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MATCO TOOLS CORPORATION

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 EMANUEL AGUILERA, ROCIO AGUILERA,
and SIMON GORO, individuals, on behalf of
13 themselves and all others similarly situated,

14 Plaintiffs,

15 vs.

16 MATCO TOOLS CORPORATION, a Delaware
corporation; and DOES 1 through 100, inclusive
17 ,

18 Defendants.

Case No.

**DEFENDANT MATCO TOOLS
CORPORATION'S NOTICE OF
REMOVAL OF CIVIL ACTION TO THE
UNITED STATES DISTRICT COURT**

**[CLASS ACTION FAIRNESS ACT OF
2005]**

Complaint filed: December 7, 2018

Removal from Superior Court of California,
County of Alameda; Case No.: RG18931359

1 similar title and who performed work for the distributorship in California, and, who were not classified
2 as employees, between December 7, 2014 and the present (the “Spouse Class”); and (3) a sub-class
3 consisting of all members of the Distributor Class who obtained loans, notes or other financing from
4 Defendant with interest rates above ten percent (10.0%) (the “Usury Sub-Class”). (Ex. A, Complaint, ¶¶
5 2-4, 33-34.)

6 4. On December 20, 2018, Defendant was served with a copy of the Summons and
7 Complaint through personal service on their statutory agent for process. (Exh. A.) Defendant filed an
8 Answer to the Complaint in Superior Court of the State of California for the County of Alameda on
9 January 17. A true and correct copy of that Answer is attached hereto as **Exhibit B**. True and correct
10 copies of all remaining pleadings and orders served on Defendant in this case are attached hereto as
11 **Exhibit C**. In compliance with 28 U.S.C. section 1446(a), **Exhibits A-C** comprise a copy of all process,
12 pleadings, and orders served by or upon Defendant in this action.

13 **TIMELINESS OF REMOVAL**

14 5. This Notice of Removal is timely as it is filed within 30 days of service on Defendant of a
15 copy of the Summons and Complaint in this action. *See* 28 U.S.C. § 1446(b).

16 **ORIGINAL JURISDICTION: CLASS ACTION FAIRNESS ACT**

17 6. This Court has original jurisdiction of this action under the Class Action Fairness Act of
18 2005, codified in pertinent part at 28 U.S.C. section 1332(d)(2) (“CAFA”). As set forth below, this
19 action is properly removable pursuant to 28 U.S.C. section 1441(a), in that this Court has original
20 jurisdiction over the action, because the aggregated amount in controversy exceeds \$5,000,000,
21 exclusive of interest and costs, and the action is a class action in which at least one class member is a
22 citizen of a state different from that of any defendant. *See* 28 U.S.C. §§ 1332(d)(2) & (d)(6).
23 Furthermore, the number of putative class members is greater than 100. *See* 28 U.S.C. § 1332(d)(5)(B).
24 (Declaration of Mike Swanson, ¶¶ 4-8) (“Swanson Decl.”).

25 **Diverse Citizenship of the Parties**

26 7. CAFA requires only minimal diversity for the purpose of establishing federal
27 jurisdiction; that is, at least one purported class member must be a citizen of a state different from any
28

1 named defendant. 28 U.S.C. § 1332(d)(2)(A). In the instant case, Plaintiffs are citizens of a state that is
2 different from the state of citizenship of Defendant.

3 8. **Plaintiffs’ Citizenship.** Defendant is informed and believes, and on that basis alleges,
4 that Plaintiffs are currently residents of the State of California. (Ex. A, Complaint, ¶¶ 8-10 (alleging that
5 Plaintiffs are, and have been at all relevant times, residents of California).) To establish citizenship for
6 diversity purposes, a natural person must be both (a) a citizen of the United States, and (b) a domiciliary
7 of one particular state. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983).
8 Residence is *prima facie* evidence of domicile. *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520
9 (10th Cir. 1994). Plaintiff Goro operated a distributorship in the San Diego, California, area pursuant to
10 a distributor agreement with Defendant, from approximately June 2018 until November 2018.
11 (Swanson Decl., ¶ 12.) The documentation submitted by Plaintiff Goro to Defendant in approximately
12 June 2018 in connection with his application to operate a distributorship states that Plaintiff Goro resides
13 in El Cajon, California. (*Id.*) Plaintiff Emanuel Aguilera operated a distributorship in the Los Angeles,
14 California, area pursuant to a distributor agreement with Defendant, from approximately June 2018 until
15 November 2018. (*Id.*, ¶ 13.) The documentation submitted by Plaintiff Aguilera to Defendant in
16 approximately May and June 2018 in connection with his application to operate a distributorship states
17 that Plaintiff Aguilera and Plaintiff Rocio Aguilera (who co-signed the distributor agreement as a
18 spouse) reside in Fountain Valley, California. (*Id.*) Ms. Aguilera further alleges that she worked for Mr.
19 Aguilera’s distributorship. (Ex. A, Complaint, ¶¶ 9, 28-29, 89-109.) Defendant is thus informed and
20 believes, and on that basis alleges, that Plaintiffs were domiciled in California while working pursuant to
21 distributor agreements with Defendant, and therefore, Plaintiffs are, or were at the institution of this civil
22 action, citizens of California.

23 9. **Defendant’s Citizenship.** Pursuant to 28 U.S.C. section 1332(c)(1), “[f]or purposes of
24 this subsection and section 1453 [28 U.S.C. § 1453], [a] corporation shall be deemed to be a citizen of
25 any State by which it has been incorporated and of the State where it has its principal place of business.”
26 To determine a corporation’s principal place of business for diversity purposes, the appropriate test is the
27 “nerve center” test. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010). Under the “nerve center” test,
28 the principal place of business is located in the state where the “corporation’s officers direct, control, and

1 coordinate the corporation's activities" and where the corporation maintains its headquarters. *Id.* Other
2 relevant factors include where corporate executives maintain their offices, where corporate policies and
3 procedures are made, and where primary corporate functions are based. *See Ho v. Ikon Office Solutions,*
4 *Inc.*, 143 F. Supp. 2d 1163, 1168 (N.D. Cal. 2001) (nerve center found to be location where
5 corporation's headquarters were located, where the corporate officers worked, and from where corporate
6 policies and procedures were made).

7 10. Defendant is now, and at all times since this action commenced has been, incorporated
8 under the laws of the state of Delaware. (Swanson Decl., ¶ 3.) Additionally, Defendant's principal
9 place of business is located in Stow, Ohio. (*Id.*) Stow, Ohio is the site of Defendant's corporate
10 headquarters and executive offices, where its high level officers direct, control, and coordinate
11 Defendant's activities. (*Id.*) Furthermore, Defendant's administrative functions (e.g., finance, human
12 resources, payroll) are performed in Stow, Ohio. (*Id.*) Accordingly, Defendant's principal place of
13 business is Stow, Ohio under the "nerve center" test. *See Hertz Corp.*, 130 S. Ct. at 1192. Therefore, for
14 diversity of citizenship purposes, Defendant is, and has been at all times since this action commenced, a
15 citizen of the State of Ohio. 28 U.S.C. § 1332(c)(1).

16 11. **Doe Defendants.** The presence of Doe defendants in this case has no bearing on
17 diversity of citizenship for removal. 28 U.S.C. § 1441(a) ("For purposes of removal under this chapter,
18 the citizenship of defendants sued under fictitious names shall be disregarded."); *Fristoe v. Reynolds*
19 *Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join in a
20 removal petition). Thus, the existence of Doe defendants does not deprive this Court of jurisdiction.
21 *Abrego v. Dow Chemical Co.*, 443 F.3d 676, 679-80 (9th Cir. 2006) (rule applied in CAFA removal).

Amount In Controversy

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23 12. CAFA requires that the amount in controversy exceed \$5,000,000, exclusive of interest
24 and costs. 28 U.S.C. § 1332(d)(2). Under CAFA, the claims of the individual members in a class action
25 are aggregated to determine if the amount in controversy exceeds the sum or value of \$5,000,000. 28
26 U.S.C. § 1332(d)(6). In addition, Congress intended for federal jurisdiction to be appropriate under
27 CAFA "if the value of the matter in litigation exceeds \$5,000,000 either from the viewpoint of the
28 plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (e.g., damages,

1 injunctive relief, or declaratory relief.” Senate Judiciary Committee Report, S. Rep. No. 109-14, at 42
2 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3, 40. Moreover, the Senate Judiciary Committee's Report on
3 the final version of CAFA makes clear that any doubts regarding the maintenance of interstate class
4 actions in state or federal court should be resolved in favor of federal jurisdiction. S. Rep. No. 109-14,
5 at 42-43 (“[I]f a federal court is uncertain about whether ‘all matters in controversy’ in a purported class
6 action do not in the aggregate exceed the sum or value of \$5,000,000, the court should err in favor of
7 exercising jurisdiction over the case[...] Overall, new section 1332(d) is intended to expand
8 substantially federal court jurisdiction over class actions. Its provisions should be read broadly, with a
9 strong preference that interstate class actions should be heard in a federal court if properly removed by
10 any defendant.”).

11 13. The alleged amount in controversy in this class action, in the aggregate, exceeds
12 \$5,000,000. As noted in Paragraph 3, *supra*, Plaintiffs purport to represent two classes and a sub-class
13 (the putative Distributor Class, the putative Spouse Class and the putative Usury Sub-Class,
14 respectively). Between December 7, 2014 (which predates the filing of Plaintiffs’ lawsuit by four years)
15 and December 31, 2018, approximately 256 individuals had agreements with Defendant to operate
16 distributorships in California. (Swanson Decl., ¶ 4.) In the aggregate, these distributorships were active
17 for approximately 34,502 weeks between December 7, 2014 and December 31, 2018. (*Id.*) In addition,
18 approximately 163 California distributor agreements in effect between December 7, 2014 and December
19 31, 2018 were co-signed by a “spouse” or a person with another similar title. (*Id.*, ¶ 7.) In the
20 aggregate, these distributorships were active for approximately 15,122 weeks between December 7,
21 2014 and December 31, 2018. (*Id.*)

22 14. Plaintiffs allege that Defendant misclassified members of the putative Distributor Class
23 as independent contractors, and further, that Defendant should be treated as the employer of members of
24 the putative Spouse Class. (Ex. A, Complaint, ¶¶ 2-3, 11, 39.) As a result of the alleged
25 misclassification, Plaintiffs contend that the putative Distributor Class incurred unreimbursed business
26 expenses, worked unpaid overtime, and, did not receive meal or rest breaks. Further, Plaintiffs allege
27 that Defendant made unlawful deductions from the wages of putative Distributor Class members, failed
28 to provide them with accurate wage statements, failed to timely pay putative class members’ final

1 wages, and, violated California’s usury laws by charging interest rates in excess of the legal maximum
2 on loans given to some putative Usury Sub-Class members. (*Id.*, ¶¶ 2, 26-27, 30, 41-88, 110-125.) In
3 addition, Plaintiffs allege that putative Spouse Class members are entitled to damages for minimum
4 wage violations and inaccurate wage statements. (*Id.*, ¶¶ 3, 28, 89-109.) Plaintiffs seek attorneys’ fees
5 on all causes of action. (*Id.*, Prayer for Relief.)

6 15. As set forth below, the amount in controversy implicated by the class-wide allegations
7 easily exceeds \$5,000,000. **All calculations supporting the amount in controversy are based on the**
8 **Complaint’s allegations, assuming, without any admission, the truth of the facts alleged and**
9 **assuming liability is established.** When the amount in controversy is not apparent from the face of the
10 Complaint, a defendant may state underlying facts supporting its assertion that the amount in
11 controversy exceeds the jurisdictional threshold. *Abrego*, 443 F.3d at 682-83.

12 16. **Labor Code § 2802.** Labor Code section 2802(a) provides that, “An employer shall
13 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
14 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of
15 the employer[.]”

16 17. The Complaint alleges that members of the Distributor Class “incurred business expenses
17 on [Defendant’s] behalf [and] were never reimbursed because they were misclassified as independent
18 contractors under [Defendant’s] uniform Distributor Agreement. (Ex. A, Complaint, ¶ 43.)

