Civil Case

**CLASS ACTION COMPLAINT**

1. Failure to Pay All Wages When Due
2. Failure to Pay Overtime Wages
3. Failure to Pay Minimum Wages
4. Failure to Provide Required Meal Periods or Pay Missed Meal Period Wages
5. Failure to Provide Required Rest Breaks or Pay Missed Rest Break Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Maintain Required Records
8. Failure to Furnish Accurate Itemized Wage Statements
9. Negligence
10. California Labor Code Private Attorneys General Act
11. Unfair and Unlawful Business Practices
12. Declaratory Judgment

**DEMAND FOR JURY TRIAL**

## INTRODUCTION

1. This is a class action brought under California law by two individuals who are or were employed as crew members in McDonald's fast-food restaurants in Northern California operated by Defendant Fremak Arches, Inc., d/b/a McDonald's (along with Doe defendants 51 through 100, hereinafter "Fremak Arches") as franchisee of Defendants McDonald's Restaurants of California, Inc., McDonald's U.S.A., LLC, and McDonald's Corporation (along with Doe defendants 1 through 50, collectively hereinafter "McDonald's"). Plaintiffs Jason Hughes and Ryan Schuetz bring this action on behalf of themselves and others similarly situated to recover the wages that Defendants failed to pay them, and are continuing to fail to pay, in violation of California law.

2. McDonald's is a multi-billion dollar business that, on information and belief, operates more than 35,000 restaurants globally, including approximately 1,300 restaurants in California. Among these restaurants are the McDonald's-franchised restaurants operated by Fremak Arches in Fremont, California.

3. Plaintiffs, like their crew member co-workers whom Defendants also employed during the applicable limitations period, spend or spent their workdays at McDonald's restaurants filling orders, preparing and cooking food, cleaning the restaurant, and serving customers under strictly regimented and pressured circumstances. That pressure results in significant part from McDonald's insistence that its franchisees like Defendant Fremak Arches must strictly monitor, control, and curtail labor costs, which Defendants accomplish by not paying for all hours worked, not paying overtime premiums for all overtime hours, not paying the required extra hour for missed meal periods and rest breaks, and by using other unlawful stratagems to comply with McDonald's requirement that labor costs at its franchised restaurants may not exceed a designated, and artificially low, percentage of the restaurant's gross sales. Compounding this pressure is McDonald's insistence that its franchised restaurants must also meet McDonald's strict, labor-intensive expectations for operational procedure and speed of service.

4. Although McDonald's has entered into a Franchise Agreement with Fremak Arches that, on information and belief, purports to delegate responsibility for restaurant operations and for control over employees to Fremak Arches, Fremak Arches operates its franchised restaurants as an

1 agent of McDonald's. At all relevant times McDonald's has directed and controlled the restaurants'  
2 operations, including by controlling the material terms and conditions of employment of Plaintiffs  
3 and all other similarly situated crew members.

4 5. Despite McDonald's vast revenues and multi-billion dollar annual profits,  
5 Defendants pay or paid Plaintiffs and other crew members only the minimum wage or slightly more  
6 than minimum wage. Indeed, according to published reports, due to the low wages McDonald's  
7 pays employees, the government is required to spend approximately \$1.2 billion annually on  
8 McDonald's employees in anti-poverty program aid, including Supplemental Nutrition Assistance  
9 Program ("food stamps") and Temporary Assistance for Needy Families. Defendants then reduce  
10 Plaintiffs' and crew members' ability to earn even the bare minimum reflected in their low wage  
11 rates by engaging in a variety of forms of unlawful wage theft, including but not limited to: altering  
12 or condoning the alteration of time records to avoid paying Plaintiffs and other crew members for  
13 time they work and for overtime premiums they earn; requiring, suffering, or permitting Plaintiffs  
14 and other crew members to work off the clock without compensation; and failing to pay legally  
15 required additional wages when Defendants fail to provide Plaintiffs and crew members with full  
16 and timely meal periods and rest breaks as required by California law.

17 6. Plaintiffs seek compensatory, statutory, declaratory, and injunctive relief for  
18 themselves and the class of all current and former crew member employees of McDonald's  
19 restaurants operated by Fremak Arches in California during the applicable limitations period ("Class  
20 Members"), to compensate these workers for the unpaid and underpaid wages that Defendants  
21 Fremak Arches and McDonald's have stolen from them and to protect current and future  
22 McDonald's workers from being subjected to similar wage theft and otherwise unlawful working  
23 conditions by this multi-billion dollar business.

## 24 PARTIES

25 7. Plaintiff JASON HUGHES is a fast-food restaurant worker who has been employed  
26 by Defendants as a crew member at the McDonald's restaurant located at 38860 Fremont Boulevard  
27 in Fremont, California, from approximately March 2012 through the present. Mr. Hughes is a  
28 resident of Hayward, California. His wage rate is \$8.25 per hour.

1           8.       Plaintiff RYAN SCHUETZ was a fast-food restaurant worker who was employed by  
2 Defendants as a crew member at the McDonald's restaurant located at 38860 Fremont Boulevard in  
3 Fremont, California, from approximately February 2011 through October 2013. Mr. Schuetz is a  
4 resident of Fremont, California. Before his employment at McDonald's ended, his wage rate was  
5 \$8.50 per hour.

6           9.       Each of the Plaintiffs identified immediately above brings this lawsuit on his own  
7 behalf, on behalf of all similarly situated current and former McDonald's crew members employed  
8 by Defendants at Fremak Arches-operated restaurants in the State of California, and on behalf of all  
9 aggrieved employees and the general public pursuant to California Labor Code §2698 et seq. and  
10 California Business & Professions Code §17200 et seq. Plaintiffs bring this class action for  
11 injunctive relief and to recover, among other things, wages and penalties from unpaid wages earned  
12 and due, including but not limited to unpaid wages for time worked off the clock, unpaid minimum  
13 wages, unpaid and illegally calculated overtime compensation, late and missed meal periods and rest  
14 break wages, wages due to discharged or quitting employees, penalties for failure to maintain  
15 required records and to provide accurate itemized wage statements, and interest, attorneys' fees,  
16 costs, and expenses.

17          10.       The proposed class these Plaintiffs seek to represent includes the following similarly  
18 situated individuals ("Class Members"): All individuals currently or formerly employed by  
19 Defendants as crew members at one or more of Defendant Fremak Arches, Inc.'s franchised  
20 McDonald's restaurants in California ("the Restaurants"), at any time within the period beginning  
21 four (4) years prior to the filing of this action and ending at the time this action proceeds to final  
22 judgment or settles (the "Class Period"). Plaintiffs reserve the right to name additional class  
23 representatives and to identify sub-classes and sub-class representatives as may be necessary and  
24 appropriate.

25          11.       Plaintiffs are informed and believe, and thereon allege, that Defendant  
26 MCDONALD'S CORPORATION is a multinational, multi-billion dollar Delaware corporation,  
27 with its principal place of business in Illinois. On information and belief, McDonald's Corporation  
28 operates more than 35,000 restaurants globally and in all 50 states, including California. At all

1 relevant times, on information and belief, Defendant McDonald's Corporation has done business in  
2 California and committed the unlawful acts alleged in this Complaint.

3 12. Plaintiffs are informed and believe, and thereon allege, that Defendant  
4 MCDONALD'S U.S.A., LLC is a multinational, multi-billion dollar Delaware limited liability  
5 company with its principal place of business in Illinois, which operates restaurants in all 50 states,  
6 including California. On information and belief, Defendant McDonald's U.S.A., LLC is a wholly-  
7 owned subsidiary of Defendant McDonald's Corporation. At all relevant times, on information and  
8 belief, Defendant McDonald's U.S.A., LLC has done business in California and committed the  
9 unlawful acts alleged in this Complaint.

10 13. Plaintiffs are informed and believe, and thereon allege, that Defendant  
11 MCDONALD'S RESTAURANTS OF CALIFORNIA, INC. is a California corporation and a  
12 wholly-owned subsidiary of McDonald's U.S.A., LLC and/or of McDonald's Corporation, and  
13 operates more than 1,300 restaurants in California. At all relevant times, on information and belief,  
14 Defendant McDonald's Restaurants of California, Inc. has done business in California and  
15 committed the unlawful acts alleged in this Complaint.

16 14. Plaintiffs are informed and believe, and thereon allege, that Defendant FREMAK  
17 ARCHES, INC., d/b/a McDonald's, also known as Fremak Arches, Fremak, Inc., Bernardin Family  
18 McDonald's, or McDonald's of Fremont, is a California corporation that conducts business in  
19 California, and operates fast-food McDonald's restaurants in California pursuant to franchise  
20 agreements with McDonald's, including but not limited to restaurants located at 38860 Fremont  
21 Boulevard, 40708 Grimmer Boulevard, and 42800 Mission Boulevard in Fremont, California.

22 15. On information and belief, Defendant Fremak Arches, Inc. is owned and operated by  
23 Mark Bernardin. On information and belief, Mark Bernardin took over the franchise from his  
24 father, Al Bernardin, who invented the Quarter-Pounder while operating the franchise in Fremont,  
25 California. On information and belief, the Quarter-Pounder invented by Mr. Bernardin is now one  
26 of McDonald's most popular signature items across the world. On information and belief, Mr.  
27 Bernardin subsequently became McDonald's vice president of product development and in that  
28



1 position played a key role in the development of frozen french fries, McDonald's Filet-O-Fish  
2 sandwich, and McDonald's apple and cherry pies.

3 16. The true names and capacities of DOES 1 through 100, inclusive, are unknown to  
4 Plaintiffs at this time, and Plaintiffs therefore sue such DOE Defendants under fictitious names.  
5 Plaintiffs are informed and believe, and thereon allege, that each Defendant designated as a DOE is  
6 in some manner responsible for the occurrences alleged herein, and that Plaintiffs' and Class  
7 Members' injuries and damages, as alleged herein, were proximately caused by the conduct of such  
8 DOE Defendants. Plaintiffs will seek leave of the court to amend this Complaint to allege the true  
9 names and capacities of such DOE Defendants when ascertained.

10 17. Defendants MCDONALD'S CORPORATION, MCDONALD'S U.S.A., LLC,  
11 MCDONALD'S RESTAURANTS OF CALIFORNIA, INC., and DOES 1 through 50, inclusive,  
12 are collectively referred to herein as "McDonald's."

13 18. Defendants FREMAK ARCHES, INC. and DOES 51 through 100, inclusive, are  
14 collectively referred to herein as "Fremak Arches."

15 19. Defendants Fremak Arches and McDonald's at all relevant times have been  
16 employers covered by the California Labor Code and California Industrial Welfare Commission  
17 ("IWC") Wage Order 5-2001.

### 18 JURISDICTION AND VENUE

19 20. The Superior Court of the State of California has jurisdiction in this matter because  
20 Defendants McDonald's and Fremak Arches regularly conduct business in California. No federal  
21 question is at issue because the claims are based solely on California law.

22 21. Venue is proper in this judicial district and the County of Alameda, California  
23 because Plaintiffs Jason Hughes, Ryan Schuetz, and other persons similarly situated performed and  
24 continue to perform work for Defendants in the County of Alameda, Defendants maintain offices  
25 and facilities and transact business in the County of Alameda, and Defendants' illegal wage theft  
26 policies and practices that are the subject of this action were applied, and continue to be applied, at  
27 least in part, to Plaintiffs and other persons similarly situated in the County of Alameda.  
28

## GENERAL FACTUAL ALLEGATIONS

22. McDonald's contracts with, on information and belief, approximately 300 franchisees that operate McDonald's restaurants in California.

23. Defendant Fremak Arches, d/b/a McDonald's, is a McDonald's franchisee that operates, on information and belief, at least three McDonald's restaurants in Fremont, California (hereinafter "Restaurants").

24. Plaintiff Hughes is a current McDonald's crew member who performs work, and Plaintiff Schuetz is a former McDonald's crew member who performed work, in the Restaurants owned and operated by Defendants Fremak Arches and McDonald's. Plaintiffs seek relief from Defendants' policies and practices of denying Plaintiffs and Class Members wages and compensation owed under California law.

25. Fremak Arches and McDonald's jointly operate the Restaurants and tightly control and monitor the working conditions of Plaintiffs and Class Members, including but not limited to controlling and monitoring the job duties performed by crew members, the hours worked by crew members, and the rate of service provided by crew members in the Restaurants.

26. Defendants have a policy and practice of engaging in comprehensive classwide measures to curtail labor costs and to limit labor costs to a defined percentage of sales revenues, even when complying with McDonald's requirement of maintaining such a low ratio labor costs to total sales results in violation of Plaintiffs' and Class Members' workplace rights under California law.

27. Defendants reduce the labor costs in the Restaurants not only by paying low wages to Plaintiffs and Class Members, but also by maintaining, encouraging, and approving policies and practices that have the purpose and effect of depriving Plaintiffs and Class Members of their full and timely wages when due.

28. As a result of the policies and practices described below, work time that Plaintiffs and Class Members perform is routinely not recorded by Defendants on Plaintiffs' and Class Members' pay stubs, and Defendants have failed and continue to fail to compensate Plaintiffs and

1 Class Members for all wages due to them and for missed, late, and shortened rest breaks and meal  
2 periods, as required by California law.

3 **A. Plaintiffs' Work as McDonald's Crew Members**

4 29. In each of the Restaurants, low-wage crew members including Plaintiffs perform and  
5 have performed a variety of duties, including but not limited to working as cashiers, taking orders  
6 from customers at the counter and at the drive-through, serving food to customers, stocking  
7 supplies, preparing and cooking food, and cleaning the restaurant.