19 18. The alleged limitations period for the Distributor Class’s potential claims under Labor
20 Code section 2802 would be from December 7, 2014 (four years before the Complaint was filed¹) to the
21 present. As noted in Paragraph 14, *supra*, between December 7, 2014 and December 31, 2018,
22 approximately 256 individuals had agreements with Defendant to operate distributorships in California
23 (Swanson Decl., ¶ 4.) Moreover, in the aggregate, these distributorships were active for approximately
24 34,502 weeks between December 7, 2014 and December 31, 2018. (*Id.*)

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28 ¹ Plaintiffs’ Business & Professions Code section 17200 (“UCL”) claim is premised, in part, on
unreimbursed business expenses; a four year statute of limitations is therefore applicable for purposes of
determining the amount in controversy. *See* Bus. & Prof. Code § 17208.

1 19. Plaintiffs allege that putative Distributor Class members were required to incur the
2 expense of payments for vehicles used in their work (known as “mobile stores”), and further, that
3 Defendant did not reimburse them for these payments. (Ex. A, Complaint, ¶¶ 15, 27.)

4 20. In approximately 2017, which is roughly the mid-point of the alleged class period,
5 Defendant estimated in its Franchise Disclosure Document (“FDD”) that the start-up cost of a “mobile
6 store” to distributors was between \$5,000 and \$125,000. (Swanson Decl., ¶ 9, Ex. 1.) The median of
7 \$5,000 and \$125,000 and \$125,000 is \$65,000. Assuming each of the 256 individuals who had
8 distributor agreements with Defendant in California during the relevant time period incurred the median
9 expense of \$65,000 associated with the procurement of a “mobile store,” the alleged amount in
10 controversy for just this facet of the expense reimbursement claim would be \$16,640,000 (256
11 individuals x \$65,000), which alone exceeds the amount in controversy required under CAFA.

12 21. Plaintiffs also allege that putative Distributor Class members were not reimbursed for
13 mileage. (Ex. A, Complaint, ¶ 27.) They further allege that these individuals engage in extensive travel
14 through their work, including “weekly in-person customer sales calls,” “customer deliveries” and “on-
15 site advertising” within a defined geographic territory. (*Id.*, ¶¶ 2, 15, 17.)

16 22. In 2017, which is roughly the mid-point of the class period, the IRS’s standard rate for
17 mileage reimbursement was \$0.545 per mile. *See* [https://www.irs.gov/newsroom/standard-mileage-](https://www.irs.gov/newsroom/standard-mileage-rates-for-2018-up-from-rates-for-2017)
18 [rates-for-2018-up-from-rates-for-2017](https://www.irs.gov/newsroom/standard-mileage-rates-for-2018-up-from-rates-for-2017).

19 23. Assuming the 256 individuals who had distributor agreements with Defendant in
20 California during the relevant time period traveled 125 miles per week for business purposes during the
21 collective 34,502 weeks in which they had distributor agreements with Defendant, the alleged amount in
22 controversy for this facet of the expense reimbursement claim would be \$2,350,448.75 [(34,502 weeks x
23 125) x \$0.545].

24 24. Although Defendant denies Plaintiffs’ allegations or that they or the putative Distributor
25 Class are entitled to any relief, based solely on the forgoing calculations for reimbursement of vehicle
26 payments and mileage, the aggregate amount in controversy for the putative class, exclusive of
27 attorneys’ fees, is \$18,990,448.75. Accordingly, Plaintiffs’ claim for expense reimbursements alone
28 exceeds the amount in controversy required under CAFA.

1 25. **Labor Code § 221.** Labor Code section 221 provides that, “It shall be unlawful for any
2 employer to collect or receive from an employee any part of wages theretofore paid by said employer to
3 said employee.”

4 26. Plaintiffs allege that Defendant made numerous deductions from the wages of putative
5 Distributor Class members, including, for example, for initial franchise fees, software licensing fees, and
6 other expenses. (Ex. A, Complaint, ¶¶ 26, 50.)

7 27. The alleged limitations period for the Distributor Class’s potential claims under Labor
8 Code section 221 would be from December 7, 2014 (four years before the Complaint was filed²) to the
9 present. As noted *supra*, approximately 256 individuals had agreements with Defendant to operate
10 distributorships in California. (Swanson Decl., ¶ 4.) In the aggregate, these distributorships were active
11 for approximately 34,502 weeks between December 7, 2014 and December 31, 2018. (*Id.*)

12 28. In approximately 2017, which is roughly the mid-point of the alleged class period,
13 Defendant stated in its FDD that the cost of an initial franchise fee to distributors was \$7,000. (Swanson
14 Decl., ¶ 10, Ex. 1.) Assuming each of the 256 individuals who had distributor agreements with
15 Defendant in California during the relevant time period had \$7,000 “deducted from their wages” for
16 their initial franchise fee, the alleged amount in controversy for just this facet of the unlawful deductions
17 claim would be \$1,792,000 (256 individuals x \$7,000).

18 29. **Labor Code § 226.** Labor Code section 226(e) provides that, “An employee suffering
19 injury as a result of a knowing and intentional failure by an employer to [provide compliant wage
20 statements] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
21 period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
22 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000)[.]”

23 30. Plaintiffs allege that Defendant did not provide accurate wage statements to Plaintiffs,
24 nor the putative members of the Distributor Class or the Spouse Class. (Ex. A, Complaint, ¶¶ 52-56, 94-
25 98.)

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28 ² Plaintiffs’ UCL claim is premised, in part, on purportedly unlawful deductions; a four year statute of
limitations is therefore applicable for purposes of calculating the amount in controversy. *See* Bus. &
Prof. Code § 17208.

1 31. The alleged limitations period for the putative Distributor Class's potential claims under
2 Labor Code section 226 would be from December 7, 2017 (one year before the Complaint was filed³) to
3 the present.

4 32. Between December 7, 2017 and December 31, 2018, approximately 198 individuals had
5 agreements with Defendant to operate distributorships in California. (Swanson Decl., ¶ 6.)

6 33. Between December 7, 2017 and December 31, 2018, the 198 members of the putative
7 Distributor Class worked approximately 14,927 biweekly periods. Thus, assuming for this exercise that
8 wage statements were issued biweekly, the amount in controversy for Plaintiffs' third cause of action for
9 wage statement penalties is \$1,482,800 [(\$100 x 14,927 biweekly periods) - (\$50 for the initial biweekly
10 periods x 198 initial biweekly periods)].

11 34. From December 7, 2017 to the present, there are approximately 121 individuals who co-
12 signed distributor agreements with Defendant in California as a spouse or another similar title.
13 (Swanson Decl., ¶ 8.)

14 35. Between December 7, 2017 and December 31, 2018, the 121 members of the putative
15 Spouse Class worked approximately 6,354 biweekly periods. Thus, assuming for this exercise that wage
16 statements were issued biweekly, the amount in controversy for Plaintiffs' tenth cause of action for wage
17 statement penalties is \$629,350 [(\$100 x 6,354 biweekly periods) - (\$50 for the initial biweekly periods
18 x 121 initial biweekly periods)].

19 36. **Unpaid Overtime Compensation.** Labor Code section 510 provides that, "Any work in
20 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek...shall
21 be compensated at the rate of no less than twice the regular rate of pay for an employee."

22 37. Plaintiffs allege that members of the putative Distributor Class "work well over 8 hours,
23 five days per week, and well over 40 hours per week to complete the work assigned to them by
24 [Defendant]," but do not receive overtime compensation. (Ex. A, Complaint, ¶¶ 2, 60.)

25 38. For purposes of this exercise, Defendant assumes (but does not admit) that, consistent
26 with Plaintiffs' allegation that such individuals work "well over 8 hours, five days per week," members
27 of the putative Distributor Class worked 9.5 hours per day, five days a week, meaning they would be
28

³ See Cal. Code Civ. Proc. § 340(a).

1 entitled to 7.5 hours of overtime compensation per week (1.5 hours x 5 days). Moreover, Defendant
2 assumes that these individuals earned \$10.00 per hour, which is the California minimum wage in effect
3 in 2017 (which is roughly the mid-point of the alleged class period). *See*
4 <https://www.dir.ca.gov/iwc/MinimumWageHistory.htm>.

5 39. The distributorships operated by the approximately 256 members of the putative
6 Distributor Class were active for approximately 34,502 weeks between December 7, 2014 and
7 December 31, 2018. (Swanson Decl., ¶ 4.) Assuming that allegedly unpaid time worked by the
8 individuals in California who had distributor agreements with Defendant during the four year statutory
9 period would be paid at the overtime rate, the reasonable estimate of the amount in controversy for
10 Plaintiffs' fourth cause of action is \$3,881,475 [(\$10.00 x 1.5 x 34,502 weeks * 7.5 hours)].

11 40. **Unpaid Meal and Rest Period Compensation.** Plaintiffs allege that Defendant did not
12 provide members of the putative Distributor Class with meal or rest breaks, nor with compensation in
13 lieu of breaks. (Ex. A, Complaint, ¶¶ 66, 71.) They seek premiums for each allegedly missed meal and
14 rest period by each putative class member. (*Id.*, ¶¶ 67, 72.)

15 41. Labor Code section 226.7 requires employers to pay an extra hour's pay to employees
16 who are not provided a meal period or a rest period. Case law makes clear that an employee is entitled
17 to an additional hour's wages per day, for both a rest and meal period violation each day. *Lyon v. W.W.*
18 *Grainger, Inc.*, 2010 WL 1753194, *4 (N.D. Cal. Apr. 29, 2010) (noting that Labor Code section 226.7
19 provides recovery for one meal break violation per work day and one rest break violation per work day).

20 42. Plaintiffs allege that members of the putative Distributor Class "work well over 8 hours,
21 five days per week." (Ex. A, Complaint, ¶ 60.) Accordingly, it is reasonable to assume that each of the
22 256 putative class members (*see* Swanson Decl., ¶ 4) seeks payment of 10 hours of premium pay for
23 allegedly missed meal and rest periods per week (5 meal period premiums and 5 rest period premiums)
24 during the alleged class period.⁴ *See* Cal. Lab. Code § 512(a) (employer must provide meal period if
25 employee works more than five hours); 8 Cal. Code Regs. 11040 § 12 (employer must provide rest
26 period for every four hours of work, or substantial fraction thereof); *Lyon*, 2010 WL 1753194 at *4

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28 ⁴ Plaintiffs' UCL claim is premised, in part, on allegedly missed meal and rest periods, and a four year
statute of limitations is therefore applicable for purposes of assessing the amount in controversy. *See*
Bus. & Prof. Code § 17208.

1 (noting that Labor Code section 226.7 provides recovery for one meal break violation per work day and
2 one rest break violation per work day). Moreover, for purposes of this exercise, Defendant assumes that
3 these individuals earned \$10.00 per hour, which is the California minimum wage in effect in 2017
4 (which is roughly the mid-point of the alleged class period). (*See* Paragraph 39, *supra*.)

5 43. Therefore, based on Plaintiffs' allegations that members of the putative Distributor Class
6 worked at least eight hours per day, five days per week, and did not receive meal or rest periods, the
7 amount in controversy on their meal and rest period claims between December 7, 2014 and December
8 31, 2018 is approximately \$3,450,200 (\$10.00 x 10 premium payments x 34,502 weeks).

9 44. **Labor Code § 203.** Labor Code section 203(a) provides that, "if an employer willfully
10 fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee
11 shall continue as a penalty" from the date such wages were due until the date paid. However, Labor
12 Code section 203(a) provides that such wages "shall not continue for more than 30 days."

13 45. Plaintiffs allege that Defendant willfully failed to pay all wages due to members of the
14 putative Distributor Class whose relationships with Defendant were terminated. (Ex. A, Complaint, ¶¶
15 75-76.)

16 46. The alleged limitations period for potential claims under Labor Code section 203 would
17 be from December 7, 2015 (three years before the Complaint was filed⁵) to the present. Between
18 December 7, 2015 and December 31, 2018, the distributorships operated by approximately 72
19 individuals who had agreements with Defendant to operate distributorships in California became
20 inactive. (Swanson Decl., ¶ 5.)