8 30. Plaintiffs and Class Members applied to work and were hired to perform work in the  
9 Restaurants by making applications through McDonald's on-line application form, "Hiring to Win,"  
10 and by submitting applications to managers in the Restaurants. For example, Plaintiff Hughes  
11 applied through McDonald's on-line application form.

12 31. Plaintiffs and Class Members work and have worked a variety of scheduled shifts in  
13 the Restaurants, including but not limited to shifts as short as three hours and as long as 10 hours.

14 32. Plaintiffs and Class Members are directly supervised in the Restaurants by managers,  
15 including a store manager and shift managers. These managers inform crew members of their work  
16 assignments and work schedules, and instruct crew members as to when they may take breaks. No  
17 Plaintiff or crew member is permitted to take any meal period or rest break unless and until a  
18 manager expressly instructs the worker to take that specific break. These managers, at the direction  
19 of others at both Fremak Arches and McDonald's, closely monitor and take steps to control labor  
20 costs in the Restaurants throughout the workday.

21 **B. Defendants' Wage Theft**

22 Alteration of Time Records

23 33. Defendant Fremak Arches is required by McDonald's to use and does in fact use a  
24 computer hardware and software system including a point-of-sale ("POS") system (referred to  
25 collectively hereinafter as "computer system") in the Restaurants that is designed and maintained by  
26 McDonald's to enable Fremak Arches and McDonald's to closely monitor data about labor and  
27 sales in the Restaurants. Among other things, the computer system collects real-time information  
28 regarding each employee's hours, including punch-in and punch-out times, and pay rates.



1           34.     Plaintiffs and Class Members are required to punch in at the beginning of their shift  
2 and to punch out at the end of their shift. They are also required to punch out at the beginning of  
3 each meal period and rest break and to punch back in at the end of each meal period and rest break.

4           35.     McDonald's computer system tracks Plaintiffs' and Class Members' punch-in and  
5 punch-out times.

6           36.     Plaintiffs are informed and believe, and thereon allege, that:

- 7           a.     McDonald's computer system indicates to restaurant managers when a crew  
8 member's punch-in and punch-out times entitle that crew member to premium pay  
9 for overtime hours worked, and when a crew member has not received a full or  
10 timely rest break or meal period.
- 11          b.     Restaurant managers are able to, and routinely do, alter the punch-in and punch-out  
12 times of crew members in McDonald's computer system. For example, Plaintiffs  
13 have received paychecks showing fewer hours than they were punched in and worked  
14 because, on information and belief, managers altered their punch records.
- 15          c.     Restaurant managers engage in a policy and practice of altering the punch-in and  
16 punch-out times of crew members in order to change time entries that demonstrate  
17 when those crew members did not receive a legally required meal period or rest break  
18 and in order to eliminate time that crew members worked past the end of their  
19 scheduled shifts and/or time that would be subject to overtime pay requirements.
- 20          d.     Defendants engage in a practice of managerial alteration of time records as a means  
21 of reducing their crew members' hours as reflected in McDonald's computer system.
- 22          e.     McDonald's computer system records and retains records of all alterations to crew  
23 members' punch-in and punch-out times.
- 24          f.     Defendants are aware of, condone, ratify, and intentionally accept the benefits of  
25 their practice and policy of altering Plaintiffs' and Class Members' time records in a  
26 manner designed to under-report and under-pay the time actually worked by  
27 Plaintiffs and Class Members.
- 28

Off-the-Clock Work

37. Defendants have required Plaintiffs and Class Members to perform unpaid off-the-clock work in violation of California law.

38. Defendants' managers require, suffer, or permit Plaintiffs and Class Members to perform work at times those workers are not punched into McDonald's computer system. For example, Plaintiff Hughes has been required to punch out immediately after beginning his scheduled shift and wait for a period of fifteen minutes to half an hour before punching back in after managers claimed to have changed the work schedule without informing him before he reported for work. Such time worked is not recorded in McDonald's computer system and is not compensated.

39. Plaintiffs are informed and believe, and thereon allege, that Defendants have a policy and practice of requiring crew members to engage in off-the-clock work in order to maintain low "labor" cost numbers in the McDonald's computer system and to avoid recording overtime hours.

40. All of the unpaid work that Defendants required, suffered, or permitted Plaintiffs and Class Members to perform has benefitted Defendants, enabling them to increase profits at the workers' expense and to keep labor costs lower, both in absolute terms and as a percentage of sales.

Missed, Late and Shortened Meal Periods and Rest Breaks

41. Defendants engage in a policy and practice of providing rest breaks and meal periods to Plaintiffs and Class Members in such a manner that Plaintiffs and crew members have not and do not receive timely and full rest breaks and meal periods. Defendants fail to pay required additional wages when Plaintiffs and Class Members are not provided timely and full rest breaks and meal periods.

42. Plaintiffs are informed and believe, and thereon allege, that Defendants have a written policy and practice of not providing a ten-minute rest break to Plaintiffs and Class Members unless they work a shift of three hours thirty-two minutes or more, and not providing a second ten-minute rest break to Plaintiffs and Class Members unless and until they work a shift of six hours one minute or more. Pursuant to Defendants' unlawful written policy, Defendants do not provide legally mandated rest breaks to crew members who work shifts of three hours thirty minutes or three hours and thirty-one minutes, and, more commonly, to crew members who work shifts of six hours.

1           43. Defendants have followed and continue to follow a policy and practice of failing to  
2 provide meal periods to Plaintiffs and Class Members when they work shifts between five and six  
3 hours in length.

4           44. On information and belief, Defendants have followed and continue to follow a policy  
5 and practice of requiring newly-hired crew members to sign an adhesive form contract that  
6 purportedly waives their statutory right to be provided a 30-minute duty-free meal period when six  
7 hours will complete their work day. On information and belief, Defendants have required and  
8 continue to require Plaintiffs and Class Members to sign this uniform "waiver" form under  
9 conditions that make Plaintiffs' and Class Members' signatures not knowing or voluntary, including  
10 but not limited to by making signing the form a condition of employment and by requiring that  
11 newly-hired crew members sign the form quickly along with many other forms without sufficient  
12 opportunity fully to review and consider its contents. For example, Plaintiffs were required to sign a  
13 series of forms as a condition of employment in hurried circumstances, and on information and  
14 belief those forms included Defendants' uniform meal period waiver form. Plaintiffs did not sign  
15 this waiver form knowingly or voluntarily.

16           45. Restaurant managers determine when Plaintiffs and Class Members may take rest  
17 breaks and meal periods. Plaintiffs and Class Members are not permitted to take a rest break or  
18 meal period without first being specifically instructed by a manager that they must go on break.

19           46. Defendants have a policy and practice of not permitting Plaintiffs and Class  
20 Members to take rest breaks and meal periods when the Restaurants are busy.

21           47. Plaintiffs are informed and believe, and thereon allege, that Defendants have a policy  
22 and practice of not permitting Plaintiffs and Class Members to take rest breaks and meal periods  
23 when a store inspection from a Mystery Shopper is expected. As described in paragraph 82 below, a  
24 Mystery Shopper is an agent of McDonald's who routinely visits McDonald's restaurants to  
25 evaluate the service he or she receives. Plaintiffs are informed and believe, and thereon allege, that  
26 the Restaurants' managers are aware of the time period during which such Mystery Shopper visits  
27 will occur. Defendants have a policy and practice of not permitting Plaintiffs and Class Members to  
28 take rest breaks and meal periods during that period, which may be a two- or three-hour time period.

1 For example, Defendants' managers have told Plaintiffs not to take meal periods or rest breaks  
2 when a Mystery Shopper may visit.

3 48. Defendants have a policy and practice of providing Plaintiffs and Class Members  
4 with rest breaks that are provided earlier or later than legally required, including by not providing  
5 Plaintiffs and Class Members with their first ten-minute rest break until more than 3-1/2 hours of  
6 work, and by requiring Plaintiffs and Class Members to take their break near or at the beginning of  
7 their shift, even when it is reasonably practicable to provide the required break near or at the middle  
8 of the shift. For example, Plaintiff Hughes has been required to take his rest break near or at the  
9 beginning of his shift and Plaintiff Schuetz has been required to take his break within 45 minutes of  
10 starting his shift, even when it was reasonably practicable to provide the required break near or at  
11 the middle of the shift.

12 49. Defendants have a policy and practice of requiring Plaintiffs and Class Members,  
13 when they work shifts that entitle them to a second ten-minute rest break, to take their second ten-  
14 minute rest break toward the end or at the very end of their shift.

15 50. Plaintiffs are informed and believe, and thereon allege, that Defendants require  
16 Plaintiffs and Class Members to take early or late rest breaks and meal periods in order to minimize  
17 the need to schedule coverage for crew members who are on break and to keep labor costs  
18 artificially and unlawfully low.

19 51. Defendants have a policy and practice of providing Plaintiffs and Class Members  
20 with rest breaks that are less than ten minutes in length.

21 52. Defendants have a policy and practice of requiring Plaintiffs and Class Members to  
22 remain in the Restaurants during their rest breaks. For example, Plaintiffs have been told by  
23 management that they cannot leave the restaurant during rest breaks.

24 53. Plaintiffs are informed and believe, and thereon allege, that Restaurant managers  
25 have a practice of adjusting the punch records of Plaintiffs and Class Members to show that they  
26 received full and timely ten-minute rest breaks and full and timely thirty-minute meal periods when  
27 they did not.  
28

1           54.     Even though Defendants' time records generally record the exact times of crew  
2 member breaks (subject to the problems discussed in paragraphs 33-36), thus providing Defendants  
3 with full knowledge of when Plaintiffs and Class Members are not receiving meal periods and rest  
4 breaks in compliance with California law, Defendants have a policy and practice of failing to pay  
5 Plaintiffs and Class Members one hour of additional pay at their regular rate for each day in which  
6 they are not provided a rest break or meal period for the reasons discussed in paragraphs 41-53 or  
7 for any other reason.

8                               Failure to Pay Overtime Rates

9           55.     Plaintiffs and Class Members regularly have not received premium pay for the time  
10 they work in excess of eight hours per day and 40 hours per week. For example, Plaintiffs have  
11 worked more than eight hours in a day and not been paid overtime. Plaintiff Schuetz was also told  
12 by managers that Defendants do not pay overtime.

13           56.     Plaintiffs are informed and believe, and thereon allege, that Restaurant managers  
14 have a policy and practice of altering crew members' recorded hours in the McDonald's computer  
15 system to eliminate overtime hours from the time records and/or to move to a different date or  
16 otherwise alter overtime hours so the hours are treated as not subject to overtime premium pay.

17           57.     Plaintiffs are informed and believe, and thereon allege, that the McDonald's  
18 computer system alerts Restaurant managers when a crew member's recorded punch-in and punch-  
19 out times entitle the crew member to overtime and notifies the managers that this is an "overtime  
20 violation."

21                               Failure to Keep Accurate Records and Provide Accurate Itemized Wage Statements

22           58.     As a result of the policies and practices described above, Defendants do not keep  
23 accurate records of, or provide Plaintiffs and Class Members accurate itemized wage statements  
24 reflecting, all time that Plaintiffs and Class Members work or the proper wage rates, including but  
25 not limited to overtime rates, applicable to all hours that Plaintiffs and Class Members work.

26           59.     The pay stubs and itemized wage statements provided to Plaintiffs and Class  
27 Members are not accurate because they fail to identify McDonald's as a joint employer of Plaintiffs  
28 and Class Members.

Failure to Pay All Wages When Due for Discharged and Quitting Employees

60. Plaintiff Schuetz left employment with Defendants in or around October 30, 2013.

61. Because of Defendants' policies and practices described above, Plaintiff Schuetz's final paycheck did not include all wages, including but not limited to unpaid overtime and missed meal period and rest break premium wages, he was due.

**C. McDonald's System and the McDonald's Franchise**

62. McDonald's operates, franchises, and services a system of restaurants that prepare, assemble, package, and sell a limited menu of value-priced foods under the McDonald's System. The McDonald's System is a concept of restaurant operations that includes, among other things, certain rights in trademarks, real estate, marketing, and operational information designed to promote uniformity of operations.

63. The key to McDonald's success, according to its own internal and publicly filed documents, is "branding" – developing and maintaining customer trust in the McDonald's brand, so whether that customer is in a restaurant owned and operated by McDonald's directly or owned and operated by a franchisee, and whether the customer is in a restaurant in his or her hometown, a neighboring state, or a foreign country far away, the customer will know what to expect from the McDonald's experience, including what to expect from McDonald's crew member interactions.

64. Plaintiffs are informed and believe, and thereon allege, that globally, approximately 7,000 McDonald's restaurants are owned and operated directly by McDonald's, and approximately 28,000 are owned and operated by McDonald's franchisees, companies like Defendant Fremak Arches.

65. Plaintiffs are informed and believe, and thereon allege, that McDonald's has a franchise agreement with Fremak Arches that requires Fremak Arches to strictly adhere to the McDonald's System, including, *inter alia*, by complying with all standards, business policies, practices and procedures prescribed by McDonald's; using formulas, methods and policies relating to operations, inventory, accounting, management, and advertising that are set forth in detailed manuals developed and provided by McDonald's; using corporate-supplied or -approved equipment



1 and food products; submitting to regular comprehensive site inspections and computer monitoring;  
2 and sharing a percentage of gross sales revenues with McDonald's.

3 66. As detailed in paragraphs 74 through 137 below, McDonald's franchise agreements,  
4 including on information and belief, the franchise agreement McDonald's maintains with Fremak  
5 Arches, vest in McDonald's significant control over restaurant operations, working conditions,  
6 personnel training, and the finances of franchisees' restaurants, and give McDonald's unlimited and  
7 unrestricted authority to inspect restaurants to monitor workplace place conditions, including labor  
8 conditions, and to ensure compliance with the standards and policies of McDonald's.

9 67. McDonald's maintains national franchise standards to which all of its franchisees are  
10 expected and required to adhere, and that affect almost every aspect of the restaurants' functioning,  
11 including practices and policies affecting crew members' labor conditions. Plaintiffs are informed  
12 and believe, and on this basis allege, that Defendant Fremak Arches is subject to these national  
13 franchise standards.

14 68. McDonald's requires all of its franchisees to use only those goods, services, supplies,  
15 fixtures, equipment, inventory, and computer hardware that meet the specifications, requirements,  
16 and standards that McDonald's has formulated for use in the McDonald's System.

17 69. Pursuant to the standard McDonald's franchise agreement, a franchisee may not  
18 assign its contractual commitment to another party.

19 70. McDonald's evaluates and grades all franchisees on whether they have satisfied its  
20 franchise standards, including standards governing the recruitment, development, training and  
21 retention of qualified personnel.

22 71. McDonald's franchise agreements are for fixed term periods, usually 20 years, and  
23 do not grant franchisees an automatic renewal option. If a franchise agreement is not renewed, all  
24 ownership rights in the franchised restaurant or restaurants covered by that agreement revert in full  
25 to McDonald's.

26 72. Plaintiffs are informed and believe, and on this basis allege, that McDonald's  
27 exercises significant control over the finances of franchisees, including the finances of Defendant  
28 Fremak Arches, including in the following ways:

- a. McDonald's franchise agreements entitle McDonald's to receive a percentage of all franchisees' gross sales revenue;
- b. McDonald's expects all franchisees to earn a specified profit on a monthly basis;
- c. McDonald's requires all franchisees to purchase food from McDonald's-approved vendors;
- d. McDonald's requires all franchisees to pay a service fee based on a percentage of each restaurant's sales;
- e. McDonald's requires all franchisees to pay rent for use of the restaurant property or premises on which the franchisee-operated restaurants are located;
- f. McDonald's mandates promotional pricing of products sold in all franchisee-operated restaurants, which may sometimes require selling already low-margin products at a loss;
- g. McDonald's encourages all franchisees to renovate restaurants and may condition renewal of a franchise agreement on the franchisee's commitment to renovate;
- h. McDonald's requires all franchisees to use computer software that tracks financial information of the franchisees' restaurants, including sales, inventory and labor costs;
- i. McDonald's requires all franchisees to submit financial data to McDonald's, while maintaining its own independent access to the franchisees' financial data; and
- j. McDonald's establishes rules for the maintenance of all franchisees' accounting books and records.

73. McDonald's significantly restricts the business autonomy of its franchisees and their ability to make independent decisions based upon their own assessment of what is best for their particular business, by instead requiring compliance with the myriad standards it imposes on all its franchisee-owned restaurants as well as upon its own corporate-owned restaurants.

1 **D. McDonald's Exercises Control Over Fremak Arches' Operations, Policies, Procedures**  
2 **and Personnel**

3 McDonald's Oversees, Evaluates and Controls the Restaurants' Operations  
4 Through the Use of Business Consultants and Other Agents

5 74. After three consecutive years of declining stock price and slumping consumer  
6 satisfaction, McDonald's instituted a "Plan to Win" program in the early 2000's, which was a  
7 worldwide program designed to update, improve, and reinforce the company's brand. One of the  
8 elements of this program was "People." McDonald's "People" program focused on the supervision  
9 and training of McDonald's employees in all restaurants, whether corporate- or franchisee-owned,  
10 and was designed to overcome concerns that negative customer experiences with service received at  
11 McDonald's restaurants – regardless of ownership – were having a negative impact on the corporate  
12 brand.

13 75. Plaintiffs are informed and believe, and thereon allege, that Defendant McDonald's  
14 "Plan to Win" continues to provide the common operational framework for all McDonald's  
15 restaurants, including the Restaurants operated by Defendant Fremak Arches.

16 76. Plaintiffs are informed and believe, and thereon allege, that in implementing the  
17 "Plan to Win," McDonald's has paired each franchisee, including Defendant Fremak Arches, with a  
18 particular business consultant or consultants employed by McDonald's. The principal responsibility  
19 of the McDonald's consultant in this paired relationship is to ensure that the franchisee fully  
20 complies with all elements of the corporate strategy for improving restaurant operations, including  
21 McDonald's objectives with respect to "People."

22 77. McDonald's exercises substantial control over franchisees' operations, policies,  
23 procedures and personnel through its business consultants and other agents, who conduct regular  
24 inspections and evaluations of the franchisee restaurants.

25 78. Plaintiffs are informed and believe, and thereon allege, that a McDonald's business  
26 consultant is assigned to Fremak Arches and conducts regular inspections and evaluations of the  
27 Restaurants.

28 79. McDonald's evaluates the operations of all of its franchisees in the categories of  
quality, service, cleanliness, and people. As part of this evaluation, McDonald's business

1 consultants conduct a detailed top-to-bottom assessment of all aspects of franchisees' store  
2 operations designed to ensure compliance with McDonald's corporate standards, processes,  
3 practices and documentation, assigning a score for each aspect of the review.

4 80. Plaintiffs are informed and believe, and thereon allege, that McDonald's business  
5 consultants, including the business consultant assigned to Fremak Arches, evaluate and provide  
6 feedback to franchisees on numerous separate restaurant "systems" that McDonald's imposes on its  
7 corporate-owned and franchisee-owned restaurants alike. As part of this process, on information  
8 and belief, McDonald's consultants review the franchisee on numerous topics, including:

- 9 a. Recruitment and training of crew members and managers, including the amount of  
10 McDonald's-conducted training employees have received;
- 11 b. Shift management and crew scheduling;
- 12 c. Compliance with McDonald's operational guidelines and standards on subjects such  
13 as food assembly and quality, cleanliness, human resources practices, and crew  
14 members' customer interaction;
- 15 d. Placement and use of promotional materials; and
- 16 e. Areas for improved compliance with McDonald's corporate standards and  
17 development of action plans to ensure compliance with those standards.

18 81. Plaintiffs are informed and believe, and thereon allege, that McDonald's also  
19 subjects each franchisee, including Defendant Fremak Arches, to a regular series of inspections,  
20 announced and unannounced, designed to ensure compliance with all corporate directives, policies,  
21 and procedures. Any franchisee that fails to receive a satisfactory score on a consultant's review or  
22 assessment is subject to mandatory follow-up inspections by McDonald's to ensure that restaurant  
23 operations and compliance are significantly improved in accordance with McDonald's mandatory  
24 requirements.

25 82. McDonald's sends agents to the Restaurants as part of its "Mystery Shopper"  
26 program, to inspect the facilities, evaluate the speed, efficiency, and quality of the work performed  
27 by crew members, and to criticize and require improvement in each instance in which the Mystery  
28

1 Shopper identifies a circumstance in which one or more crew members failed to comply fully with  
2 the requirements imposed by McDonald's.

3 83. McDonald's relies on the inspections, evaluations and reviews conducted by its  
4 business consultants and other agents to control franchisees, including Fremak Arches. Plaintiffs  
5 are informed and believe, and thereon, allege that McDonald's relies these inspections, evaluations,  
6 and reviews in deciding whether the franchisee is eligible to renew or "rewrite" its franchisee  
7 agreement; whether the franchisee may add new restaurants to its franchise or, alternatively, should  
8 lose restaurants; and whether the franchisee is eligible for McDonald's remodel programs.

9 McDonald's Exercises Control Over Fremak Arches' Hiring, Wages,  
10 Discipline and Training of Restaurant Personnel

11 84. McDonald's exercises control over all franchisees, including Fremak Arches, by  
12 requiring them to operate in compliance with the same uniform policies and procedures that  
13 McDonald's imposes on all of its franchisees, including its policies and procedures governing hiring  
14 and training employees, conducting wage surveys, and disciplining crew members.

15 85. Plaintiffs are informed and believe, and thereon allege, that McDonald's exercises  
16 control over franchisees' personnel practices, including in the following ways:

- 17 a. McDonald's sets franchise policies on diversity, discrimination and harassment  
18 (including mandated employee reporting mechanisms), management-employee  
19 communication, solicitation and distribution of literature, leaves of absence, and  
20 student workers;
- 21 b. McDonald's evaluates franchisees on their use of an "effective hiring process,"  
22 including how job applicants are solicited;
- 23 c. McDonald's lists franchise job openings on its own website and encourages  
24 applicants to apply using a standardized McDonald's on-line application;
- 25 d. McDonald's provides and requires franchisees to use an on-line assessment tool for  
26 applicant screening, criteria for assessing the screening, and other criteria and  
27 instructions for interviewing applicants;

- 1 e. McDonald's requires franchise owners to attend and satisfactorily complete an  
2 extensive and detailed training program at Hamburger University on how to operate,  
3 staff, and manage McDonald's restaurants, and to enroll their managers in similar  
4 McDonald's required training at Hamburger University or other designated training  
5 centers;
- 6 f. McDonald's evaluates franchisees on whether franchisees have had their employees  
7 participate in McDonald's-led trainings, including, for example, by requiring all new  
8 hires to view the corporate training video that Plaintiffs were required to watch  
9 before beginning work;
- 10 g. McDonald's requires franchisees to conduct an employee satisfaction survey;
- 11 h. McDonald's evaluates franchisees on whether they have conducted wage reviews  
12 and provides a form to use for such wage reviews;
- 13 i. McDonald's sets franchise disciplinary policy and provides forms used to document  
14 workplace conduct;
- 15 j. McDonald's encourages franchisee employees to report instances of wage theft to  
16 McDonald's, in addition to franchisee management;
- 17 k. McDonald's grades franchisees on employees' interactions with customers,  
18 including their tone of voice, eye contact, facial expressions, words used, and  
19 assembly of food items; and
- 20 l. McDonald's affects the range of possible franchisee wage rates by controlling  
21 restaurants' staffing levels, controlling certain product pricing, requiring use of  
22 specific supplies and suppliers, and charging marketing, service, and other franchise  
23 fees that significantly impact franchisees' profit margins and budget lines.

24 86. Plaintiffs are informed and believe, and thereon allege, that McDonald's trains  
25 franchisees' managers on personnel practices, including on state law requirements for employee  
26 breaks and overtime, the number of employees that should be working each shift, the number of  
27 employees that should be working at each station such as the grill, fryer, drink machine, registers  
28 and drive-through window, how to balance fixed and non-fixed labor costs, how to calculate and



1 monitor a restaurant's labor percentage, and how to reduce labor costs through such practices as not  
2 permitting overtime work.

3 87. Plaintiffs are informed and believe, and thereon allege, that McDonald's periodic  
4 evaluations of its franchisees, including Defendant Fremak Arches, are graded in part on whether  
5 the franchise is using all of the documentation and record-keeping practices that McDonald's  
6 requires.

7 88. Plaintiffs are informed and believe, and thereon allege, that McDonald's exercises  
8 extensive control over the personnel matters of all franchisees, including Fremak Arches, because  
9 franchisees' labor costs are directly tied to McDonald's profits. In its February 2014 Form 10-K  
10 filed with the United States Securities and Exchange Commission, McDonald's Corporation  
11 acknowledged as much, stating that "key features" that can affect its "operations, plans and results"  
12 include "[t]he impact on [its] margins of labor costs that [it] cannot offset through price increases,  
13 and the long-term trend toward higher wages and social expenses in both mature and developing  
14 markets, which may intensify with increasing public focus on matters of income inequality."

15 McDonald's Exercises Control Over Staffing and Scheduling  
16 of Crew Members at the Restaurants

17 89. Plaintiffs are informed and believe, and thereon allege, that McDonald's requires all  
18 franchisees, including Fremak Arches, to use McDonald's computer software that establishes  
19 prescribed staffing levels, weekly employee schedules, and positions of crew members within a  
20 restaurant, and that McDonald's evaluates franchisees on whether they are using this software  
21 properly.

22 90. Plaintiffs are informed and believe, and thereon allege, that McDonald's instructs all  
23 franchisees, including Fremak Arches, to use a positioning tool included in McDonald's computer  
24 software to ensure that the number of people working each shift and the number of people  
25 positioned at each station within the restaurant are consistent with, and not greater than, the  
26 numbers that McDonald's has determined are no more than the maximum number needed to fulfill  
27 its operational and financial priorities, and in particular its priorities of providing a certain level and  
28 speed of service while keeping labor costs below a specified percentage of gross sales.

1           91.     Plaintiffs are informed and believe, and thereon allege, that McDonald's provides  
2 manuals, training and reference books, forms, and other instructions and guidelines to all  
3 franchisees, including Fremak Arches, that set forth corporate standards and requirements,  
4 including but not limited to checklists to be used to check on store conditions, including supplies,  
5 level of staffing and cleanliness; and instructions for calculating the number of employees that  
6 should be staffed at varying intervals.

7           92.     Plaintiffs are informed and believe, and thereon allege, that McDonald's business  
8 consultants review corporate-generated staffing sheets and position sheets with all franchisees.

9           93.     Plaintiffs are informed and believe, and thereon allege, that McDonald's business  
10 consultants work with franchisees to control the amount of crew members' hours in restaurants in  
11 relation to the amount of the restaurants' sales.

12          94.     McDonald's requires all franchisee restaurants to remain open seven days per week  
13 from at least 7:00 a.m. to 11:00 p.m., and McDonald's unilaterally determines whether its  
14 franchises, including Fremak Arches, will be open or closed on major holidays.