21 47. Plaintiffs allege that members of the putative Distributor Class "work well over 8 hours,
22 five days per week." (Ex. A, Complaint, ¶ 60.) Accordingly, it is reasonable to assume that of the
23 aforementioned 72 former distributors seeks eight hours of pay per day for the maximum penalty of 30
24 days' wages. Moreover, for purposes of this exercise, Defendant assumes that these individuals earned
25 \$10.00 per hour, which is the California minimum wage in effect in 2017 (which is roughly the mid-
26 point of the alleged class period). (*See* Paragraph 39, *supra*.)

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28 ⁵ *See Pineda v. Bank of America N.A.*, 50 Cal. 4th 1389 (2010) (three year statute of limitations applies to Labor Code section 203 claims).

1 48. Therefore, the amount in controversy on Plaintiffs' claim for waiting time penalties is
2 approximately \$172,800 (72 former distributors x 8 hours per day x \$10.00 per hour x 30 days).

3 49. **Unpaid Minimum Wage Compensation.** Plaintiffs allege that members of the putative
4 Spouse Class members "devote many hours per week to necessary elements of [Defendant's] business"
5 but do not receive any compensation from Defendant. (Ex. A, Complaint, ¶¶ 4, 24, 92.) Plaintiffs
6 therefore damages for allegedly unpaid minimum wages, and, liquidated damages pursuant to Cal. Lab.
7 Code § 1194.2. (*Id.*, ¶ 91-93.)

8 50. As noted above, 163 California distributor agreements in effect between December 7,
9 2014 and December 31, 2018 were co-signed by a "spouse" or a person with another similar title.
10 (Swanson Decl., ¶ 7.) In the aggregate, these distributorships were active for approximately for
11 approximately 15,122 weeks between December 7, 2014 and December 31, 2018. (*Id.*)

12 51. For purposes of this exercise, Defendant assumes that these 163 individuals earned
13 \$10.00 per hour, which is the California minimum wage in effect in 2017 (which is roughly the mid-
14 point of the alleged class period). (*See* Paragraph 39, *supra.*) Further, given Plaintiffs' allegation that
15 members of the putative Spouse Class "devote many hours per week to necessary elements of
16 [Defendant's] business," it is reasonable to assume these individuals worked at least 10 hours per week.
17 Based on the foregoing, the amount of allegedly unpaid wages would be approximately \$1,512,200
18 [\$10.00 per hour x 10 hours x 15,122 weeks]. The amount of an award of liquidated damages pursuant
19 to Labor Code section 1194.2 would be an equivalent sum. Accordingly, the amount in controversy for
20 this claim would be approximately \$3,024,400.

21 52. **Usury.** Plaintiffs further allege that Defendant charged more than 10 percent interest on
22 financing or loans for the purchase of inventory and other business expenditures provided to members of
23 the putative Usury Sub-Class in violation of California law. (Ex. A, Complaint, ¶¶ 30, 112-116.) They
24 thus seek to rescind all interest paid to Defendant, and, treble damages. (*Id.*, ¶ 116.)

25 53. In approximately 2017, which is roughly the mid-point of the alleged class period,
26 Defendant stated in its FDD that the estimated start-up cost of a distributor's initial inventory ranged
27 from \$63,000 to \$86,000. (Swanson Decl., ¶ 11, Ex. 1.) Further, Plaintiffs allege that the rates charged
28 to Plaintiffs Aguilera and Goro "ranged from 10.5 percent to 10.75 percent." (Ex. A, Complaint, ¶ 113.)

1 54. For purposes of this exercise, Defendant assumes that 64 members of the putative
2 Distributor Class are also members of the putative Usury Sub-Class (i.e., 25% of the putative Distributor
3 Class), and, that each such individual obtained \$63,000 in financing from Defendant, at 10.5 percent per
4 annum, for his or her initial inventory. Assuming that the term of each such individual's financing was
5 just six months, these individuals would have paid approximately \$3,307.50 in interest over the lives of
6 their loans. Accordingly, because Plaintiffs seek to rescind not only the amounts of interest paid by
7 putative Usury Sub-Class members, but also, treble damages, the amount in controversy for this facet of
8 Plaintiffs' twelfth cause of action is approximately \$846,720 [64 individuals x (\$3,307.50 x 4)].

9 55. Although Defendant denies Plaintiffs' allegations, or, that they or the putative classes are
10 entitled to any relief for the above-mentioned claims, based on the forgoing calculations, the aggregate
11 amount in controversy for the putative classes and the putative sub-class for all asserted claims,
12 exclusive of attorneys' fees, is at least \$34,270,193.75.⁶ This amount easily exceeds the \$5,000,000
13 amount in controversy required under CAFA.

14 56. **Attorneys' Fees.** Plaintiffs also seek attorneys' fees. (Exh. A, Complaint, Prayer for
15 Relief.) A reasonable estimate of fees likely to be recovered may be used in calculating the amount in
16 controversy. *Longmire v. HMS Host USA, Inc.*, 2012 WL 5928485, at *9 (S.D. Cal. Nov. 26, 2012)
17 (“[C]ourts may take into account reasonable estimates of attorneys' fees likely to be incurred when
18 analyzing disputes over the amount in controversy under CAFA.”) (citing *Brady v. Mercedes-Benz USA,*
19 *Inc.*, 243 F. Supp. 2d 1004, 1010-11 (N.D. Cal. 2002)); *Muniz v. Pilot Travel Centers LLC*, 2007 U.S.
20 Dist. LEXIS 31515, at *15 (E.D. Cal. Apr. 30, 2007) (attorneys' fees appropriately included in
21 determining amount in controversy).

22 57. In the class action context, courts have found that 25 percent of the aggregate amount in
23 controversy is a benchmark for attorneys' fees award under the "percentage of fund" calculation and
24 courts may depart from this benchmark when warranted. *See Campbell v. Vitran Exp., Inc.*, 471 F.
25 App'x 646, 649 (9th Cir. 2012) (attorneys' fees are appropriately included in determining amount in
26 controversy under CAFA); *Powers v. Eichen*, 229 F.3d 1249, 1256-57 (9th Cir. 2000); *Wren v. RGIS*

27 _____
28 ⁶ Notably, this figure does not include all allegedly reimbursable business expenses, nor all allegedly
unlawful deductions from wages, nor all items for which putative class members may have obtained
financing from Defendant.

1 *Inventory Specialists*, 2011 U.S. Dist. LEXIS 38667 at *78-84 (N.D. Cal. Apr. 1, 2011) (finding ample
2 support for adjusting the 25% presumptive benchmark upward and found that plaintiffs' request for
3 attorneys' fees in the amount of 42% of the total settlement payment was appropriate and reasonable in
4 the case); *Cicero v. DirecTV, Inc.*, 2010 U.S. Dist. LEXIS 86920 at *16-18 (C.D. Cal. July 27, 2010)
5 (finding attorneys' fees in the amount of 30% of the total gross settlement amount to be reasonable); *see*
6 *also In re Quintas Securities Litigation*, 148 F. Supp. 2d 967, 973 (N.D. Cal. 2001) (noting that in the
7 class action settlement context the benchmark for setting attorneys' fees is 25 percent of the common
8 fund). Even under the conservative benchmark of 25 percent of the total recovery, attorneys' fees on a
9 potential damages award could be as high as \$8,567,548.44 (\$34,270,193.75 x 25%).

10 58. Because diversity of citizenship exists, and the amount in controversy easily exceeds
11 \$5,000,000, this Court has original jurisdiction of this action pursuant to 28 U.S.C. section 1332(d)(2).
12 This action is therefore a proper one for removal to this Court pursuant to 28 U.S.C. section 1441(a).

13 59. To the extent that Plaintiffs have alleged any other claims for relief in the Complaint over
14 which this Court would not have original jurisdiction under 28 U.S.C. section 1332(d), the Court has
15 supplemental jurisdiction over any such claims pursuant to 28 U.S.C. section 1367(a).

16 **VENUE AND INTRADISTRICT ASSIGNMENT**

17 60. This action originally was brought in the Superior Court of the State of California,
18 County of Alameda. The County of Alameda is located within the jurisdiction of the San Francisco and
19 Oakland divisions of the United States District Court for the Northern District of California. Removal to
20 this Court is therefore proper pursuant to 28 U.S.C. sections 1441, 1446(a) and 84(a). Defendant,
21 however, reserves the right to seek a transfer of venue on the grounds that: a) Plaintiffs' claims are
22 covered by a valid forum-selection agreement designating an alternative forum for the litigation of their
23 potential claims; and b) Defendant is informed and believes that Plaintiffs are and have been domiciled
24 within, and worked within, the jurisdiction of the U.S. District Court for the Central District of
25 California and/or the U.S. District Court for the Southern District of California.

26 **NOTICE OF REMOVAL**

27 61. A true and correct copy of this Notice of Removal will be promptly served on Plaintiffs
28 and filed with the Clerk of the Superior Court of the State of California for the County of Alameda.

1 WHEREFORE, Defendant prays that this civil action be removed from the Superior Court of the
2 State of California for the County of Alameda to the United States District Court for the Northern
3 District of California.

4
5 DATED: January 18, 2019

Respectfully submitted,
SEYFARTH SHAW LLP

7 By: /s/ Eric M. Lloyd
8 Christian J. Rowley
9 Matthew A. Goodin
Eric M. Lloyd

10 Attorneys for Defendant
11 MATCO TOOLS CORPORATION

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EXHIBIT A

12/20/18 1205

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

MATCO TOOLS CORPORATION, a Delaware corporation; and **DOES 1 through 100**, inclusive.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

EMANUEL AGUILERA, ROCIO AGUILERA, and SIMON GORO, individuals, on behalf of themselves and all others similarly situated.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**FILED BY FAX
ALAMEDA COUNTY**

December 07, 2018

CLERK OF
THE SUPERIOR COURT
By Shabra Iyamu, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida el secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): **ALAMEDA SUPERIOR COURT**

**Administration Building, Fourth Floor
1221 Oak Street, Oakland, CA 94612**

CASE NUMBER:
(Número del Caso):

RG18931359

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
NICHOLAS & TOMASEVIC, 225 Broadway, 19th Floor, San Diego, CA 92101 (619) 325-0492

DATE:
(Fecha) **December 07, 2018**

Clerk, by *J. Iyamu*
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

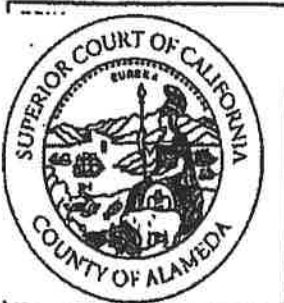
NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): **MATCO TOOLS CORPORATION**

- under:
- CCP 416.10 (corporation)
 - CCP 416.20 (defunct corporation)
 - CCP 416.40 (association or partnership)
 - other (specify):
 - CCP 416.60 (minor)
 - CCP 416.70 (conservatee)
 - CCP 416.90 (authorized person)

4. by personal delivery on (date):



FILED BY FAX

ALAMEDA COUNTY

December 07, 2018

CLERK OF
THE SUPERIOR COURT
By Shabra Iyamu, Deputy

CASE NUMBER:

RG18931359

1 **NICHOLAS & TOMASEVIC, LLP**
 2 Craig M. Nicholas (SBN 178444)
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12 Attorneys for EMANUEL AGUILERA,
 13 ROCIO AGUILERA, and SIMON GORO,
 14 on behalf of themselves and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

15 EMANUEL AGUILERA, ROCIO
 16 AGUILERA, and SIMON GORO,
 17 individuals, on behalf of themselves and all
 18 others similarly situated,

Plaintiffs,

vs.

19 MATCO TOOLS CORPORATION, a
 20 Delaware corporation; and DOES 1 through
 21 100, inclusive,

Defendants.

Case No.

CLASS ACTION COMPLAINT FOR:

Distributor Class:

- (1) **FAILURE TO REIMBURSE EXPENSES [LAB. CODE, § 2802];**
- (2) **UNLAWFUL DEDUCTIONS FROM WAGES [LAB. CODE, §§ 221-223];**
- (3) **FAILURE TO PROVIDE ACCURATE Wage STATEMENTS [LAB. CODE, § 226];**
- (4) **FAILURE TO PAY OVERTIME [LAB. CODE, § 510];**
- (5) **FAILURE TO PROVIDE MEAL PERIODS [LAB. CODE, § 226.7]**
- (6) **FAILURE TO PROVIDE REST BREAKS [LAB. CODE, § 226.7]**
- (7) **FAILURE TO PAY WAGES WHEN DUE [LAB. CODE, §§ 201-203];**
- (8) **UNFAIR BUSINESS PRACTICES [BUS. & PROF. CODE, § 17200 ET SEQ.];**

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Spouse Class:

(9) FAILURE TO PAY WAGES [LAB. CODE, §§ 1194, 1197];

(10) FAILURE TO PROVIDE ACCURATE Wage STATEMENTS [LAB. CODE, § 226];

(11) UNFAIR BUSINESS PRACTICES [BUS. & PROF. CODE, § 17200 ET SEQ.];

Usury Sub-Class:

(12) USURY [CAL. CONST. ART. XV, § 1];

(13) VIOLATION OF UNFAIR COMPETITION LAW [BUS. & PROF. CODE, § 17200 ET SEQ.].

DEMAND FOR JURY TRIAL

EMANUEL AGUILERA, ROCIO AGUILERA, and SIMON GORO, individuals ("Mr. Aguilera," Mrs. Aguilera," "Mr. Goro," and collectively "Plaintiffs"), on behalf of themselves and all others similarly situated, bring this action against Defendant MATCO TOOLS CORPORATION, a Delaware corporation ("Matco" or "Defendant"), and DOES 1 through 100, inclusive, and alleges on information and belief as follows:

INTRODUCTION

1. Matco is a manufacturer and distributor of professional automotive repair tools and related equipment. Its primary customers are mechanical service professionals and the shops where these individuals work.

2. Under the guise of its "independent contractor" Distributor Agreement, Matco obtains the labor of "Distributor" employees like Mr. Goro and Mr. Aguilera to carry out necessary services within one of its many distribution channels—mobile distributorships (i.e., Matco shops built into mobile trucks driven by "Distributors"). These Distributors perform on-site advertising, sales, delivery, and maintenance-related tasks for Matco under its strict supervision and control. By refusing to recognize Distributors as employees, Matco cheats these individuals out of protections provided by California law such as overtime pay and reimbursement of business expenses. Matco's

1 misclassification of Distributors also robs the State of important employee tax revenue and gives
2 Matco an undue advantage over law-abiding competitors who bear the necessary expense
3 associated with employing similar workers.

4 3. Matco also acquires additional free labor from Distributors' Spouses like Mrs.
5 Aguilera whom Matco makes personally liable for the assigned tasks and obligations set out in
6 Matco's standard Distributor Agreement. Such individuals devote many hours per week to
7 necessary elements of Matco's business such as making sure Distributors have sufficient
8 equipment, that sales are properly processed and accounted for, and the like. Yet, these individuals
9 receive no compensation for the hours Matco employs them.

10 4. To make matters worse, Matco charges usurious interest rates on money it loans to
11 Distributor employees and their Spouses, like Plaintiffs, in connection with their operations under
12 the Distributor Agreement. In short, not only does Matco illegally require that Distributors and their
13 Spouses pay for Matco's business expenses, but it also charges illegal interest rates on money it
14 loans to these individuals for such expenses.

15 5. This Class Action seeks recovery for violations of California's Labor Code,
16 Industrial Welfare Commission Wage Orders ("Wage Orders"), Constitutional usury limits, and
17 Unfair Competition Law on behalf of Plaintiffs and similarly situated Distributors and Spouses in
18 California.

19 **JURISDICTION & VENUE**

20 6. This Court has subject matter jurisdiction to hear this case because monetary damages
21 and restitution sought herein resulting from Matco's conduct exceeds the jurisdictional minimum of
22 this Superior Court.

23 7. Venue is proper pursuant to Code of Civil Procedure, section 395.5, among other
24 sections. The wrongful conduct and liability complained of in this Class Action Complaint arose, at
25 least in part, in this County as some of the transactions that are the subject of this lawsuit occurred
26 here and Defendant has conducted and continues to conduct business in this County.

27
28

PARTIES

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2 8. Mr. Aguilera is and at all relevant times was a resident of California. He worked as a
3 Distributor for Matco in California from June 2018 through the present.

4 9. Mrs. Aguilera is and at all relevant times was a resident of California. She worked as
5 a Distributor "Spouse" for Matco in California from June 2018 through the present.

6 10. Mr. Goro is and at all relevant times was a resident of California. He worked as a
7 Distributor for Matco in California from June 2018 through November 2018.

8 11. Defendant Matco is a Delaware corporation with its principal place of business in
9 Stow, Ohio. On information and belief, it is authorized to carry out and does carry out business in
10 this County and is subject to personal jurisdiction in this County. On information and belief,
11 Defendant contracts with misclassified "independent contractor" Distributors and their Spouses who
12 work and reside in this County and are members of the proposed Classes (defined below).

13 12. Plaintiffs do not know the true names and/or capacities, whether individual, partners,
14 or corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason
15 sue said Defendants under fictitious names. Plaintiffs will seek leave to amend this Complaint when
16 the true names and capacities of these Defendants have been ascertained. Plaintiffs are informed and
17 believe and thereon allege that these Defendants are responsible in whole or in part for Plaintiffs'
18 alleged damages.

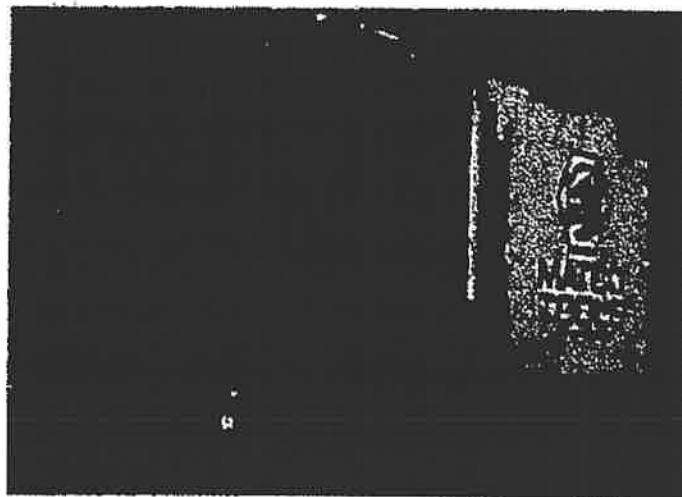
19 13. At all times mentioned, Defendants were the agents, alter egos, servants, joint
20 venturers, joint employers, or employees for each other. Defendants acted with the consent of the
21 other Co-Defendants and acted within the course, purpose, and scope of their agency, service, or
22 employment. All conduct was ratified by Defendants, and each of them.

23 **GENERAL ALLEGATIONS**

24 **A. Matco's Business Model**

25 14. Matco manufactures and distributes tools and related products like tool boxes and
26 service equipment ("Products"). It sells Products to mechanics, technicians, and other service
27 professionals as well as businesses providing these services.

1 15. One non-exclusive avenue through which Matco distributes its products is through
2 “mobile distributorships” operated by “Distributors” like Mr. Aguilera and Mr. Goro. These
3 Distributors must purchase and operate a mobile vehicle (or mobile store) stocked with Products
4 within a Matco-assigned geographic territory. The mobile store may only be used for the operation
5 of the distributorship and may not be altered without Matco’s express approval. The mobile store
6 and the Distributor’s uniform—which they pay for—both display the Matco brand and marks
7 (available at: <https://www.matcotools.com/franchise/investment/>):



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18 16. Matco also sells and distributes its products through non-mobile distributor channels
19 like ecommerce (i.e., online) and commercial sales representatives. These non-distributor sales
20 channels provide Products to the same type of clients Distributors service and also sell to vocational
21 schools along with wholesale customers. In short, Distributors carry out one among many sales and
22 distribution avenues within Matco’s tool sale and distribution operation.

23 **B. Matco’s Misclassified Distributors**

24 17. Matco strictly controls and regulates Distributors. Distributors must follow the terms
25 of Matco’s onerous Distributor Agreement and Matco’s Confidential Operating Manual, along with
26 other written instructions from Matco. Under these operating requirements and standards,
27 Distributors must make weekly in-person customer sales calls to Matco’s list of customers at their
28 worksites, make customer deliveries, maintain Matco’s inventory levels, hit minimum sales figures,

1 provide post-purchase product support and maintenance, and use Matco's required computer
2 programs, among other things.

3 18. Being a Distributor is a full-time job. Matco requires that Distributors personally
4 work full-time to diligently promote, market, and increase the sale of Products as well as Matco's
5 customer base. This includes Distributors being personally responsible for all sales, collections,
6 inventory management, and other aspects of the distributorship. Distributors cannot outsource these
7 responsibilities (except in limited instances to their Spouses) without Matco's approval.

8 19. Matco controls both the list of customers Distributors must service and the customers
9 that may be added to a Distributor's territory. Matco reserves the right to add to or modify this list
10 in its sole discretion.

11 20. Additionally, Distributors may only carry Matco products. Matco likewise reserves
12 the right to set the price of Products sold to Distributors and the price of Products that end-purchasers
13 pay, ultimately controlling what Distributors can earn from Product sales.

14 21. Matco provides mandatory training for Distributors, including a multi-day
15 classroom-based training course in Ohio, and goes on "ride-alongs" to ensure that Distributors
16 adhere to Matco's required customer service guidelines and other standards. Training includes
17 completion of Matco's Business System Training Program. During this training, Matco evaluates
18 and coaches Distributors on sales, collections, product knowledge, product display and vehicle
19 appearance, time management, and their business administration skills, among other things. Matco
20 rates the Distributors in these areas and makes plans for follow-up and improvement. It also reserves
21 the right to amend or modify Distributor training.

22 22. In addition to training, Distributors must attend regular in-person sales meetings
23 hosted by Matco.

24 23. Distributors' performance obligations do not end at making sales to Matco's list of
25 customers. Distributors also facilitate delivery of products and process customer returns. Likewise,
26 they carry out and fulfill Matco's warranty and repair obligations on Products sold to customers in
27 their territory. Matco broadly reserves its right to amend or modify its repair and warranty promises
28 to customers that Distributors must carry out. No compensation is paid for these non-sales based

1 services. After allocating for these, among other, non-sales tasks, Distributors spend less than half
2 of their working hours devoted to sales and cannot qualify for any sort of outside sales or other
3 exemption under California law.

4 24. Matco broadly reserves the right to terminate Distributors. For example, Matco may
5 terminate a Distributor for selling to customers that are not on Matco's list of customers, even if the
6 customer is within the Distributor's territory. It can also terminate Distributors for becoming
7 disabled and unable to meet performance obligations for a given period of time. Where a Distributor
8 fails to comply with any of Matco's onerous standards, Matco also retains the unlimited right to take
9 "other action" "in lieu of termination" as it deems appropriate.

10 25. Distributors and Spouses sign 10 year, renewable terms with Matco.

11 **C. Matco's Illegal Deductions and Failure to Reimburse**

12 26. Distributors pay for the right to work for Matco. This includes, but is not limited to,
13 paying an "initial fee" upon becoming a Distributor, paying for training and the cost of attending
14 training in Ohio, paying in "restock" returned Products that are not purchased and/or are returned by
15 Matco's customers, paying for shipping and handling of Products, and paying software and licensing
16 fees.

17 27. Distributors also shoulder many other unreimbursed business expenses for Matco
18 including but not limited to fuel/mileage, travel and meals, clothing and uniforms, mobile
19 distributorship truck payments, and business, vehicle, and health insurance.