15                 McDonald's Exercises Control Over Crew Members' Job Duties and Performance

16          95.     Plaintiffs are informed and believe, and thereon allege, that McDonald's requires its  
17 franchisees, including Fremak Arches, to meet rigid timing requirements for every component of  
18 restaurant transactions, that McDonald's tracks the timing of all crew members' execution of these  
19 tasks using McDonald's software, and that McDonald's requires details of all crew members'  
20 performance to be forwarded to McDonald's on a regular basis. For example, McDonald's  
21 guidelines provide that a transaction at the drive through should take three or three and a half  
22 minutes, and whether that time is met is tracked in part by when crew members enter certain  
23 information on their cash registers.

24          96.     McDonald's provides franchisees a positioning guide that tells restaurant managers  
25 where crew members should be positioned within the store and corporate operating procedures for  
26 each station such as the grill, the drive-through and the front registers.

27          97.     McDonald's, through its business consultant, counsels individual crew members at  
28 the Restaurants on their job duties and has corrected crew members' performance of job duties,

1 including, for example, by instructing Plaintiffs on how most efficiently to lay hamburgers on the  
2 grill.

3 98. Plaintiffs are informed and believe, and thereon allege, that McDonald's, through its  
4 business consultant, has taken action to correct crew members' performance of job duties by  
5 reporting issues to Restaurant managers, who then relay these corrections to crew members.

6 99. Plaintiffs are informed and believe, and thereon allege, that McDonald's business  
7 consultants and other McDonald's agents review and monitor each franchisee, including Defendant  
8 Fremak Arches, to determine if crew members meet the various timing requirements for each  
9 transaction in the restaurant, and will instruct franchisees to improve crew member performance if  
10 the requirements are not being met.

11 McDonald's Exercises Control Over Fremak Arches by Requiring the Franchisee to Use a  
12 McDonald's Computer System and Monitoring Labor and Sales Data Collected By That System

13 100. Plaintiffs are informed and believe, and thereon allege, that McDonald's requires all  
14 franchisees, including Defendant Fremak Arches, to use McDonald's proprietary computer  
15 hardware and software to track practically all transactions in the franchisee restaurants, including  
16 sales, product mix, cash control, labor costs, and crew members' hours and schedules

17 101. Plaintiffs are informed and believe, and thereon allege, that McDonald's has access  
18 to each of its franchisees' sales and other restaurant-level information, which is stored on the  
19 McDonald's servers.

20 102. Plaintiffs are informed and believe, and thereon allege, that data from the  
21 franchisees' computers is transferred to McDonald's on a daily basis and this data is reviewed  
22 regularly by McDonald's to assess franchisee performance.

23 103. Plaintiffs are informed and believe, and thereon allege, that McDonald's computer  
24 software permits all franchisees, including Defendant Fremak Arches, to track whether labor is  
25 "high" at a given time in the Restaurants, meaning whether labor costs represent a large percentage  
26 of sales revenue.

27 104. Plaintiffs are informed and believe, and thereon allege, that McDonald's computer  
28 software, which all franchisees are required to use, identifies when crew members have worked

1 hours that qualify for overtime pay and further that the data collected by the software system is and  
2 may be used to produce a report showing crew members' hours worked without providing legally  
3 required meal periods and rest breaks.

4 105. Plaintiffs are informed and believe, and thereon allege, that data captured by  
5 McDonald's computer software is used by McDonald's and Fremak Arches to produce Daily  
6 Activity Reports ("DARs") that reflect the punch-in and punch-out times of all employees in  
7 franchisee restaurants on a given day.

8 106. Plaintiffs are informed and believe, and thereon allege, that McDonald's business  
9 consultants, when conducting inspections of franchisees, can and do request to review DARs and,  
10 according to McDonald's operating procedures, DARs are supposed to kept in the restaurants for  
11 several months.

12 107. All McDonald's franchisee crew members are required to punch in at the beginning  
13 of their shift, to punch out at the beginning of rest breaks and meal periods, to punch back in at the  
14 end of rest breaks and meal periods, and to punch out at the end of their shift. These times are  
15 captured by McDonald's computer software. At the end of each crew member's shift, a paper  
16 receipt is printed on which the crew member's punch-in and punch-out times are recorded.

17 108. Restaurant managers have authority to edit records of punch-in and punch-out entries  
18 made by crew members. Plaintiffs are informed and believe, and thereon alleged, that McDonald's  
19 software system tracks and records edits made to crew members' punch-in and punch-out times, and  
20 that McDonald's can determine and is aware when crew members' time has been adjusted or edited.

## 21 JOINT LIABILITY ALLEGATIONS

### 22 A. Defendants Have Jointly Employed Plaintiffs and All Class Members

23 109. Plaintiffs and Class Members have been jointly employed by Defendants Fremak  
24 Arches and McDonald's to work in the Restaurants. Much of these employees' work has been and  
25 is performed at the direction of Fremak Arches' supervisors based on specific guidelines,  
26 procedures, and protocols mandated by Defendant McDonald's and overseen and enforced by  
27 Defendant McDonald's. Fremak Arches applies and enforces McDonald's guidelines,  
28 requirements, and training with respect to Plaintiffs and Class Members, including but not limited

1 to requirements regarding how crew members perform their job duties, how crew members are  
2 evaluated, and how crew members are scheduled and positioned for work within each of the  
3 Restaurants.

4 110. Defendant McDonald's has, along with Defendant Fremak Arches, jointly controlled  
5 and dictated all material terms and conditions of the employment of Plaintiffs and Class Members,  
6 including but not limited to by:

- 7 a. Dictating the specific tasks to be undertaken by Plaintiffs and Class Members and the  
8 manner and order in which these tasks are to be completed, and enforcing detailed  
9 standard operating procedures governing the work Plaintiffs and Class Members  
10 have been required to perform, including off-the-clock work and other time worked  
11 that McDonald's knew or should have known was not being compensated and  
12 overtime hours worked that McDonald's knew or should have known was not being  
13 properly compensated;
- 14 b. Devising and requiring standardized training that must be completed by Plaintiffs  
15 and Class Members;
- 16 c. Overseeing directly and indirectly through on-site supervision and computer  
17 monitoring the day-to-day performance of Plaintiffs and Class Members;
- 18 d. Conducting comprehensive evaluations and reviews on a regular basis that assessed  
19 the performance of Plaintiffs and Class Members, including by measuring their  
20 efficiency and productivity and the Restaurants' labor costs, including wages paid to  
21 Plaintiffs and Class Members;
- 22 e. Developing plans to correct any deficiencies identified by McDonald's in the  
23 evaluations and reviews of the Restaurants; and
- 24 f. Regularly assessing the productivity of all workers employed at the Restaurants,  
25 including Plaintiffs and Class Members, and including a review of staffing levels and  
26 labor costs.

27 111. McDonald's and Fremak Arches jointly oversee and supervise the work of Plaintiffs  
28 and Class Members through several means, including by McDonald's dictating the required number

1 of supervisory staff who oversee Plaintiffs' and Class Members' work performance and  
2 productivity, and by McDonald's itself maintaining supervisory staff on the premises at regular  
3 intervals.

4 112. McDonald's has set the standards for training, work performance, conduct, and  
5 disciplinary infractions and procedures for all Plaintiffs and Class Members and thus exercises  
6 shared responsibility for discipline and discharge decisions involving Class Members who violate  
7 McDonald's' training, work performance, and/or conduct standards. Further, McDonald's has  
8 authority and has jointly exercised the authority, along with Fremak Arches, to discharge, discipline,  
9 and/or correct the work of such employees for perceived infractions of either Fremak Arches' or  
10 McDonald's rules, policies, or procedures.

11 113. McDonald's requires Fremak Arches to provide high quality, trained staff to conduct  
12 its restaurant operations, including by imposing detailed standards for pre-employment screening,  
13 orientation, and training that must be completed before Plaintiffs and Class Members begin working  
14 at the Restaurants.

15 114. Plaintiffs are informed and believe, and thereon allege, that McDonald's has jointly  
16 exercised control with Fremak Arches over the number of hours, productivity standards, schedules,  
17 and the speed and amount of work performed by Plaintiffs and Class Members by, among other  
18 things:

- 19 a. Establishing standard operating metrics for the Restaurants that impose requirements  
20 for accuracy, timely processing, and productivity;
- 21 b. Creating projections and formulae that establish, *inter alia*, the number of hours to  
22 be expended in the Restaurants, the ratio of managers to crew members in the  
23 Restaurants, the job duties and positions to be filled by managers and crew members  
24 in the Restaurants, and the associated labor costs;
- 25 c. Requiring Fremak Arches to collect detailed statistics on the number of hours  
26 worked by Plaintiffs and each member of the Class on a daily basis and to report  
27 these numbers to McDonald's in other regular reports and assessments of the  
28 Restaurants' performance and finances;



- 1 d. Determining, through its budgeting and staffing projection practices, the specific  
2 amount of budgeted hours that the Restaurants devote to servicing customers during  
3 a particular workweek while also controlling the volume of food products that must  
4 be sold at the Restaurants during any week and the required rates at which those  
5 products must be sold; and  
6 e. Other related means.

7 115. McDonald's has, along with Fremak Arches, jointly exercised control over the pay  
8 that Plaintiffs and Class Members receive through various means, including but not limited to, by:

- 9 a. Dictating the pace at which crew members' work must be performed;  
10 b. Exercising strict controls over what Fremak Arches can pay crew members through  
11 McDonald's budgeting and staffing projection procedures;  
12 c. Exercising strict controls over the number and cost of overtime hours worked in the  
13 McDonald's restaurants;  
14 d. Closely monitoring the number of hours worked by crew members and income  
15 earned through sales of food and other goods to customers; and  
16 e. Other means designed to suppress and/or lower the wages paid to Plaintiffs and  
17 Class Members.

18 116. McDonald's has, along with Fremak Arches, jointly exercised control over the  
19 working conditions under which Plaintiffs and Class Members perform their jobs by, among other  
20 things:

- 21 a. Supervising, monitoring, and checking their work, as alleged in more detail above;  
22 b. Determining the protocol and procedure for performing all job functions at the  
23 McDonald's restaurants that must be followed as the minimum level of acceptable  
24 performance in those restaurants;  
25 c. Setting the daily pace of work, including by imposing onerous and unrealistic  
26 productivity standards;  
27 d. Setting work rules; and  
28 e. Other related means.

1 117. Defendants Fremak Arches and McDonald's have been and continue to be joint  
2 employers of Plaintiffs and Class Members for the reasons above, and the following reasons, among  
3 others:

- 4 a. Defendants have jointly controlled and dictated all material terms and conditions of  
5 the employment of Plaintiffs and Class Members;
- 6 b. Plaintiffs and Class Members have jointly applied for employment through both  
7 Fremak Arches and McDonald's, including by submitting applications to Fremak  
8 Arches supervisors who are required to use and have in fact used orientation and/or  
9 training materials from McDonald's;
- 10 c. Defendants Fremak Arches and McDonald's jointly implement the new-hire  
11 orientation that Plaintiffs and Class Members must undertake after hiring, which has  
12 taken place at the Restaurants with McDonald's training materials;
- 13 d. Defendants Fremak Arches and McDonald's have had authority and have jointly  
14 exercised the authority to discipline and/or correct the work of Plaintiffs and Class  
15 Members for perceived infractions of either McDonald's or Fremak Arches' rules or  
16 policies;
- 17 e. Defendants Fremak Arches and McDonald's have jointly exercised control over the  
18 number of hours and types of work performed by Plaintiffs and Class Members by,  
19 among other things, deciding whether and when to require crew members to perform  
20 work and deciding on the amount and pace of work the crew members must perform;
- 21 f. Defendants Fremak Arches and McDonald's have jointly exercised control over the  
22 working conditions under which Plaintiffs and Class Members perform their jobs by  
23 supervising, monitoring, and checking their work, including through inspections and  
24 Mystery Shoppers that rate crew members' job performance; by determining the  
25 protocol and procedure for assigning crew members to work stations, evaluating and  
26 disciplining crew members, and creating crew members' schedules; and by setting  
27 the daily pace of work;
- 28 g. Defendants Fremak Arches and McDonald's have jointly exercised control over the

1 compensation paid to Plaintiffs and Class Members, including but not limited to by  
2 training Fremak Arches owners and managers on how to control labor costs through  
3 wage rates, scheduling, and compensation practices, and by requiring Fremak Arches  
4 Restaurants to maintain labor costs below a certain percentage of gross sales; and

5 h. Plaintiffs and Class Members physically worked and reported to work on premises  
6 that, on information and belief, are owned by McDonald's.

7 118. The restaurant job duties performed by Plaintiffs and Class Members constitute an  
8 integral, core function of the restaurant business of Defendants Fremak Arches and McDonald's.

9 119. McDonald's has suffered or permitted Plaintiffs and other Class Members to work in  
10 the Restaurants by acquiescing in and not hindering their working, including by not remedying but  
11 instead accepting and profiting from the unlawful conditions under which they work.

12 120. Plaintiffs and Class Members have performed work that consists primarily of labor  
13 that does not require specialized training, education, or the exercise of judgment or discretion to  
14 perform.

15 121. For the reasons set forth above, among others, Defendants Fremak Arches and  
16 McDonald's, directly or indirectly, or through an agent or any other person, have employed or  
17 exercised control over the wages, hours, or working conditions of Plaintiffs and Class Members.

18 122. For the reasons set forth above, among others, Defendant McDonald's, together with  
19 Defendant Fremak Arches, directly or indirectly, or through an agent or any other person, employs  
20 or exercises control over the wages, hours, or working conditions of all Plaintiffs and Class  
21 Members.

22 **B. Defendants Have Committed the Violations Alleged Herein as Co-Conspirators**

23 123. Plaintiffs are informed and believe, and thereon allege, that at all material times,  
24 each defendant acted and is continuing to act as a co-conspirator of each other defendant and of  
25 certain unnamed and as-yet unknown co-conspirators.