20 **D. Spouse Obligations under Matco's Distributor Agreement**

21 28. As signatories to the Distributor Agreement, Spouses remain equally responsible for
22 carrying out and are bound by the Distributor Agreement and related Matco service standards
23 described above. Matco specifically tasks "Spouses," like Mrs. Aguilera, with assisting Distributors
24 with certain "back-end" operational aspects of the distributorship and Spouses remain financially
25 liable for amounts owed to Matco.

26 29. Mrs. Aguilera, like other Spouses, assists with inventory, accounting, orders, and
27 other aspects of the distributorship apart from the day-to-day in the field operations carried out by
28

1 Distributors like Mr. Aguilera. This occupies many hours of the Spouses' time each week, yet these
2 individuals do not receive any compensation from Matco.

3 **E. Matco's Usurious Lending**

4 30. In connection with the sale of distributorships, Matco encourages Distributors and
5 Spouses like Plaintiffs to obtain financing for the purchase of Product inventory and other business
6 expenses through Matco. Matco charges over 10% interest on these loans to Distributors in violation
7 of California law. California's usury limit under Article XV, section 1 of the California Constitution,
8 is the higher of 10 percent, or 5 percent plus the prevailing rate of the Federal Reserve Bank. For the
9 statutory periods at issue here, the cap has always been 10 percent.

10 31. Matco is not exempt from California's usury caps.

11 **CLASS ALLEGATIONS**

12 32. Pursuant to Code of Civil Procedure, section 382, Plaintiffs bring this lawsuit as a
13 class action on behalf of themselves and all other similarly situated members of the Classes, defined
14 below. This action satisfies the ascertainability, numerosity, commonality, typicality, adequacy,
15 predominance, and superiority requirements of class actions.

16 33 **Class Period.** The Class Period shall be defined as: from four years preceding the
17 date that the first Complaint in this action is filed, until the full resolution of this action, plus any
18 time that may be attributed to equitable or other forms of tolling.

19 34. Plaintiffs seek to represent the following Classes of persons:

20 i. Mr. Goro and Mr. Aguilera seek to represent the Distributor Class: All
21 individuals during the Class Period who personally worked as "Distributors,"
22 or under any similar title, for Matco in California and who were not classified
23 as employees.

24 ii. Mrs. Aguilera seeks to represent the Spouse Class: All individuals during the
25 Class Period who co-signed a Matco Distributor Agreement or similar
26 document as a "Spouse" or similar title and who performed work for the
27 distributorship in California.

28

1 iii. Mr. Goro and Mr. Aguilera seek to represent the Usury Sub-Class: All
2 members of the Distributor Class who obtained loans, notes, or similar
3 financing from Matco and paid interest at any rate above 10.0%.

4 35. These Classes do not include Defendant, its officers, and/or its directors; the Judge
5 to whom this case is assigned; or the Judge's immediate family or staff.

6 36. Plaintiffs reserve the right to amend the above Class and to add additional classes and
7 subclasses as appropriate based on investigation, discovery, and the specific theories of liability,
8 among other reasons.

9 37. **Numerosity.** The potential members of each Class as defined are so numerous that
10 joinder of all the members is impracticable. While the precise number of the members of each Class
11 has not been determined, Plaintiffs are informed and believe that there are hundreds of individuals
12 meeting the definition of each Class. Defendant has access to data sufficient to identify the members
13 of the Class.

14 38. **Adequacy of Representation.** The named Plaintiffs are fully prepared to take all
15 necessary steps to fairly and adequately represent the interests of the Classes defined above.
16 Plaintiffs' attorneys are ready, willing, and able to fully and adequately represent the Classes and
17 individual Plaintiffs. Plaintiffs' attorneys are highly experienced in employment Class action
18 litigation. Plaintiffs intend to prosecute this action vigorously.

19 39. **Common Questions of Law and Fact.** There are predominant common questions
20 and answers of law and fact and a community of interest amongst Plaintiffs and the claims of each
21 Class as follows:

22 i. Distributor Class:

- 23 a. Whether Defendant misclassified Distributors as "independent
24 contractors" instead of employees;
- 25 b. Whether Defendant failed to reimburse Distributors for expenses;
- 26 c. Whether Defendant made illegal deductions from Distributors
27 earnings;

- 1 d. Whether Distributors are outside sales exempt employees (to the
- 2 extent the Court finds they are employees);
- 3 e. Whether Defendant properly provided meal and rest breaks to
- 4 Distributors;
- 5 f. Whether Defendant paid Distributors all wages when due;
- 6 g. Whether Defendant provided proper wage statements to Distributors;
- 7 h. Whether Defendant failed to properly pay Distributors overtime; and
- 8 i. Whether Defendants engaged in an unlawful, unfair, and/or fraudulent
- 9 business practice or act in violation of Business and Professions Code,
- 10 section 17200 *et seq.* as it relates to Distributors.
- 11 ii. Spouse Class:
- 12 a. Whether Defendant is the “employer” of Spouses under California law
- 13 (i.e., whether Matco engaged Spouses, controlled Spouses’
- 14 wages/hours/working conditions, or suffered or permitted Spouses to
- 15 work);
- 16 b. Whether Defendant failed to pay for all hours worked by Spouses;
- 17 c. Whether Defendant paid Spouses all wages when due;
- 18 d. Whether Defendant provided proper wage statements to Spouses; and
- 19 e. Whether Defendant engaged in an unlawful, unfair, and/or fraudulent
- 20 business practice or act in violation of Business and Professions Code,
- 21 section 17200 *et seq.* as it relates to Distributors.
- 22 iii. Usury Sub-Class:
- 23 a. Whether Defendant’s interest rate on loans to Distributors violate
- 24 California’s Constitution and statutory usury limits; and
- 25 b. Whether Defendant is exempt from usury laws in California.
- 26 a. **Typicality.** The claims of Plaintiffs are typical of the claims of all members of the
- 27 Classes because Defendant applied and continues to apply its illegal classification, pay, and interest
- 28 practices to all Distributors and Spouses.

SECOND CAUSE OF ACTION

**Unlawful Deductions From Wages—Lab. Code, §§ 221-223 and Wage Orders
By Mr. Goro and Mr. Aguilera, On Behalf of Themselves and the Distributor Class
Against Matco and DOES 1-60**

47. Plaintiffs incorporate each and every allegation contained above.

48. Plaintiffs Mr. Goro and Mr. Aguilera bring this cause of action as a Class action on behalf of themselves and the Distributor Class.

49. Under Labor Code, section 221, it is "unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." This protection extends to deductions for mistakes in employees' work or other non-malicious conduct. The IWC Wage Orders further provide that the only circumstances under which an employer can make a deduction from an employee's wage are due to cash shortage, breakage, or loss of equipment if the employer can show that the shortage, breakage, or loss was the result of the employee's gross negligence or dishonest or willful act.

50. Despite this, Matco made and continues to make numerous deductions from the wages of their misclassified Distributors. Defendant, for example, unlawfully deducts money for franchise fees, software licensing fees, and other expenses.

51. Mr. Goro, Mr. Aguilera, and the Distributor Class are entitled to recover their damages, penalties, interest, costs, and attorneys' fees based on Matco's violations.

THIRD CAUSE OF ACTION

**Failure to Provide Accurate Wage Statements—Lab. Code, § 226 and Wage Orders
By Mr. Goro and Mr. Aguilera, On Behalf of Themselves and the Distributor Class
Against Matco and DOES 1-60**

52. Plaintiffs incorporate by reference every allegation contained above.

53. Plaintiffs Mr. Goro and Mr. Aguilera bring this cause of action as a Class action on behalf of themselves and the Distributor Class.

54. The purpose of Labor Code section 226 is to ensure the employees can determine whether they are being paid their wages in accordance with California law. Under Section 226(h), "[a]n employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorney's fees."

1 55. Matco violated the above statute by, among other things, failing to provide accurate
2 gross and net wages earned and hours worked on a paystub to Distributors.

3 56. Matco's violations of Section 226, and applicable Wage Orders are ongoing and will
4 continue until and unless this Court enters an injunction barring such violations. Plaintiffs Mr. Goro
5 and Mr. Aguilera, therefore, seek damages and injunctive relief pursuant to Labor Code, section 226,
6 subsections (e) and (g), along with penalties for past violations, including attorneys' fees and costs
7 incurred.

8 **FOURTH CAUSE OF ACTION**

9 **Failure to Provide Overtime—Lab. Code, § 510 and Wage Orders**
10 **By Mr. Goro and Mr. Aguilera, On Behalf of Themselves and the Distributor Class**
11 **Against Matco and DOES 1-60**

12 57. Plaintiffs incorporate by reference every allegation contained above.

13 58. Plaintiffs Mr. Goro and Mr. Aguilera bring this cause of action as a Class action on
14 behalf of themselves and the Distributor Class.

15 59. Labor Code, section 510, and Wage Orders require overtime pay of at least 1.5 times
16 an employee's regular rate of pay for all hours worked over 8 in a day or 40 in a week.

17 60. Distributors work well over 8 hours, five days per week, and well over 40 hours per
18 week to complete the work assigned to them by Matco. Despite this, they receive no overtime pay
19 in violation of California law.

20 61. There is no exemption to the overtime laws applicable to Distributors. Once properly
21 allocated, Distributors spend less than half of their time on sales-related activities as defined by
22 applicable California law and are not exempt from overtime pay.

23 62. Matco is liable to the Distributor Class for unpaid overtime, interest, reasonable
24 attorney's fees and costs, and any related statutory penalties.

25 **FIFTH CAUSE OF ACTION**

26 **Failure to Provide Meal Periods—Lab. Code § 226.7 and Wage Orders**
27 **By Mr. Goro and Mr. Aguilera, On Behalf of Themselves and the Distributor Class**
28 **Against Matco and DOES 1-60**

63. Plaintiffs incorporate by reference every allegation contained above.

SEVENTH CAUSE OF ACTION

**Failure to Pay Wages When Due—Lab. Code, §§201-203
By Mr. Goro and Mr. Aguilera, On Behalf of Themselves and the Distributor Class
Against Matco and DOES 1-60**

73. Plaintiffs incorporate by reference every allegation contained above.

74. Plaintiffs Mr. Goro and Mr. Aguilera bring this cause of action as a Class action on behalf of themselves and all members of the Distributor Class who are no longer working for Matco.

75. Matco failed to pay all wages due, including the above-mentioned missing wages that were improperly deducted, that went unreimbursed, that were not paid-for breaks or meal periods, upon separation of employment as required by Labor Code sections 201 through 203. As such, Mr. Goro, Mr. Aguilera, and other former Distributors in the Distributor Class are owed penalties amount to up to 30 days wages.

76. Matco's actions in this respect were willful within the meaning of Labor Code, section 203, entitling Plaintiffs Mr. Goro and Mr. Aguilera and the Class Members to recover waiting time penalties.

77. Plaintiffs Mr. Goro, Mr. Aguilera, and the Class Members are entitled to recover waiting time penalties and unpaid wages, as well as, interest, applicable penalties, attorneys' fees, and costs.

EIGHTH CAUSE OF ACTION

**Unfair Business Practices—Bus. & Prof. Code, § 17200 et seq.
By Mr. Goro and Mr. Aguilera, On Behalf of Themselves and the Distributor Class
Against Matco and DOES 1-60**

78. Plaintiffs incorporate by reference every allegation contained above.

79. Matco knowingly and willfully engaged in the unlawful practices described above, which include but are not limited to:

- a. Intentionally misclassifying its employee Distributors as "independent contractors;"
- b. Imposing unreimbursed business expenses on and illegally deducting wages from misclassified employees in violation of Labor Code, sections 221 and 2802;
- c. Failing to pay overtime to Distributor employees;

- d. Failing to provide adequate meal and rest breaks to Distributors;
- e. Failing to pay Distributors all wages due upon termination; and
- f. Failing to provide accurate pay statements to Distributors in violation of Labor Code, section 226.

80. Matco intended to, and did, profit from these illegal acts.

81. As a direct and proximate result of the above, Plaintiffs Mr. Goro and Mr. Aguilera and the Distributor Class have lost money or property, thereby entitling these individuals to restitution.

82. Pursuant to the Business and Professions Code, Plaintiff and Class Members are entitled to restitution of money or property acquired by Defendant by means of such unlawful business practices, in amounts not yet known, but to be ascertained at trial.

83. Pursuant to the Business and Professions Code, the Distributor Class and the public are also entitled to injunctive relief against Matco's ongoing continuation of such unlawful business practices, including public injunctive relief.

84. If Matco is not enjoined from engaging in the unlawful business practices described above, Plaintiffs Mr. Goro and Mr. Aguilera, Distributor Class members, and the public will be irreparably injured. The exact extent, nature, and amount of such injury is difficult to ascertain now.

85. The Distributor Class, including Mr. Goro and Mr. Aguilera, have no plain, speedy, and adequate remedy at law.

86. Matco will continue to engage in the unlawful business practices described above in violation of the Business and Professions Code, in derogation of the rights of Plaintiffs Mr. Goro and Mr. Aguilera, the Distributor Class, and of the public, if not enjoined by this Court.

87. The success of Plaintiffs Mr. Goro and Mr. Aguilera in this action will result in the enforcement of important rights affecting the public interest by conferring a significant benefit upon the public.

88. Private enforcement of these rights is necessary as no public agency has pursued enforcement. There is a financial burden incurred in pursuing this action, and it would be against the interests of justice to require the payment of attorneys' fees from any recovery in this action.

1 Plaintiffs Mr. Goro and Mr. Aguilera are therefore entitled to an award of attorneys' fees and costs
2 of suit under the "common fund," "substantial benefit," and other important doctrines.

3 **NINTH CAUSE OF ACTION**

4 **Failure to Pay Wages—Lab. Code, §§ 1194, 1197 and Wage Orders**
5 **By Mrs. Aguilera, On Behalf of Herself and the Spouse Class**
6 **Against Matco and DOES 60-80**

7 89. Plaintiffs incorporate by reference every allegation contained above.

8 90. Plaintiff Mrs. Aguilera brings this cause of action as a Class action on behalf of
9 herself and the Spouse Class.

10 91. California law requires that an employer compensate an employee for each hour
11 worked. (See Lab. Code, §§ 1194, 1197, 1198 and applicable Wage Orders.) Agreements to work
12 for less or no money are not permitted.

13 92. Despite engaging and suffering and permitting members of the Spouse Class, like
14 Mrs. Aguilera, to work within its tool manufacturing and sales business, Matco pays these
15 individuals no wages.

16 93. Mrs. Aguilera and the Spouse Class are entitled to recover their damages (including
17 liquidated damages under Labor Code, section 1194.2) penalties, interest, costs, and attorneys' fees
18 based on Matco's violations.

19 **TENTH CAUSE OF ACTION**

20 **Failure to Provide Accurate Wage Statements—Lab. Code, § 226 and Wage Orders**
21 **By Mrs. Aguilera, On Behalf of Herself and the Spouse Class**
22 **Against Matco and DOES 60-80**

23 94. Plaintiffs incorporate by reference every allegation contained above.

24 95. Plaintiff Mrs. Aguilera brings this cause of action as a Class action on behalf of
25 herself and the Spouse Class.

26 96. The purpose of Labor Code section 226 is to ensure the employees can determine
27 whether they are being paid their wages in accordance with California law. Under Labor Code,
28 section 226(h), "[a]n employee may also bring an action for injunctive relief to ensure compliance
with this section and is entitled to an award of costs and reasonable attorney's fees."

1 97. Matco violated the above statute by, among other things, failing to provide any wage
2 statements whatsoever for Mrs. Aguilera and the Spouse Class.

3 98. Matco's violations of Section 226, and applicable Wage Orders are ongoing and will
4 continue until and unless this Court enters an injunction barring such violations. Plaintiff, therefore,
5 seeks damages and injunctive relief pursuant to Labor Code, section 226, subsections (e) and (g),
6 along with penalties for past violations, including attorneys' fees and costs incurred.

7 **ELEVENTH CAUSE OF ACTION**

8 **Unfair Business Practices—Bus. & Prof. Code, § 17200 et seq.**
9 **By Mrs. Aguilera, On Behalf of Herself and the Spouse Class**
10 **Against Matco and DOES 60-80**

11 99. Plaintiffs incorporate by reference every allegation contained above.

12 100. Matco knowingly and willfully engaged in the unlawful practices described above,
13 which include but are not limited to:

- 14 a. Failing to pay the Spouse Class wages; and
- 15 b. Failing to provide accurate pay statements to the Spouse Class in violation of
16 Labor Code, section 226.

17 101. Matco intended to, and did, profit from these illegal acts.

18 102. As a direct and proximate result of the above, Mrs. Aguilera and the Spouse Class
19 have lost money or property, thereby entitling these individuals to restitution.

20 103. Pursuant to the Business and Professions Code, Plaintiff Mrs. Aguilera and Class
21 Members are entitled to restitution of money or property acquired by Matco by means of such
22 unlawful business practices, in amounts not yet known, but to be ascertained at trial.

23 104. Pursuant to the Business and Professions Code, the Spouse Class and the public are
24 also entitled to injunctive relief against Matco's ongoing continuation of such unlawful business
25 practices, including public injunctive relief.

26 105. If Matco is not enjoined from engaging in the unlawful business practices described
27 above, Plaintiff Mrs. Aguilera, Spouse Class members, and the public will be irreparably injured.
28 The exact extent, nature, and amount of such injury is difficult to ascertain now.

1 106. The Spouse Class, including Mrs. Aguilera, have no plain, speedy, and adequate
2 remedy at law.

3 107. Matco will continue to engage in the unlawful business practices described above in
4 violation of the Business and Professions Code, in derogation of the rights of Plaintiff Mrs. Aguilera,
5 the Spouse Class, and of the public, if not enjoined by this Court.

6 108. The success of Plaintiff Mrs. Aguilera in this action will result in the enforcement of
7 important rights affecting the public interest by conferring a significant benefit upon the public.

8 109. Private enforcement of these rights is necessary as no public agency has pursued
9 enforcement. There is a financial burden incurred in pursuing this action, and it would be against
10 the interests of justice to require the payment of attorneys' fees from any recovery in this action.
11 Plaintiff Mrs. Aguilera is therefore entitled to an award of attorneys' fees and costs of suit under the
12 "common fund," "substantial benefit," and other important doctrines.

13 **TWELFTH CAUSE OF ACTION**

14 **Usury—Cal. Const. Art. XV, § 1**

15 **By Mr. Goro and Mr. Aguilera, On Behalf of Themselves and the Usury Sub-Class
Against Matco and DOES 80-100**

16 110. Plaintiffs incorporate each and every allegation above.

17 111. Plaintiffs Mr. Goro and Mr. Aguilera bring this claim on behalf of themselves and
18 the Usury Sub-Class as a class action.

19 112. As described in more detail above, Matco provided financing or loans to Distributors
20 like Mr. Goro, Mr. Aguilera, and other members of the Usury Sub-Class in connection with their
21 distributorships.

22 113. Pursuant to the terms of the loans it makes, Matco charges interest to Distributors.
23 The rate charged is often over 10 percent. For Mr. Goro and Mr. Aguilera, rates ranged from 10.5
24 percent to 10.75 percent.

25 114. California's Constitution limits interest on loans to 10 percent. Anything above that
26 is illegal usury. (See Cal. Const. Art. XV, § 1 [the higher of 10 percent or 5 percent plus the
27 prevailing rate of the Federal Reserve Bank]; Civ. Code, § 1916 et seq. [as stated in *Penziner v. West*
28 *American Finance Co.* (1937) 10 Cal.2d 160].) Whereas many registered financial institutions, like

1 federally-chartered banks, are exempt from the 10 percent limit, Matco is *not* exempt under any
2 theory.

3 115. Matco intentionally and willfully entered into usurious lending contracts in
4 California. These usurious rates result in substantial injury to the Usury Sub-Class.

5 116. Plaintiffs Mr. Goro and Mr. Aguilera and the Usury Sub-Class have been damaged
6 in amounts to be proven at trial. They are entitled to and seek to recoup excessive interest paid under
7 the Matco loans, treble damages, and/or to rescind the interest component of their loans entirely.
8 These individuals also seek declaratory judgment that the interest provisions in Matco loans and
9 similar documents are void and that Matco was not entitled to charge and should have to reimburse
10 all interest paid on the notes.

11 **THIRTEENTH CAUSE OF ACTION**

12 **Violation of the Unfair Competition Law—Bus. & Prof. Code, § 17200 et seq.**
13 **By Mr. Goro and Mr. Aguilera, On Behalf of Themselves and the Usury Sub-Class**
14 **Against Matco and DOES 80-100**

15 117. Plaintiffs incorporate each and every allegation above.

16 118. Plaintiffs Mr. Goro and Mr. Aguilera bring this claim on behalf of themselves and
17 the Usury Sub-Class.

18 119. California's Unfair Competition Law, Business and Professions Code, section 17200
19 et seq., defines unfair business competition to include "unlawful, unfair, or fraudulent" acts or
20 practices. An unlawful practice violates any established state or federal law. An unfair practice,
21 among other things, offends or violates a legislatively declared policy.

22 120. The interest rates charged to members of the Usury Sub-Class are unlawful because
23 they violate California usury laws, including the California Constitution, as discussed above.

24 121. The interest rates charged to members of the Usury Sub-Class are unfair because they
25 violate California's policy capping interest on non-registered financial institutions at 10 percent.

26 122. Through the above mentioned acts and practices, Defendants have unlawfully,
27 unfairly, and fraudulently obtained and continue to obtain money from Mr. Goro, Mr. Aguilera, and
28 the Usury Sub-Class in California. These individuals and the general public have been injured and

1 have lost money or property as a result of Defendant's unfair competition. As such, they seek
2 restitution of these ill-gotten gains.

3 123. Mr. Goro and Mr. Aguilera also request, on behalf of themselves and the general
4 public, an order enjoining Matco from collecting interest and/or enjoining Matco's collection of
5 interest above the limits set by the California Constitution. Without an injunction, Mr. Aguilera and
6 members of the Usury Sub-Class with outstanding Matco loans will suffer irreparable harm in the
7 form of excessive interest payments. The exact extent, nature, and amount of such injury is difficult
8 to ascertain at this time. These individuals have no plain, speedy, and adequate remedy at law.

9 124. The success of this action will result in the enforcement of important rights affecting
10 the public interest by conferring a significant benefit upon the general public. Furthermore, private
11 enforcement of these rights is necessary as no public agency has pursued enforcement. There is a
12 financial burden incurred in pursuing this action, and it would be against the interests of justice to
13 require the payment of attorneys' fees and costs from any recovery in this action.

14 125. Mr. Goro, Mr. Aguilera, and the Usury Sub-Class also seek a declaratory judgment
15 that the interest provisions of the Matco loans are void and that Matco was not entitled to and should
16 have to reimburse all interest paid on the notes. (E.g., *Epstein v. Frank* (1981) 125 Cal.App.3d 111,
17 122.)

18 PRAYER FOR RELIEF

19 Plaintiff prays for judgment against Defendant, as follows:

- 20 1. For an order certifying the Classes as described herein, appointing Plaintiffs as class
21 representatives, and their counsel as class counsel;
- 22 2. For compensatory damages according to proof;
- 23 3. For enhanced damages, liquidated damages, and penalties as permitted under
24 prevailing law (except no PAGA penalties are sought at this time);
- 25 4. For declaratory relief that the interest provisions of Matco's loans and similar
26 documents are void;
- 27 5. For pre-judgment and post-judgment interest where allowable;
- 28 6. For costs of suit;

- 1 7. For injunctive relief, including public injunctive relief, as described herein;
- 2 8. For restitution as described herein;
- 3 9. For punitive damages, where appropriate;
- 4 10. For reasonable attorneys' fees and costs; and
- 5 11. For such other and further relief as this Court may deem just and proper.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff demands a trial by jury.