26 124. Plaintiffs are informed and believe, and thereon allege, that prior to the start of the  
27 applicable limitations periods, each defendant entered into a conspiracy and agreement with the  
28 other defendants and with unnamed and unknown co-conspirators and/or subsequently joined said

1 conspiracy and ratified the prior acts and conduct of the other defendants and/or co-conspirators  
2 who had previously entered into said conspiracy. The purpose of said ongoing conspiracy includes  
3 unlawfully evading compliance with state labor laws in an effort to artificially reduce Defendants'  
4 labor costs and unlawfully maximize Defendants' profits by failing to pay Plaintiffs and Class  
5 Members the wages and benefits required by law, failing to provide meal periods, rest breaks, and  
6 other labor rights mandated by law, failing to provide workers with information required by law,  
7 and by other means. Plaintiffs are currently unaware of when each defendant or other co-  
8 conspirator joined said conspiracy but, on information and belief, allege that Defendants and their  
9 co-conspirators all knowingly, maliciously and wilfully entered into said conspiracy which  
10 continues to this day. By engaging in the conduct and omissions alleged in this Complaint, each  
11 defendant was acting within the course and scope of its agency, with the authorization of the other  
12 defendants, and in furtherance of the ongoing conspiracy.

13 **C. Defendants Have Aided and Abetted Each Other in the Commission of the Violations**  
14 **Alleged Herein**

15 125. Defendants Fremak Arches and McDonald's aided and abetted each other in the  
16 commission of the violations against Plaintiffs and Class Members as alleged herein.

17 126. Fremak Arches and McDonald's knew that their conduct as alleged herein was in  
18 breach of their duties to Plaintiffs and Class Members, yet gave substantial assistance or  
19 encouragement to each other to so act. In addition, the conduct of Fremak Arches and McDonald's  
20 breached those defendants' duties to Plaintiffs and Class Members.

21 127. Fremak Arches and McDonald's have given substantial assistance or encouragement  
22 to each other by, for example, requiring Plaintiffs and Class Members to meet high productivity  
23 standards under severe time constraints, while also taking steps to keep labor costs low, and by  
24 charging and agreeing to pay high franchise fees, and together caused violations of Plaintiffs' and  
25 Class Members' rights under California law, as set forth herein.

26 **D. Fremak Arches Acted as McDonald's Agent**

27 128. Plaintiffs are informed and believe, and thereon allege, that at all material times,  
28 Fremak Arches acted as an agent of McDonald's; Fremak Arches employed Plaintiffs and Class

1 Members on behalf of McDonald's for those defendants' mutual benefit; and Defendants jointly had  
2 the authority to control and exercised control over the wages, hours, and working conditions of  
3 Plaintiffs and Class Members.

4 129. The control McDonald's has asserted and continues to assert over Defendant  
5 Fremak Arches exceeds any control necessary to protect McDonald's trademark or good will.

6 130. By engaging in the violations alleged herein, Fremak Arches was acting within the  
7 course and scope of its agency, with the authorization of McDonald's.

8 **E. McDonald's Was Negligent in Its Retention, Supervision, and/or Control of Fremak**  
9 **Arches**

10 131. On information and belief, McDonald's has been the owner and/or lessee of the  
11 Restaurants where Plaintiffs and Class Members worked, and the only franchisor of the Restaurants  
12 during the applicable Class Period.

13 132. At all relevant times, McDonald's has closely monitored, supervised, and controlled  
14 the operations of the Restaurants, and has known or should have known of the violations of the state  
15 labor and employment law rights of Plaintiffs and Class Members that have been occurring at the  
16 Restaurants since the start of the limitations period, including violations committed by Fremak  
17 Arches, as alleged herein. These violations include but are not limited to requiring Plaintiffs and  
18 Class Members to work without proper compensation for all hours worked, failing to compensate  
19 Plaintiffs and Class Members at legally required wage rates, failing to compensate Plaintiffs and  
20 Class Members when not provided legally required meal periods and rest breaks, and failing to  
21 disclose critical wage and hour information to Plaintiffs and Class Members.

22 133. At all relevant times, McDonald's has negligently retained, supervised, and/or  
23 controlled Fremak Arches as the franchisee of its restaurants. Although McDonald's knew or  
24 should have known of the violations alleged herein, McDonald's failed to take any reasonable steps  
25 to stop those violations from continuing or increasing in scope or frequency, and instead created  
26 conditions that inevitably increased the likelihood that these violations would continue to occur and  
27 worsen, including by maintaining contractual arrangements with Fremak Arches that contain  
28 powerful economic incentives for both McDonald's and Fremak Arches to require increased

1 productivity from Plaintiffs and Class Members while lowering the costs of their labor, including by  
2 reducing the amount of reported hours and overtime hours worked.

3 134. McDonald's knew or should have known that retaining Fremak Arches to operate the  
4 Restaurants on McDonald's behalf would create an undue risk that the state labor and employment  
5 law rights of Plaintiffs and Class Members would be violated as alleged herein, and that those  
6 workers would thereby be harmed, in part because McDonald's knew or should have known, based  
7 on the terms of its contracts with Fremak Arches and its knowledge of what had been occurring at  
8 the Restaurants and at other restaurants throughout the country, including McDonald's corporate  
9 restaurants, that Fremak Arches would not be able to simultaneously meet McDonald's productivity  
10 standards, stay within McDonald's labor and cost budgets, and maintain a profit margin at the rates  
11 paid by McDonald's while complying with all applicable state employment law standards.

12 135. McDonald's has known or should have known that Fremak Arches was violating and  
13 would continue to violate the employment law rights of Plaintiffs and Class Members as alleged  
14 herein, because McDonald's closely monitored, supervised, and controlled Fremak Arches'  
15 restaurant operations, including the hours worked by Plaintiffs and Class Members, the breaks  
16 received by those crew members, the amounts paid to those crew members, and the conditions  
17 under which those crew members labored.

18 136. Although McDonald's has had the authority to control, and has exercised substantial  
19 control, over Fremak Arches' operation of the Restaurants, including the material terms and  
20 conditions of the employment of Plaintiffs and other Class Members, McDonald's has failed to  
21 ensure compliance with state employment law standards or to implement effective procedures for  
22 ensuring such compliance in the Restaurants. McDonald's also failed to take reasonable measures  
23 to prevent the violations alleged herein from continuing to occur including, *inter alia*, by failing to  
24 set rates for restaurant services, productivity standards, and staffing and labor budgets that would  
25 realistically permit compliance with the applicable labor and employment laws; failing to exercise  
26 its authority to monitor, supervise, and control Fremak Arches in a manner that ensured compliance  
27 with state labor and employment laws, instead of turning a willful blind eye to violations; and/or  
28



1 failing to prohibit Fremak Arches from continuing to violate Plaintiffs' and Class Members' rights  
2 as alleged herein.

3 137. The violations and harms to Plaintiffs and Class Members alleged herein are the  
4 result of McDonald's failure to exercise due care in the retention, supervision, and/or control of  
5 Fremak Arches and, based on the facts described above, which McDonald's knew or should have  
6 known when it continued to retain, supervise, and control Fremak Arches, those violations and  
7 harms were foreseeable.

### 8 CLASS ACTION ALLEGATIONS

9 138. Plaintiffs Hughes and Schuetz, as class representatives, bring this action on behalf of  
10 a class of all similarly situated individuals pursuant to California Code of Civil Procedure §382.  
11 The proposed class includes the following similarly situated individuals ("Class Members"): All  
12 individuals currently or formerly employed by Defendants as crew members at one or more of  
13 Defendant Fremak Arches, Inc.'s franchised McDonald's restaurants in California ("the  
14 Restaurants"), at any time within the period beginning four (4) years prior to the filing of this action  
15 and ending at the time this action proceeds to final judgment or settles (the "Class Period").  
16 Plaintiffs reserve the right to name additional class representatives and to identify sub-classes and  
17 sub-class representatives as may be necessary and appropriate.

18 139. Ascertainability. The identity of all Class Members is readily ascertainable from  
19 Defendants' records, and class notice can be provided to all Class Members by conventional means  
20 such as U.S. mail, email, and workplace postings.

21 140. Numerosity. The size of the class makes a class action both necessary and efficient.  
22 The class consists of over 100 McDonald's employees currently or formerly working at the  
23 Restaurants during the applicable limitations period. Members of the class are ascertainable but so  
24 numerous that joinder is impracticable. The class includes future class members who will benefit  
25 from the injunctive relief sought herein and whose joinder is inherently impossible.

26 141. Common Questions of Law and Fact. This case poses common questions of law and  
27 fact, which are likely to generate common answers advancing resolution of the litigation, affecting  
28 the rights of all Class Members, including:

- a. The legality of Defendants' compensation systems;
- b. The policies, practices, programs, procedures, protocols, and plans of Defendants regarding payment of wages;
- c. The policies, practices, programs, procedures, protocols, and plans of Defendants regarding payment of overtime premiums;
- d. Whether Defendants paid Plaintiffs and Class Members their full wages when due as required by California Labor Code §§204, 206, 223, and 1195.5;
- e. Whether Defendants required, suffered, or permitted Plaintiffs and Class Members to work in excess of eight hours per day and/or 40 hours per week;
- f. Whether Defendants paid Plaintiffs and Class Members the legally required overtime premium for hours worked in excess of eight hours per day and/or 40 hours per week;
- g. Whether Defendants provided Plaintiffs and Class Members with accurate itemized wage statements as required by California Labor Code §226;
- h. Whether Defendants maintained records for Plaintiffs and Class Members as required under California Labor Code §§226 and 1174 and IWC Wage Order No. 5-2001 §7.
- i. Whether Defendants violated California Labor Code §226.7 and 512 and IWC Wage Order 5-2001 §11 by failing to provide Plaintiffs and Class Members with a meal period for every five hours worked and by failing to compensate said employees one hour of wages in lieu of each full and timely meal period that was not provided;
- j. Whether Defendants violated California Labor Code §226.7 and IWC Wage Order 5-2001 §12 by failing to provide paid rest breaks to Plaintiffs and Class Members for every four hours or major fraction thereof worked and failed to compensate said employees one hour of wages in lieu of each full and timely rest break that was not provided;
- k. Whether Defendants willfully failed to make timely payment of the full wages due to

1 Plaintiff Schuetz and Class Members who quit or have been discharged, as required  
2 by California Labor Code §§201-03;

- 3 l. Whether Defendants engaged in unfair and unlawful business practices in violation  
4 of Business & Professions Code §17200 et seq.;
- 5 m. Whether Defendants are joint employers of Plaintiffs and Class Members;
- 6 n. Whether the named Defendants conspired with each other and/or with any unnamed  
7 co-conspirator, as alleged herein;
- 8 o. Whether any Defendants aided and abetted other Defendants in the commission of  
9 the violations alleged herein;
- 10 p. Whether any Defendants acted as the agent of other Defendants in the commission of  
11 the violations alleged herein;
- 12 q. Whether McDonald's negligently retained, supervised, and/or controlled Fremak  
13 Arches; and
- 14 r. What relief is necessary to remedy Defendants' unfair and unlawful conduct as  
15 herein alleged.

16 142. Typicality. The claims of the individual plaintiffs are typical of the claims of the  
17 class as a whole. Defendants' unlawful wage policies and practices, which have operated to deny  
18 Plaintiffs the overtime premiums, minimum wages, other unpaid wages, and other compensation,  
19 benefits, penalties, and protections required by law, are typical of the unlawful wage policies and  
20 practices that have and will continue to operate to deny other Class Members lawful compensation.

21 143. Adequacy of Class Representation. The individual plaintiffs can adequately and  
22 fairly represent the interests of the class as defined above, because their individual interests are  
23 consistent with, not antagonistic to, the interests of the class.

24 144. Adequacy of Counsel for the Class. Counsel for Plaintiffs have the requisite  
25 resources and ability to prosecute this case as a class action and are experienced labor and  
26 employment and class action attorneys who have successfully litigated other cases involving similar  
27 wage and hour issues, including on a class action basis.  
28

145. Propriety of Class Action Mechanism. This suit is properly maintainable as a class action under California Code of Civil Procedure §382 because Defendants have implemented a series of unlawful schemes that are generally applicable to the class, making it appropriate to issue final injunctive relief and corresponding declaratory relief with respect to the class as a whole. This suit is also properly maintainable as a class action because the common questions of law and fact predominate over any questions affecting only individual members of the class. For all these and other reasons, a class action is superior to other available methods for the fair and efficient adjudication of the controversy set forth in this Complaint.

## FIRST CLAIM FOR RELIEF

## Failure to Pay All Wages When Due

**[Cal. Labor Code §§204, 206, 223, 225.5, 1194.5, 1195.5]**

**(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class**

**Against All Defendants)**

146. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate by reference all previous paragraphs.

147. California Labor Code §204 requires an employer to pay all wages to its employees when those wages are due. California Labor Code §206 requires that, in a case of a dispute over wages, an employer must pay, without condition and within the time set by statute, all wages, or parts thereof, conceded to be due. California Labor Code §223 prohibits an employer from secretly paying a lower wage while purporting to pay the required wage designated by statute or by contract. California Labor Code §225.5 provides that every person who unlawfully withholds wages due any employee in violation of §223 shall be subject to a civil penalty for an initial violation of \$100 for each failure to pay each employee, and for each subsequent violation or any willful or intentional violation of \$200 for each failure to pay each employee plus 25 percent of the amount unlawfully withheld. California Labor Code §1195.5 requires an employer to correctly compute and pay wages due to employees, including wages above the minimum wage.

148. During the Class Period, Defendants have followed and continue to follow several policies and practices directly resulting in their failure to pay Plaintiffs and Class Members all

1 wages for all hours worked when they are due, and of withholding wages due by secretly paying a  
2 lower wage than purported. These policies and practices include, but are not limited to the  
3 following:

- 4 a. Altered Time Records. On information and belief, Defendants have failed and  
5 continue to fail to pay Plaintiffs and Class Members for all hours worked by  
6 following a policy and practice of encouraging, permitting, and/or ratifying managers  
7 or supervisors routinely to edit or delete time recorded by the punch-in and punch-  
8 out system. On information and belief, this policy and practice has resulted in  
9 Defendants paying Plaintiffs and Class Members for less time than they have  
10 actually worked.
- 11 b. Off-the-Clock Work. Defendants have followed and continue to follow a policy and  
12 practice of requiring, suffering, or permitting Plaintiffs and Class Members to  
13 perform uncompensated work off the clock while not punched in, including but not  
14 limited to time spent retrieving or restocking supplies for the restaurant, counting  
15 and reconciling cash in the cash registers, performing other tasks that needed to be  
16 completed, or waiting after reporting to the restaurant as required for a scheduled  
17 shift before being permitted to punch in.
- 18 c. Minimum Wages, Overtime, and Missed Meal Period and Rest Break Premium  
19 Wages. As alleged in the Second through Fifth Claims for Relief below and  
20 incorporated by reference here, Defendants have followed and continue to follow a  
21 policy and practice of failing to pay Plaintiffs and Class Members minimum wages,  
22 overtime compensation, and additional wages due for missed, untimely, or shortened  
23 meal periods and rest breaks, thereby failing to pay Plaintiffs and Class Members all  
24 wages due for all hours worked.

25 149. Defendants have committed and continue to commit the acts alleged herein  
26 knowingly and willfully.

27 150. As a proximate result of Defendants' unlawful actions and omissions, Plaintiffs and  
28 Class Members have sustained economic damages, including but not limited to unpaid wages and

1 lost interest, in an amount to be established at trial, and are entitled to recover economic and  
2 statutory damages and penalties and other appropriate relief from Defendants' violations of the  
3 California Labor Code.

4 151. California Labor Code §1194.5 authorizes injunctions where an employer has  
5 willfully violated laws governing wages, hours, or working conditions. Plaintiff Hughes and current  
6 employee Class Members, who are low-wage workers for whom Defendants' failure to pay all  
7 wages when due for all hours worked creates substantial hardship, are entitled to preliminary and  
8 permanent injunctive relief under the governing legal standards, and are entitled to an order  
9 requiring Defendants to pay all wages when due and to keep accurate track of all time Plaintiffs and  
10 Class Members spend working each day.

11 **SECOND CLAIM FOR RELIEF**

12 **Failure to Pay Overtime Wages**

13 **[Cal. Labor Code §§510, 1194, 1194.5, 1198; IWC Wage Order No. 5-2001, §3]**

14 **(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class**

15 **Against All Defendants)**

16 152. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate by  
17 reference all previous paragraphs.

18 153. It is unlawful under California law for an employer to require, suffer or permit an  
19 employee to work in excess of eight hours per workday or 40 hours per workweek without paying  
20 premium wages under California Labor Code §510 and IWC Wage Order 5-2001 §3.

21 154. California Labor Code §1198 makes employment of an employee for longer hours  
22 than the IWC sets or under conditions the IWC prohibits unlawful. California Labor Code §1194(a)  
23 entitles an employee to recover in a civil action the unpaid balance of all overtime compensation  
24 due but not paid.

25 155. Plaintiffs and Class Members are current and former non-exempt employees entitled  
26 to the protections of California Labor Code §§510, 1194, and IWC Wage Order No. 5-2001.

27 156. Plaintiffs and Class Members have worked and at times continue to work in excess  
28 of eight hours per workday and in excess of 40 hours per workweek.



1           157. During the Class Period, Defendants have followed and continue to follow a policy  
2 and practice of not paying Plaintiffs and Class Members properly for overtime, and have failed and  
3 continue to fail properly to compensate Plaintiffs and Class Members for all overtime hours worked  
4 under California law. For example, Defendants have followed and continue to follow a policy and  
5 practice of failing to pay Plaintiffs and Class Members for all overtime hours Defendants require,  
6 permit, or suffer Plaintiffs and Class Members to work off the clock; hours that Defendants alter or  
7 remove from time records; hours Defendants move from one day to another to avoid overtime rates;  
8 and hours Defendants require, permit, or suffer Plaintiffs and Class Members to work through meal  
9 periods and rest breaks.

10           158. Defendants have committed and continue to commit the acts alleged herein  
11 knowingly and willfully.

12           159. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,  
13 Plaintiffs and Class Members have sustained economic damages, including but not limited to  
14 unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover  
15 economic and statutory damages and penalties and other appropriate relief from Defendants'  
16 violations of the California Labor Code and IWC Wage Order 5-2001.

17           160. California Labor Code §1194.5 authorizes injunctions where an employer has  
18 willfully violated laws governing wages, hours, or working conditions. Plaintiff Hughes and current  
19 employee Class Members, who are low-wage workers for whom Defendants' failure to pay required  
20 overtime creates substantial hardship, are entitled to preliminary and permanent injunctive relief  
21 under the governing legal standards, and are entitled to an order requiring Defendants to pay  
22 required overtime premiums and to keep track of the time Plaintiffs and Class Members spend  
23 working over eight hours each day and over 40 hours each week.

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4

3

4

5

6

78

901

2  
3  
4  
5  
6

7  
8  
9  
0  
1  
2

3.4

5  
6  
7

1 economic and statutory damages and penalties and other appropriate relief from Defendants'  
2 violations of the California Labor Code and IWC Wage Order 5-2001.

3 167. California Labor Code §1194.5 authorizes injunctions where an employer has  
4 willfully violated laws governing wages, hours, or working conditions. Plaintiff Hughes and current  
5 employee Class Members, who are low-wage workers for whom Defendants' failure to pay required  
6 overtime creates substantial hardship, are entitled to preliminary and permanent injunctive relief  
7 under the governing legal standards, and are entitled to an order requiring Defendants to pay  
8 minimum wages and to keep accurate track of the time Plaintiffs and Class Members spend  
9 performing all compensable work.

10 **FOURTH CLAIM FOR RELIEF**

11 **Failure to Provide Required Meal Periods or Pay Missed Meal Period Wages**

12 **[Cal. Labor Code §§226.7, 512, 1194.5, 1198;**

13 **IWC Wage Order No. 5-2001, §11]**

14 **(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class**

15 **Against All Defendants)**

16 168. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate by  
17 reference all previous paragraphs.

18 169. California Labor Code §226.7(a) prohibits an employer from requiring an employee  
19 to work during any meal period mandated by an applicable Industrial Wage Order. California Labor  
20 Code §512 and IWC Wage Order 5-2001 §11(A) prohibit employers from employing a worker for  
21 more than five hours without a meal period of at least 30 minutes. California Labor Code §512  
22 prohibits employers from employing a worker for more than 10 hours without a second meal period  
23 of at least 30 minutes. Under both California Labor Code §226.7(b) and IWC Wage Order 5-2001  
24 §11(B), if an employer fails to provide an employee a meal period as required, the employer must  
25 pay the employee one hour of pay at the employee's regular rate of compensation for each workday  
26 that a meal period is not provided as required.

27 170. California Labor Code §1198 makes unlawful the employment of an employee under  
28 conditions the IWC prohibits.

1 171. During the Class Period, Defendants have had and continue to have a policy and  
2 practice of failing to provide Plaintiffs and Class Members full and timely meal periods required by  
3 California Labor Code §§226.7 and 512 and IWC Wage Order 5-2001 §11, including but not  
4 limited to through the following:

5 a. Shifts Between Five and Six Hours Long. Defendants have followed and continue to  
6 follow a policy and practice of failing to provide a meal period to Plaintiffs and Class  
7 Members when they work shifts between five and six hours in length. On  
8 information and belief, Defendants have followed and continue to follow a policy  
9 and practice of requiring newly-hired crew members to sign an adhesive form  
10 contract that purports to waive their right to be provided a 30-minute duty-free meal  
11 period for shifts of up to six hours. On information and belief, Defendants have  
12 required and continue to require Plaintiffs and Class Members to sign this uniform  
13 “waiver” form under conditions that make Plaintiffs’ and Class Members’ signatures  
14 not knowing or voluntary, including but not limited to by making signing the form a  
15 condition of employment and by requiring that newly-hired crew members sign the  
16 form quickly along with many other forms without sufficient opportunity fully to  
17 review and consider its contents.

18 b. Missed, Late, and Shortened Meal Periods. When Plaintiffs and Class Members  
19 receive meal periods, these meal periods often have been, and continue to be, late or  
20 shortened. Defendants’ restaurant locations are frequently busy and Defendants have  
21 implemented and continue to implement a policy and practice of understaffing crew  
22 members at all the Fremak Arches Restaurants. Defendants have permitted and  
23 continue to permit Plaintiffs and Class Members to take breaks only when told to do  
24 so by their managers. Defendants also have prohibited and continue to prohibit  
25 Plaintiffs and Class Members from taking breaks when the store is busy or during  
26 times when a Mystery Shopper may be coming to the restaurant. Through these and  
27 other policies and practices alleged above and incorporated herein by reference,  
28 Plaintiffs and Class Members have regularly been denied, and continue to be denied,

1 the opportunity to take a full, uninterrupted, and timely meal period as required  
2 under the California Labor Code §§226.7 and 512, and IWC Wage Order No. 5-2001  
3 §11.

4 172. Defendants have further violated and continue to violate California Labor Code  
5 §226.7 and IWC Wage Order No. 5-2001 §11, by having had and continuing to have a policy and  
6 practice of failing to pay each of their employees who was not provided with a full and timely meal  
7 period an additional one hour of compensation at each employee's regular rate of pay.

8 173. Defendants have committed and continue to commit the acts alleged herein  
9 knowingly and willfully.

10 174. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,  
11 Plaintiffs and Class Members have sustained economic damages, including but not limited to  
12 unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover  
13 economic and statutory damages and penalties and other appropriate relief from Defendants'  
14 violations of the California Labor Code and IWC Wage Order 5-2001.

15 175. California Labor Code §1194.5 authorizes injunctions where an employer has  
16 willfully violated laws governing wages, hours, or working conditions. Plaintiff Hughes and current  
17 employee Class Members, who are low-wage workers for whom Defendants' failure to provide  
18 required meal periods or pay an additional hour's wages when required meal periods are missed,  
19 late, or shortened creates substantial hardship, are entitled to preliminary and permanent injunctive  
20 relief under the governing legal standards, and are entitled to an order requiring Defendants to  
21 provide required meal periods, to pay one hour's wages for every day that an employee's required  
22 meal period is missed, late, or shortened, and to keep accurate track of the times Plaintiffs and Class  
23 Members begin and end each of their meal periods.

1 **FIFTH CLAIM FOR RELIEF**

2 **Failure to Provide Required Rest Breaks or Pay Missed Rest Break Wages**

3 **[Cal. Labor Code §§226.7, 1194.5 1198; IWC Wage Order No. 5-2001, §12]**

4 **(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class**

5 **Against All Defendants)**

6 176. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate by  
7 reference all previous paragraphs.

8 177. California Labor Code §226.7(a) prohibits an employer from requiring an employee  
9 to work during any rest break mandated by an applicable Industrial Wage Order. IWC Wage Order  
10 5-2001 §12(A) requires employers to authorize and permit employees who work three and one half  
11 or more hours in a day to take a paid rest break of at least 10 minutes for every four hours worked or  
12 major fraction thereof, which insofar as practicable shall be in the middle of each work period.  
13 Under both California Labor Code §226.7(b) and IWC Wage Order 5-2001 §12(B), if an employer  
14 fails to provide an employee a rest break as required, the employer must pay the employee one hour  
15 of pay at the employee's regular rate of compensation for each workday that a rest break is not  
16 provided as required.

17 178. California Labor Code §1198 makes unlawful the employment of an employee under  
18 conditions the IWC prohibits.

19 179. During the Class Period, Defendants have had and continue to have a policy and  
20 practice of failing to provide Plaintiffs and Class Members full and timely rest breaks required by  
21 California Labor Code §226.7 and IWC Wage Order 5-2001 §12, including but not limited to  
22 through the following:

23 a. Unlawful Written Rest Break Policy. On information and belief, Defendants have  
24 implemented and continue to implement a written break policy that violates  
25 California Labor Code §226.7 and IWC Wage Order No. 5-2001 §12, for reasons  
26 including but not limited to the following:

27 i. The policy states that no breaks are required when a crew member works "3  
28 hours, 31 minutes or less," thereby denying Plaintiffs and Class Members



1 lawfully-required breaks when they work shifts lasting three hours and 30  
2 minutes or three hours and 31 minutes; and

3 ii. The policy states that a second 10-minute rest break is only available when a  
4 crew member works “6 hours, 1 minute – 10 hours,” thereby denying Plaintiffs  
5 and Class Members lawfully-required second breaks when they work shifts  
6 lasting six hours.

7 b. Missed, Late, and Shortened Rest Breaks. In addition, as set forth above, Defendants  
8 willfully understaff the Restaurants, in part, on information and belief, to satisfy  
9 Defendants’ objectives that labor costs be kept to a minimum. As a direct  
10 consequence of this understaffing and imperative to keep labor costs low, Plaintiffs’  
11 and Class Members’ rest breaks frequently have been and continue to be missed,  
12 late, and/or shortened. Plaintiffs and Class Members regularly have not been  
13 authorized or permitted to take their first or second 10-minute rest break, have been  
14 only authorized or permitted to take less than a full 10-minute rest break, or have  
15 been otherwise required to perform work during their first or second 10-minute rest  
16 break.