9
10 Respectfully submitted:

11 Dated: December 7, 2018

NICHOLAS & TOMASEVIC, LLP

12
13 By: 

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ENDORSED
FILED
ALAMEDA COUNTY

JAN 17 2019

SUE PESKO

7 Attorneys for Defendant
MATCO TOOLS CORPORATION
8
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA
12

13 EMANUEL AGUILERA, ROCIO AGUILERA,
and SIMON GORO, individuals, on behalf of
14 themselves and all others similarly situated,

Case No. RG18931359

15 Plaintiffs,

**DEFENDANT MATCO TOOLS
CORPORATION'S ANSWER TO
PLAINTIFFS' CLASS ACTION
COMPLAINT**

16 v.

17 MATCO TOOLS CORPORATION, a Delaware
corporation; and DOES 1 through 100 inclusive,
18

19 Defendants.
20

21 Defendant MATCO TOOLS CORPORATION ("Defendant") hereby answers Plaintiffs
22 EMANUEL AGUILERA, ROCIO AGUILERA, and SIMON GORO's ("Plaintiffs") Class Action
23 Complaint ("Complaint") as follows:

24 **GENERAL DENIAL**

25 Pursuant to California Code of Civil Procedure section 431.30(d), Defendant generally and
26 specifically denies each and every assertion and cause of action alleged in Plaintiffs' Complaint and,
27 without limiting the generality of the foregoing, denies that Plaintiffs or any member of the putative
28

BY FAX

1 classes alleged in the Complaint have been damaged in any amount, or at all, by reason of any act or
2 omission of Defendant, or any of its respective past or present agents, representatives and/or employees.

3 **SEPARATE DEFENSES**

4 In further answer to Plaintiffs' Complaint, Defendant alleges the following separate defenses. In
5 asserting these defenses, Defendant does not assume the burden of proof as to matters that, pursuant to
6 law, are Plaintiffs' and/or the putative class members' burden to prove.

7 **FIRST SEPARATE DEFENSE**

8 (Failure To State A Cause Of Action - All Causes of Action)

9 Plaintiffs' Complaint, and each purported cause of action therein, fails to state facts sufficient to
10 constitute a cause of action or state a claim upon which relief may be granted against Defendant.

11 **SECOND SEPARATE DEFENSE**

12 (Statute of Limitations - All Causes of Action)

13 Plaintiffs' purported causes of action on their own behalf and on behalf of the class they seek to
14 represent are barred, in whole or in part, by the applicable statutes of limitations, including, but not
15 limited to, the limitations contained in California Code of Civil Procedure sections 338(a), 339, 340, and
16 343, and California Business & Professions Code section 17208.

17 **THIRD SEPARATE DEFENSE**

18 (Unclean Hands - All Causes of Action)

19 Defendant alleges that to the extent Plaintiffs seek equitable relief, Plaintiffs' inequitable conduct
20 constitutes unclean hands and therefore bars the granting of such relief herein. Defendant asserts this
21 defense both as to Plaintiffs' individual claims and as to any alleged class-wide claims.

22 **FOURTH SEPARATE DEFENSE**

23 (Estoppel - All Causes of Action)

24 Plaintiffs, and the putative classes they seek to represent, are estopped by their conduct to assert
25 any cause of action against Defendant.

1 **FIFTH SEPARATE DEFENSE**

2 (Laches - All Causes of Action)

3 Plaintiffs have delayed inexcusably and unreasonably in the filing of this action, causing
4 substantial prejudice to Defendant, and thus, Plaintiffs' Complaint and each purported cause of action
5 alleged are barred by the equitable doctrine of laches. Defendant asserts this defense both as to
6 Plaintiffs' individual claims and as to any alleged class-wide claims.

7 **SIXTH SEPARATE DEFENSE**

8 (Release - All Causes of Action)

9 This Complaint is barred to the extent that Plaintiffs or any putative class member or other
10 putative beneficiaries of this action have given a release to Defendant, individually or collectively, in
11 exchange for adequate consideration.

12 **SEVENTH SEPARATE DEFENSE**

13 (Consent/Authorization - All Causes of Action)

14 Plaintiffs' Complaint, and each purported cause of action alleged therein, is barred, in whole or
15 in part, because the alleged conduct of Defendant complained of in the Complaint was approved,
16 consented to, and/or authorized by Plaintiffs and/or the putative class members through their actions,
17 omissions, and course of conduct.

18 **EIGHTH SEPARATE DEFENSE**

19 (Offset - All Causes of Action)

20 Defendant alleges that it has suffered damages by reason of the conduct of Plaintiffs and/or the
21 putative class members, and that it has the right of offset if any amount of money is owed or due to
22 Plaintiffs and/or the putative class members by way of damage. Further, to the extent that Plaintiffs or
23 any individual they seek to represent are entitled to reimbursements for business expenses, Defendant is
24 entitled to an offset for any remuneration previously provided to Plaintiffs or that individual.

1 **NINTH SEPARATE DEFENSE**

2 (Failure to Mitigate Damages - All Causes of Action)

3 Plaintiffs and/or the putative class members are not entitled to recover damages from Defendant
4 due to their continuous failure to make reasonable efforts to mitigate or minimize the damages that they
5 allegedly incurred.

6 **TENTH SEPARATE DEFENSE**

7 (Ratification - All Causes of Action)

8 Plaintiffs' Complaint, and each purported cause of action alleged therein, is barred on the ground
9 that Plaintiffs and the putative class members ratified Defendant's alleged actions.

10 **ELEVENTH SEPARATE DEFENSE**

11 (Standing - All Causes of Action)

12 Plaintiffs' Complaint, and each purported cause of action alleged therein, is barred to the extent
13 that Plaintiffs and putative class members lack standing to assert any of the causes of action contained in
14 the Complaint because they have not suffered an injury-in-fact.

15 **TWELFTH SEPARATE DEFENSE**

16 (Unjust Enrichment - First and Eighth Causes of Action)

17 Plaintiffs' and putative class members' claims are barred, in whole or in part, because Plaintiffs
18 and/or putative class members would be unjustly enriched by the relief sought.

19 **THIRTEENTH SEPARATE DEFENSE**

20 (Waiver - All Causes of Action)

21 Plaintiffs and putative class members have waived their right to assert the purported claims
22 contained in the Complaint against Defendant. Accordingly, Plaintiffs and putative class members are
23 barred from recovering any relief obtained in this action.

24 **FOURTEENTH SEPARATE DEFENSE**

25 (Adequate Remedy at Law - All Causes of Action)

26 Plaintiffs and/or the putative class members are not entitled to the equitable relief sought insofar
27 as they have an adequate remedy at law and/or cannot make the requisite showing to obtain injunctive
28 relief in a labor dispute.

1 **FIFTEENTH SEPARATE DEFENSE**

2 (Exempt Status - First through Eleventh Causes of Action)

3 At all times relevant and material herein, and assuming Plaintiffs and putative class members
4 were employees of Defendant (which Defendant denies), Plaintiffs and putative class members were
5 exempt from the overtime compensation requirements of the California Labor Code and the Industrial
6 Welfare Commission Wage Orders because Plaintiffs and putative class members were employed in an
7 exempt capacity within the meaning of the California Labor Code and Wage Orders, including, but not
8 limited to, pursuant to the Outside Salesperson exemption.

9 **SIXTEENTH SEPARATE DEFENSE**

10 (No Injury as a Result of Violation of Labor Code Section 226 - Third and Tenth Causes of Action)

11 Neither Plaintiffs, nor putative class members, have suffered injury as a result of any alleged
12 violation of Labor Code section 226 and they are therefore barred from recovering penalties.

13 **SEVENTEENTH SEPARATE DEFENSE**

14 (Not Hours Worked - Fourth, Eighth, Ninth and Eleventh Causes of Action)

15 Plaintiff's claims, and those of putative class members, are barred because the hours they allege
16 were worked are not "hours worked" within the meaning of applicable law.

17 **EIGHTEENTH SEPARATE DEFENSE**

18 (Arbitration - All Causes of Action)

19 To the extent that any recoveries sought by the Complaint are for claims subject to arbitration
20 agreements between Defendant and Plaintiffs or others, the recoveries are subject to the terms of (or the
21 claims must be brought in arbitration pursuant to) such agreements.

22 **NINETEENTH SEPARATE DEFENSE**

23 (*De Minimis* Doctrine - Fourth, Eighth, Ninth and Eleventh Causes of Action)

24 Plaintiffs' Complaint fails to the extent that, even if Plaintiffs or any putative class members
25 were not paid for all work performed, such work is not compensable pursuant to the *de minimis* doctrine.
26 *See, e.g., Rutti v. Lojack Corp.*, 596 F.3d 1046, 1057-58 (9th Cir. 2010) (noting that courts have
27 generally found that *de minimis* work of less than ten minutes per day is not compensable; "most courts
28 'have found daily periods of approximately ten minutes *de minimis* even though otherwise

1 compensable”); *Lindow v. United States*, 738 F.2d 1057, 1062, 1064 (9th Cir. 1984) (“[i]t is only when
2 an employee is required to give up a substantial measure of his time and effort that compensable
3 working time is involved”; “most courts have found daily periods of 10 minutes *de minimis* even though
4 otherwise compensable”).

5 **TWENTIETH SEPARATE DEFENSE**

6 (Conduct Reasonable And In Good Faith/Not Willful - Seventh Cause of Action)

7 To the extent a court holds that Plaintiffs or putative class members are entitled to damages or
8 penalties, which is specifically denied, Defendant acted, at all relevant times, on the basis of a good faith
9 and reasonable belief that it had complied fully with California wage and hour laws. Consequently,
10 Defendant’s conduct was not knowing or willful within the meaning of the California Labor Code and
11 neither waiting time penalties nor liquidated damages pursuant to Labor Code section 1194.2 can be
12 awarded.

13 **TWENTY-FIRST SEPARATE DEFENSE**

14 (Avoidable Consequences - First, Second, Fourth, Fifth, Sixth, Eighth, Ninth and Eleventh Causes of
15 Action)

16 To the extent Plaintiffs and putative class members were employed by Defendant (which
17 Defendant denies), Plaintiffs’ claims, and those of putative class members, are barred to the extent they
18 failed to mitigate any alleged harm by complying with Defendant’s policies.

19 **TWENTY-SECOND SEPARATE DEFENSE**

20 (Res Judicata, Collateral Estoppel, and Issue Preclusion - All Causes of Action)

21 Plaintiffs’ claims, and those of the individuals they seek to represent, are barred to the extent that
22 Plaintiffs or any individual they seek to represent was a claimant or plaintiff or could have been a
23 claimant or plaintiff in any prior litigation or administrative action in which the present claims were or
24 could have been asserted including, but not limited to, any prior class action, collective action, Private
25 Attorney General Act action, claim before the Division of Labor Standards Enforcement, or individual
26 civil case relating to Plaintiffs’ employment or the employment of any person they seek to represent.
27 Plaintiffs’ claims are further barred to the extent that the relief they seek in this action, or any claim on
28 an issue relevant to this action, were decided against Plaintiffs, against any individual they seek to

1 represent, or against any individual with similar interest in litigating the matter, in a prior judicial or
2 agency action.

3 **TWENTY-THIRD SEPARATE DEFENSE**

4 (Accord and Satisfaction - All Causes of Action)

5 The claims of Plaintiffs and/or any putative class member are barred, in whole or in part,
6 pursuant to an accord and satisfaction, and/or are barred to the extent that Plaintiffs and/or any putative
7 class members have entered into or are otherwise bound by compromise, settlement, or release
8 agreements regarding those claims.

9 **TWENTY-FOURTH SEPARATE DEFENSE**

10 (No Knowledge of Overtime, Unpaid Hours or Missed Meal or Rest Periods - Fourth, Fifth, Sixth,
11 Eighth, Ninth and Eleventh Causes of Action)

12 At all relevant times Defendant did not have actual or constructive knowledge about any
13 purported overtime or off-the-clock work allegedly performed by Plaintiffs and/or putative class
14 members. Plaintiffs' claims, and those of putative class members, are likewise barred to the extent that
15 Defendant also did not have actual or constructive knowledge that Plaintiffs or those they seek to
16 represent were denied any meal or rest periods. *See, e.g., Brinker v. Superior Court*, 53 Cal. 4th 1004,
17 1051-1052 (2012).