17 c. Rest Break Timing. Additionally, Defendants have followed and continue to follow  
18 a policy and practice of failing to provide Plaintiffs and Class Members 10-minute  
19 rest breaks in the middle of each work period, including but not limited to by  
20 requiring Plaintiffs and Class Members to take their first 10-minute rest break either  
21 within their first hour of work or after more than four hours of work, and by  
22 requiring Plaintiffs and Class members to take a second 10-minute rest break near or  
23 at the end of their shifts, thereby violating California Labor Code §226.7 and IWC  
24 Wage Order No. 5-2001 §12.

25 d. Failing to Relieve Employees of all Control During Rest Breaks. Defendants have  
26 further implemented and continue to implement a policy and practice of requiring  
27 Plaintiffs and Class Members to remain in the Restaurants during their rest breaks, in  
28 violation of the requirement that during rest breaks required by California Labor

1 Code §226.7 and IWC Wage Order No. 5-2001 §12, employees must be relieved of  
2 any duty or employer control and be free to come and go as they please.

3 180. Defendants have further violated and continue to violate California Labor Code  
4 §226.7 and IWC Wage Order No. 5-2001 §12, by having had and continuing to have a policy and  
5 practice of failing to pay each of their employees who was not provided with a full and timely rest  
6 break an additional one hour of compensation at each employee's regular rate of pay.

7 181. Defendants have committed and continue to commit the acts alleged herein  
8 knowingly and willfully.

9 182. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,  
10 Plaintiffs and Class Members have sustained economic damages, including but not limited to  
11 unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover  
12 economic and statutory damages and penalties and other appropriate relief from Defendants'  
13 violations of the California Labor Code and IWC Wage Order 5-2001.

14 183. California Labor Code §1194.5 authorizes injunctions where an employer has  
15 willfully violated laws governing wages, hours, or working conditions. Plaintiff Hughes and current  
16 employee Class Members, who are low-wage workers for whom Defendants' failure to provide  
17 required rest breaks or pay an additional hour's wages when required rest breaks are missed, late, or  
18 shortened creates substantial hardship, are entitled to preliminary and permanent injunctive relief  
19 under the governing legal standards, and are entitled to an order requiring Defendants to provide  
20 required rest breaks, to pay one hour's wages for every day that an employee's required rest break is  
21 missed, late, or interrupted, and to keep accurate track of the times Plaintiffs and Class Members  
22 begin and end each of their rest breaks.

1 **SIXTH CLAIM FOR RELIEF**

2 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

3 **[Cal. Labor Code §§201, 202, 203, 1194.5]**

4 **(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class**

5 **Against All Defendants)**

6 184. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate by  
7 reference all previous paragraphs.

8 185. California Labor Code §201 requires an employer who discharges an employee to  
9 pay all compensation due and owing to that employee immediately upon the employee's discharge  
10 from employment. California Labor Code §202 requires an employer promptly to pay all  
11 compensation due and owing to an employee within 72 hours after that employee's employment  
12 terminates, including by resignation. California Labor Code §203 provides that if an employer  
13 willfully fails to pay all compensation due promptly upon discharge or resignation, as required by  
14 §§201 and 202, the employer shall be liable for waiting time penalties in the form of continued  
15 compensation for up to 30 work days.

16 186. By failing to compensate Plaintiffs and Class Members as required by California  
17 law, as set forth above – including but not limited to Defendants' failure to properly pay Plaintiffs  
18 and Class Members wages for all hours worked when due, overtime wages, minimum wages, and  
19 additional wages for non-compliant meal periods and rest breaks – Defendants have willfully failed  
20 and continue to fail to pay all accrued wages and other compensation to Plaintiff Schuetz and  
21 discharged and quitting Class Members in accordance with California Labor Code §§201 and 202.

22 187. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,  
23 Plaintiff Schuetz and former employee Class Members have sustained economic damages, including  
24 but not limited to unpaid wages and lost interest, in an amount to be established at trial.

25 188. By failing to make timely payment of the full wages due to Plaintiff Schuetz and  
26 Class Members who quit or have been discharged, Defendants are also liable for a penalty to each  
27 such employee of up to 30 days' of that employee's wages under California Labor Code §203.  
28

189. California Labor Code §1194.5 authorizes issuance of an injunction where an employer has willfully violated laws governing wages, hours, or working conditions. Plaintiff Hughes and current employee Class Members, who are low-wage workers for whom McDonald's failure to pay required wages when due if and when they leave Defendants' employment would create substantial hardship, are entitled to injunctive relief under the governing legal standards, and are entitled to an order requiring Defendants to provide all discharged and terminating employees all accrued wages in accordance with the requirements of California Labor Code §§201-203.

### SEVENTH CLAIM FOR RELIEF

### Failure to Maintain Required Records

[Cal. Labor Code §§226, 1174, 1194.5, 1198; IWC Wage Order No. 5-2001 §7]

**(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class**

**Against All Defendants)**

190. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate by reference all previous paragraphs.

191. California Labor Code §1174(c)-(d) requires employers to keep records showing the names and addresses of all employees employed, and to keep, at a central location in the State of California or at the establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to all employees employed at the establishment. IWC Wage Order 5-2001 §7(A)(3) further requires employers to keep time records showing when the employee begins and ends each work period, meal period, and split shift interval. Under §7(A)(5), employers must also record each employee's total hours worked and applicable rates of pay, and must make such information "readily available" to the employee upon request. Under §7(C), all required records must be in the English language and in ink or other indelible form, properly dated, showing month, day, and year, and must be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. Under both §7(C) and California Labor Code §226(b), all required records must be available for inspection by an employee upon reasonable request.

1        192. California Labor Code §1198 makes unlawful the employment of an employee under  
2 conditions the IWC prohibits.

3        193. Pursuant to Defendants' policy and practice, Defendants have willfully failed, and  
4 continue willfully to fail, to maintain accurate, complete, and readily available records, in violation  
5 of California Labor Code §1174 and IWC Wage Order 5-2001 §7.

6        194. In addition, Defendants have failed and continue to fail to maintain required records  
7 that accurately reflect the actual time and hours worked by Plaintiffs and Class Members and the  
8 regular and overtime rates of pay associated with these hours worked.

9        195. Plaintiffs and Class Members have suffered and will continue to suffer actual  
10 economic harm resulting from these recordkeeping violations, as they have been, and will continue  
11 to be, precluded from accurately monitoring the wages to which they are entitled, have been  
12 required to retain counsel and others to evaluate and calculate unpaid wages, and have suffered  
13 delays in receiving the wages and interest that are due and owing to them. Defendants' ongoing  
14 violations of these mandatory recordkeeping laws have caused, and will continue to cause,  
15 irreparable harm to Plaintiffs and Class Members, among other reasons because as long as  
16 Defendants fail to maintain the required records, Plaintiffs and Class Members will be unable to  
17 determine or demonstrate the precise number of hours actually worked, or the wages and penalties  
18 owed to them for the hours that Defendants have required, suffered or permitted them to work.

19        196. By willfully failing to maintain the records required by California Labor Code  
20 §1174(c) or the accurate and complete records required by §1174(d), Defendants are also liable for a  
21 civil penalty of five hundred dollars for each violation under §1174.5.

22        197. California Labor Code §1194.5 authorizes issuance of an injunction where an  
23 employer has willfully violated laws governing wages, hours, or working conditions. Plaintiff  
24 Hughes and current employee Class Members are entitled to injunctive relief under the governing  
25 legal standards, and are entitled to an order requiring Defendants to provide Plaintiffs and Class  
26 Members all of the information required by California Labor Code §1174 and IWC Wage Order 5-  
27 2001.  
28

1 **EIGHTH CLAIM FOR RELIEF**

2 **Failure to Furnish Accurate Itemized Wage Statements**

3 **[Cal. Labor Code §§204, 226; IWC Wage Order No. 5-2001, §7]**

4 **(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class**

5 **Against All Defendants)**

6 198. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate by  
7 reference all previous paragraphs.

8 199. California Labor Code §226(a) requires employers semimonthly or at time of paying  
9 wages to provide to their employees detailed wage and hour information including total hours  
10 worked, applicable hourly rates, and deductions. IWC Wage Order 5-2001 §7(B) requires  
11 employers semimonthly or at the time of each payment of wages to furnish to each employee an  
12 itemized statement in writing showing the following information: all deductions; the inclusive dates  
13 of the period for which the employee is paid; the name of the employee or the employee's social  
14 security number; and the name of the employer. California Labor Code §204(b)(2) requires that if  
15 an employee works in excess of the employee's normal work period in one pay period and the  
16 employer pays for those hours in the following pay period, the hours in excess of the employee's  
17 normal work period in the current pay period must be itemized as corrections on the paystub for the  
18 next regular pay period, and the paystub containing those corrections must state the inclusive dates  
19 of the pay period for which the employer is correcting its initial report of hours worked. These  
20 required disclosures of information are essential to enable employees to determine whether they  
21 have been paid in compliance with the law and to determine the identity of all employers who are  
22 responsible for any payments that remain due.

23 200. California Labor Code §226(e) provides that an employee who suffers injury as a  
24 result of a knowing and intentional failure by an employer to comply with §226(a) may recover the  
25 greater of actual damages or the civil penalties designated by statute of \$50 for the initial pay period  
26 in which a violation occurs and \$100 per employee for each violation in a subsequent pay period up  
27 to an aggregate penalty of \$4,000.  
28



1           201. California Labor Code §226.3 provides that any employer who violates §226(a) shall  
2 further be subject to a civil penalty of \$250 per employee per violation in an initial citation and  
3 \$1,000 per employee for each violation in a subsequent citation for which the employer fails to  
4 provide the employee a wage deduction statement or fails to keep the records required in §226(a).

5           202. California Labor Code §1198 makes employment of an employee under conditions  
6 the IWC prohibits unlawful.

7           203. Pursuant to Defendants' unlawful policies and practices alleged herein, Defendants  
8 have knowingly and intentionally failed to furnish Plaintiffs and Class Members with the  
9 information required by California Labor Code §226(a) and IWC Wage Order 5-2001 §7(B),  
10 including but not limited to the legally mandated disclosures of total hours worked, hourly rates,  
11 identity of all joint employers, and an itemization of all deductions taken. This failure has injured,  
12 continues to injure, and was intended to injure Plaintiffs and Class Members by, among other  
13 things, enabling Defendants to avoid paying these workers all wages due without detection of  
14 wrongdoing; creating confusion among these workers over whether they had received all wages due  
15 and owing; making it difficult and expensive for these workers to reconstruct pay records and  
16 accurate records of all hours worked; forcing these workers to make mathematical computations to  
17 analyze whether the wages paid compensated them for all hours worked; requiring these workers to  
18 retain attorneys and others to help them determine the fact, scope, and extent of Defendants'  
19 wrongful conduct; and causing delay in these workers recovering their full back pay and interest.

20           204. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,  
21 Plaintiffs and Class Members have sustained economic damages, including but not limited to  
22 unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover  
23 such economic and statutory damages and penalties and other appropriate relief from Defendants'  
24 violations of the California Labor Code and IWC Wage Order 5-2001.

25           205. California Labor Code §226(h) authorizes courts to issue injunctive relief to remedy  
26 violations of §226(a). Plaintiffs and Class Members are entitled to injunctive relief under the  
27 governing legal standards, and are entitled to an order requiring Defendants: (a) to immediately  
28 begin providing to Plaintiff Hughes and current employee Class Members itemized wage statements

1 containing all of the information required to be disclosed by California Labor Code §226(a); and (b)  
2 to immediately provide to all Plaintiffs and Class Members the information required to be disclosed  
3 by California Labor Code §226(a), dating back to those employees' beginning of employment or to  
4 the start of the applicable limitations period, whichever is further back in time.

5 **NINTH CLAIM FOR RELIEF**

6 **Negligence**

7 **(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class**

8 **Against Defendant McDonald's)**

9 206. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate by  
10 reference all previous paragraphs.

11 207. McDonald's has owed and continues to owe a duty to Plaintiffs and Class Members,  
12 both as their joint employer and as an entity that benefits directly from their services, not to subject  
13 those individuals to the foreseeable harms as alleged herein that would reasonably result from  
14 McDonald's failure to exercise due care in its contracting and supervision of Fremak Arches as the  
15 entity it chose to operate the Restaurants as its franchisee. As the owner of the McDonald's  
16 trademark and operator of the multinational McDonald's company and as a franchisor with  
17 unusually high systems of control over its franchisees, who operate on term-limited and conditional  
18 contracts, McDonald's had and continues to have the contractual, actual, and other authority to  
19 ensure that its franchisees comply with all state labor and employment laws and to ensure that  
20 Plaintiffs' and Class Members' legal rights are fully protected while working in McDonald's  
21 restaurants, serving McDonald's food and selling McDonald's products, under McDonald's direct  
22 and indirect supervision.

23 208. On information and belief, at all relevant times, McDonald's has retained,  
24 supervised, and controlled Fremak Arches as its agent and contractor for the purpose of operating  
25 the Restaurants.

26 209. McDonald's violated its duty to Plaintiffs and Class Members by failing to exercise  
27 due care in the retention, supervision, and/or control of Fremak Arches. Given a long history of  
28 employment law violations at the Restaurants, and that the terms of the McDonald's-Fremak Arches

1 contract and attendant operating requirements and pressures created powerful incentives for Fremak  
2 Arches to violate the labor and employment law rights of Plaintiffs and Class Members, and based  
3 on McDonald's close monitoring and control over the Restaurant's operations, McDonald's knew or  
4 should have known when it retained, supervised, and controlled Fremak Arches as the franchisee of  
5 the Restaurants, that it was creating an undue risk of harm to Plaintiffs and Class Members.

6 210. As a direct and proximate result of McDonald's conduct as alleged in this  
7 Complaint, Plaintiffs and Class Members have been harmed, including but not limited to suffering  
8 lost wages and other benefits in amounts to be proven at trial.

9 **TENTH CLAIM FOR RELIEF**

10 **California Labor Code Private Attorneys General Act**

11 **[Cal. Labor Code §2698 et seq.]**

12 **(Brought by All Plaintiffs on behalf of Themselves, the Plaintiff Class, all similarly situated**  
13 **current and former McDonald's employees, and the Public Against All Defendants)**

14 211. Plaintiffs, on behalf of themselves and all aggrieved employees and/or on behalf of  
15 the plaintiff class, as well as the general public of the State of California, reallege and incorporate  
16 by reference all previous paragraphs.

17 212. Under the California Labor Code Private Attorneys General Act, California Labor  
18 Code §§2698-99 ("PAGA"), any aggrieved employee may bring a representative action as a private  
19 attorney general on behalf of the general public, including all other aggrieved employees, to recover  
20 civil penalties for their employers' violations of the California Labor Code and IWC Wage Orders.  
21 These civil penalties are in addition to any other relief available under the Labor Code, and must be  
22 allocated 75 percent to the State of California's Labor and Workforce Development Agency and 25  
23 percent to the aggrieved worker, pursuant to California Labor Code §2699.

24 213. Pursuant to California Labor Code §1198, Defendants' employment of any Plaintiff  
25 or Class Member for longer hours than those fixed by IWC Wage Order 5-2001 or under conditions  
26 of labor prohibited by Wage Order No 5-2001 is unlawful and constitutes a violation of the  
27 California Labor Code, actionable under PAGA. Pursuant to California Labor Code §1198, it is  
28 unlawful for Defendants to have failed to pay or cause to be paid to Plaintiffs and Class Members

1 overtime or minimum wages required by Wage Order 5-2001; to have required Plaintiffs and Class  
2 Members to work for longer hours than those fixed, or under conditions of labor prohibited by,  
3 Wage Order 5-2001; and to have violated, or refused or neglected to have complied with, any other  
4 provision of Wage Order 5-2001 as alleged herein.

5       214. Plaintiffs allege, on behalf of themselves, all aggrieved employees and/or on behalf  
6 of the plaintiff class, as well as the general public of the State of California, that Defendants have  
7 violated the following provisions of the California Labor Code and the following provisions of the  
8 IWC Wage Orders that are actionable through the California Labor Code and PAGA, as previously  
9 alleged herein: California Labor Code §§201-04, 206, 223, 226, 226.7, 510, 512, 1174, 1182.12,  
10 1194, 1195.5, and 1197-99, and IWC Wage Order 5-2001 §§3, 4, 7, 11, and 12. Each of these  
11 violations entitles Plaintiffs, as private attorneys general, to recover the applicable statutory civil  
12 penalties on their own behalf, on behalf of all aggrieved employees, and on behalf of the general  
13 public.

14       215. California Labor Code §2699(a), which is part of PAGA, provides in pertinent part:

15               Notwithstanding any other provision of law, any provision of this code that  
16               provides for a civil penalty to be assessed and collected by the Labor and Workforce  
17               Development Agency or any of its departments, divisions, commissions, boards,  
18               agencies, or employees, for a violation of this code, may, as an alternative, be  
19               recovered through a civil action brought by an aggrieved employee on behalf of  
20               himself or herself and other current or former employees pursuant to the procedures  
21               specified in Section 2699.3.

22       216. California Labor Code §2699(f), which is part of PAGA, provides in pertinent part:

23               For all provisions of this code except those for which a civil penalty is  
24               specifically provided, there is established a civil penalty for a violation of these  
25               provisions, as follows: . . .

26               (2) If, at the time of the alleged violation, the person employs one or  
27               more employees, the civil penalty is one hundred dollars (\$100) for each  
28               aggrieved employee per pay period for the initial violation and two hundred

dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

217. Plaintiffs are entitled to civil penalties, to be paid by Defendants and allocated as PAGA requires, pursuant to California Labor Code §2699(a) for Defendants' violations of the California Labor Code and IWC Wage Orders for which violations a civil penalty is already specifically provided by law; and Plaintiffs are entitled to civil penalties, to be paid by Defendants and allocated as PAGA requires, pursuant to California Labor Code §2699(f) for Defendants' violations of the California Labor Code and IWC Wage Orders for which violations a civil penalty is not already specifically provided.

218. Plaintiffs are in the process of exhausting their administrative remedies as required by California Labor Code §2699.3. Plaintiffs will amend their Complaint to allege such exhaustion after the exhaustion process is complete.

219. Under PAGA, Plaintiffs and the State of California are entitled to recover the maximum civil penalties permitted by law for the violations of the California Labor Code and Wage Order 5-2001 that are alleged in this Complaint.

#### **ELEVENTH CLAIM FOR RELIEF**

##### **Unfair and Unlawful Business Practices**

**[Cal. Bus. & Prof. Code §17200 et seq.]**

**(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class**

**Against All Defendants)**

220. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate by reference all previous paragraphs.

221. Defendants have engaged in unfair and unlawful business practices in violation of California Business & Professions Code §17200 et seq. by engaging in the unlawful conduct alleged above, including but not limited to: failing to pay all wages when due and secretly paying a lower wage than purported; failing to pay the overtime premiums required by state law; failing to pay the minimum wage required by state law; failing to provide workers with all meal periods and paid rest breaks to which they are entitled; failing to pay workers an additional hour's pay for all days in

1 which they were not provided a full and timely meal period or rest break as required by state law;  
2 failing to provide employees information required by California Labor Code §§204, 226(a), and  
3 1174 and Wage Order 5-2001; concealing from workers material information concerning  
4 Defendants' joint employer status and the nature and extent of the conspiracy in which Defendants  
5 are engaged; failing to make timely payment of full wages to workers who quit or have been  
6 discharged; and negligently retaining, supervising, and/or controlling agents and/or contractors  
7 acting on their behalf.

8 222. Plaintiffs are informed and believe, and based upon such information and belief,  
9 allege that by engaging in the unfair and unlawful business practices complained of above,  
10 Defendants were able to lower their labor costs and thereby to obtain a competitive advantage over  
11 law-abiding employers with which they compete, in violation of California Business & Professions  
12 Code §17200 et seq. and California Labor Code §90.5(a), which sets forth the public policy of  
13 California to vigorously enforce minimum labor standards to ensure that employees are not required  
14 or permitted to work under substandard and unlawful conditions and to protect law-abiding  
15 employers and their employees from competitors that lower their costs by failing to comply with  
16 minimum labor standards.

17 223. As a direct and proximate result of Defendants' unfair and unlawful conduct as  
18 alleged herein, Plaintiffs and Class Members have sustained injury and damages, including unpaid  
19 wages and lost interest, in an amount to be established at trial. Plaintiffs and Class Members seek  
20 restitution of all unpaid wages owed to Plaintiffs and Class Members, disgorgement of all profits  
21 that Defendants have enjoyed as a result of their unfair and unlawful business practices, penalties,  
22 and injunctive relief.

1 **TWELFTH CLAIM FOR RELIEF**

2 **Declaratory Judgment**

3 **[Cal. Code of Civil Procedure §1060 et seq.]**

4 **(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class**

5 **Against All Defendants)**

6 224. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate by  
7 reference all previous paragraphs.

8 225. An actual controversy has arisen and now exists between the parties relating to the  
9 legal rights and duties of the parties as set forth above, for which Plaintiffs desire a declaration of  
10 rights and other relief available pursuant to the California Declaratory Judgment Act, California  
11 Code of Civil Procedure §1060 et seq.

12 226. A declaratory judgment is necessary and proper in that Plaintiffs contend that  
13 Defendants have committed and continue to commit the violations set forth above and Defendants,  
14 on information and belief, will deny that they have done so and/or that they will continue to do so.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs respectfully request the following relief:

17 1. Certification of this action as a class action on behalf of the proposed class under  
18 California Code of Civil Procedure §382;

19 2. Designation of Plaintiffs as representatives of the plaintiff class;

20 3. A temporary, preliminary, and permanent injunction requiring Defendants to pay  
21 Plaintiffs and Class Members all wages, including but not limited overtime, minimum wages, and  
22 wages due to discharged and quitting employees, for all hours worked when due, and requiring  
23 Defendants to keep accurate track of all time Plaintiffs and Class Members work;

24 4. A temporary, preliminary, and permanent injunction requiring Defendants to provide  
25 Plaintiffs and Class Members all legally required meal periods and rest breaks and to pay an  
26 additional hour's pay for every day that a meal period or rest break is missed, untimely, or  
27 shortened, and requiring Defendants to keep accurate track of the time Plaintiffs and Class Members  
28 are provided and receive meal periods and rest breaks;



1           5. A temporary, preliminary, and permanent injunction requiring Defendants to provide  
2 Plaintiffs and Class Members all of the information required by California Labor Code §§226(a)  
3 and 1174 and IWC Wage Order 5-2001 §7;

4           6. A permanent injunction prohibiting Defendants from violating the California Labor  
5 Code and IWC Wage Order 5-2001, and committing unlawful and unfair business practices  
6 proscribed by California Business & Professions Code §17200 et seq.;

7           7. A declaratory judgment that Defendants have knowingly and intentionally violated the  
8 following provisions of law:

- 9           a. California Labor Code §§204, 206, 223, and 1195.5 by failing to pay full wages when  
10 due for all hours worked;
- 11           b. California Labor Code §§510 and 1194(a) and IWC Wage Order 5-2001 §3, by failing  
12 to provide premium wages for work in excess of eight hours per workday or 40 hours  
13 per workweek;
- 14           c. California Labor Code §§1182.12, 1194(a), 1194.2(a), and 1197 and IWC Wage Order  
15 5-2001 §4, by failing to pay at least the California minimum wage;
- 16           d. California Labor Code §§226.7 and 512 and IWC Order 5-2001 §§11 and 12, by failing  
17 to provide all required meal periods and rest breaks and failing to compensate  
18 employees for missed, untimely, or shortened meal periods and rest breaks;
- 19           e. California Labor Code §1174 and IWC Wage Order No. 9-2001 §7, by failing to  
20 maintain and provide employees with access to complete and accurate records;
- 21           f. California Labor Code §226, by failing to provide the information required  
22 semimonthly or with each payment of wages;
- 23           g. California Labor Code §§201-203, by willfully failing to make timely payment of the  
24 full wages due to workers who quit or have been discharged; and
- 25           h. California Business and Professions Code §§17200-08, by violating the provisions set  
26 forth in subparagraphs (a)-(g);
- 27           8. An award of restitution or damages in the amount of unpaid wages, overtime, minimum  
28 wage compensation (plus liquidated damages pursuant to California Labor Code §1194.2), and

1 unlawful deductions from wages (or liquidated damages pursuant to California Labor Code  
2 § 226(e), whichever is greater), including interest thereon, subject to proof at trial;

3 9. An award of statutory penalties pursuant to California Labor Code §§203, 226.3, 558,  
4 1174.5, 1197.1, and 2698-99, and California Business & Professions Code §17206, subject to proof  
5 at trial;

6 10. An award of penalties for failure to pay full wages when due pursuant to California  
7 Labor Code §§206, 210, and 225.5 subject to proof at trial;

8 11. An award of waiting time penalties as to Plaintiff Schuetz and those Class Members  
9 who have quit or been discharged, pursuant to California Labor Code §203, subject to proof at trial;

10 12. An award of restitution of all amounts owed in unpaid wages, overtime, minimum wage  
11 compensation, and unlawful deductions from wages, and interest thereon, in an amount according to  
12 proof at trial, pursuant to California Business & Professions Code §17203;

13 13. Disgorgement of profits and all other appropriate equitable relief authorized by  
14 California Business & Professions Code §17203;

15 14. Prejudgment and postjudgment interest on all sums awarded;

16 15. Attorneys' fees and litigation expenses in an amount the Court determines to be  
17 reasonable, pursuant to Labor Code §§216(b), 218.5, 226(h), 1194(a), and 2699(g)(1), and  
18 California Code of Civil Procedure §1021.5, and such other provisions as may be applicable.

19 16. Costs of suit; and

20 17. Such other and further relief as is equitable, just, and proper.

21 Dated: March 12, 2014

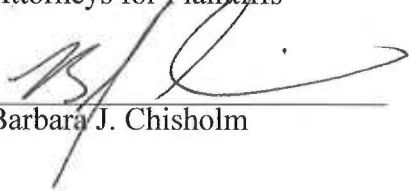
Respectfully submitted,

22 MICHAEL RUBIN  
23 BARBARA J. CHISHOLM  
24 MATTHEW J. MURRAY  
Altshuler Berzon LLP

25 JOSEPH P. SELLERS  
26 ABIGAIL E. SHAFROTH  
Cohen Milstein Sellers & Toll, PLLC

27 Attorneys for Plaintiffs

28 By:

  
Barbara J. Chisholm

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs, on behalf of themselves and similarly situated McDonald's employees, hereby  
3 demand a jury trial on all causes of action and claims with respect to which they have a right to jury  
4 trial.

5 Dated: March 12, 2014

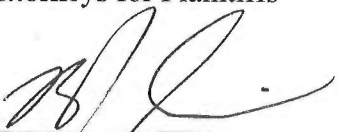
6 Respectfully submitted,

7 MICHAEL RUBIN  
8 BARBARA J. CHISHOLM  
9 MATTHEW J. MURRAY  
10 Altshuler Berzon LLP

11 JOSEPH P. SELLERS  
12 ABIGAIL E. SHAFROTH  
13 Cohen Milstein Sellers & Toll, PLLC

14 Attorneys for Plaintiffs

15 By:

16   
17 \_\_\_\_\_  
18 Barbara J. Chisholm  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28