18 **TWENTY-FIFTH SEPARATE DEFENSE**

19 (Exemption from Usury Laws - Twelfth and Thirteenth Causes of Action)

20 The claims of Plaintiffs and/or any putative class member are barred, in whole or in part, because
21 one or more exemptions to California's usury laws applied to the transactions between Defendant and
22 Plaintiffs, or, those whom Plaintiffs purport to represent.

23 **TWENTY-SIXTH SEPARATE DEFENSE**

24 (Improper Forum/Venue - All Causes of Action)

25 Plaintiffs' choice of forum and venue is improper because Plaintiffs entered into distributor
26 agreements with Defendant containing valid forum-selection clauses designating Summit County or
27 Cuyahoga County, Ohio, as the forum for any and all proceedings initiated by Plaintiffs or Defendant.
28 In addition, Defendant is informed and believes that Plaintiff Goro is and has been domiciled in, and

1 operated a distributorship pursuant to an agreement with Defendant, in the San Diego, California, area.
2 Further, Defendant is informed and believes that Plaintiffs Emanuel and Rocio Aguilera are and have
3 been domiciled in the Orange County, California area, and operated a distributorship pursuant to an
4 agreement with Defendant in the Los Angeles, California area.

5 **TWENTY-SEVENTH SEPARATE DEFENSE**

6 (Choice of Law Provision - All Causes of Action)

7 The Complaint, and each and every claim asserted therein, is barred in whole or in part because
8 the parties have agreed that Ohio law governs their relationships.

9 **ADDITIONAL DEFENSES**

10 Defendant presently has insufficient knowledge or information on which to form a belief as to
11 whether it may have additional, as yet unstated, defenses available. Defendant reserves the right to
12 assert additional defenses in the event that discovery indicates that such defenses are appropriate.

13 **PRAYER**

14 WHEREFORE, Defendant prays for judgment as follows:

- 15 1. That Plaintiffs take nothing by their Complaint, and that this Complaint be dismissed
16 with prejudice;
- 17 2. That judgment be entered in favor of Defendant and against Plaintiffs;
- 18 3. For reasonable expenses and costs, including but not limited to reasonable attorneys'
19 fees, incurred in the defense of the Complaint; and
- 20 4. For such other further relief as this Court may deem just and proper.

21 DATED: January 17, 2019

SEYFARTH SHAW LLP

22
23 By: 

24 Christian J. Rowley
25 Matthew A. Goodin
26 Eric Lloyd
Attorneys for Defendant
MATCO TOOLS CORPORATION

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 560 Mission Street, 31st Floor, San Francisco, California 94105. On January 17, 2019, I served the within document(s):

DEFENDANT MATCO TOOLS CORPORATION'S ANSWER TO PLAINTIFFS' CLASS ACTION COMPLAINT

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed as set forth below.

by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

by placing the document(s) listed above, together with an unsigned copy of this declaration, in a sealed envelope or package provided by an overnight delivery carrier with postage paid on account and deposited for collection with the overnight carrier at San Francisco, California, addressed as set forth below.

by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

electronically by using the Court's ECF/CM System.

Craig M. Nicholas/Alex Tomasevic
Shaun Markley
NICHOLAS & TOMASEVIC, LLP
225 Broadway, 19th Floor
San Diego, CA 92101
(619) 325-0492
(5190 325-0496 (facsimile)
cnicholas@nicholaslaw.org
atomasevic@nicholaslaw.org
smarkley@nicholaslaw.org

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 17, 2019, at San Francisco, California.



Nancy J. Davilla

EXHIBIT C

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Craig M. Nicholas, Esq. (SBN 178444) Shaun Markley, Esq. (SBN 291785) NICHOLAS & TOMASEVIC, LLP 225 Broadway, 19th Floor San Diego, CA 92101 TELEPHONE NO: (619) 325-0492 FAX NO: (619) 325-0496 ATTORNEY FOR (Name): Plaintiffs Emanuel Aguilera, et al.		FOR COURT USE ONLY FILED BY FAX ALAMEDA COUNTY December 07, 2018 CLERK OF THE SUPERIOR COURT By Shabra Iyamu, Deputy CASE NUMBER: RG18931359
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1221 Oak Street MAILING ADDRESS: 1221 Oak Street CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Administration Building		CASE NUMBER: JUDGE: DEPT:
CASE NAME: Emanuel Aguilera, et al. v. Matco Tools Corporation, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) Non-PIP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (08) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): (13): Violations of Lab. Code, Bus. & Prof. Code, and UCL; Usury
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 7, 2018

Shaun Markley, Esq. (SBN 291785)

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

<i>Attorney or Party without Attorney:</i> NICHOLAS & TOMASEVIC, LLP 225 BROADWAY 19TH FLOOR San Diego, CA. 92101 Telephone No: (619) 325-0492		FILED BY FAX <small>Only</small> ALAMEDA COUNTY December 27, 2018 CLERK OF THE SUPERIOR COURT By Sonya Debaca, Deputy	
<i>Attorney for:</i> Plaintiff		<i>Ref. No. or File No.:</i> 46998	CASE NUMBER: RG18931359
<i>Insert name of Court, and Judicial District and Branch Court:</i> ALAMEDA COUNTY SUPERIOR COURT			
<i>Plaintiff:</i> EMANUEL AGUILERA, ROCIO AGUILERA AND SIMON GORO <i>Defendant:</i> MATCO TOOLS CORPORATION, a Delaware corporation			
PROOF OF SERVICE SUMMONS	<i>Hearing Date:</i>	<i>Time:</i>	<i>Case Number:</i> RG18931359

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS; CLASS ACTION COMPLAINT; CIVIL CASE COVER SHEET; NOTICE OF HEARING; ADR INFORMATION PACKET; BLANK STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR) AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS
3. a. Party served: MATCO TOOLS CORPORATION, a Delaware corporation c/o C.T. CORPORATION
 b. Person served: GABRIELA SANCHEZ, Agent for service of process
4. Address where the party was served: C.T. CORPORATION SYSTEM
 818 WEST SEVENTH STREET
 STE 930
 LOS ANGELES, CA 90017
5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Thu., Dec. 20, 2018 (2) at: 12:05PM
6. The "Notice to the Person Served" (on the Summons) was completed as follows:
 on behalf of: MATCO TOOLS CORPORATION, a Delaware corporation
 Under CCP 416.10 (corporation)
7. Person Who Served Papers:

<ol style="list-style-type: none"> a. GIL LE PERSONNIC b. COUNTY LEGAL ATTORNEY SERVICE 816 S. FIGUEROA STREET STE 100 LOS ANGELES, CA 90017 c. (213) 327-0014 	<p style="text-align: right;">Recoverable Cost Per CCP 1033.5(a)(4)(B)</p> <ol style="list-style-type: none"> d. The Fee for Service was: e. I am: (3) registered California process server <ol style="list-style-type: none"> (i) Owner (ii) Registration No.: PS1664 (iii) County: Santa Clara
--	--

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
 Date: Thu, Dec. 27, 2018

Nicholas & Tomasevic, LLP
Attn: Nicholas, Craig M.
225 Broadway, 19th Floor
San Diego, CA 92101

Matco Tools Corporation, a Delaware
corporation

**Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse**

<p>Aguilera Plaintiff/Petitioner(s) VS. Matco Tools Corporation, a Delaware corporation Defendant/Respondent(s) (Abbreviated Title)</p>	<p>No. <u>RG18931359</u> NOTICE OF HEARING</p>
--	---

To each party or to the attorney(s) of record for each party herein:
Notice is hereby given that the above-entitled action has been set for:
**Complex Determination Hearing
Case Management Conference**

You are hereby notified to appear at the following Court location on the date and time noted below:

Complex Determination Hearing:
DATE: 02/19/2019 TIME: 03:00 PM DEPARTMENT: 23
LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Case Management Conference:
DATE: 03/19/2019 TIME: 03:00 PM DEPARTMENT: 23
LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 3.250 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 23 issues tentative rulings on DomainWeb (www.alameda.courts.ca.gov/domainweb). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 267-6939. Please consult Rule 3.30(c) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 23.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by submitting directly to the E-Delivery Fax Number (510) 267-5732. No fee is charged for this service. For further information, go to Direct Calendar Departments at

<http://apps.alameda.courts.ca.gov/domainweb>.

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 23.

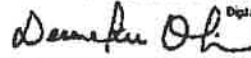
If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 23 by e-mail at Dept.23@alameda.courts.ca.gov or by phone at (510) 267-6939.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 12/10/2018

Chad Finke Executive Officer / Clerk of the Superior Court

By

 ^{Deputy}

Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 12/11/2018.

By

 ^{Deputy}

Deputy Clerk



Superior Court of California, County of Alameda Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- Indicating your preference on Case Management Form CM-110;
- Filing the Stipulation to ADR and Delay Initial Case Management Conference for 90 Days (a local form included with the information packet); or
- Agree to ADR at your Initial Case Management Conference.

QUESTIONS? Call (510) 891-6055. Email adrprogram@alameda.courts.ca.gov
Or visit the court's website at <http://www.alameda.courts.ca.gov/adr>

What Are The Advantages Of Using ADR?

- **Faster** – Litigation can take years to complete but ADR usually takes weeks or months.
- **Cheaper** – Parties can save on attorneys' fees and litigation costs.
- **More control and flexibility** – Parties choose the ADR process appropriate for their case.
- **Cooperative and less stressful** – In mediation, parties cooperate to find a mutually agreeable resolution.
- **Preserve Relationships** – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

What Is The Disadvantage Of Using ADR?

- **You may go to court anyway** – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.

What ADR Options Are Available?

- **Mediation** – A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options, and agree on a solution that is acceptable to all sides.
 - **Court Mediation Program:** Mediators do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediator's regular fees.

Some mediators ask for a deposit before mediation starts which is subject to a refund for unused time.

- **Private Mediation:** This is mediation where the parties pay the mediator's regular fees and may choose a mediator outside the court's panel.
- **Arbitration** – A neutral person (arbitrator) hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial and the rules of evidence are often relaxed. Arbitration is effective when the parties want someone other than themselves to decide the outcome.
- **Judicial Arbitration Program (non-binding):** The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. There is no fee for the arbitrator. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award and proceed to trial.
- **Private Arbitration (binding and non-binding)** occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.

Mediation Service Programs In Alameda County

Low cost mediation services are available through non-profit community organizations. Trained volunteer mediators provide these services. Contact the following organizations for more information:

SEEDS Community Resolution Center

2530 San Pablo Avenue, Suite A, Berkeley, CA 94702-1612

Telephone: (510) 548-2377 Website: www.seedsrc.org

Their mission is to provide mediation, facilitation, training and education programs in our diverse communities – Services that Encourage Effective Dialogue and Solution-making.

Center for Community Dispute Settlement

291 McLeod Street, Livermore, CA 94550

Telephone: (925) 373-1035 Website: www.trivalleymediation.com

CCDS provides services in the Tri-Valley area for all of Alameda County.

For Victim/Offender Restorative Justice Services

Catholic Charities of the East Bay: Oakland

433 Jefferson Street, Oakland, CA 94607

Telephone: (510) 768-3100 Website: www.cceb.org

Mediation sessions involve the youth, victim, and family members work toward a mutually agreeable restitution agreement.

ALA ADR-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY CASE NUMBER: _____
SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR) AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS	

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

This stipulation is effective when:

- All parties have signed and filed this stipulation with the Case Management Conference Statement at least 15 days before the initial case management conference.
- A copy of this stipulation has been received by the ADR Program Administrator, 1225 Fallon Street, Oakland, CA 94612.

1. Date complaint filed: _____ An Initial Case Management Conference is scheduled for:

Date: _____ Time: _____ Department: _____

2. Counsel and all parties certify they have met and conferred and have selected the following ADR process (check one):

- Court mediation Judicial arbitration
 Private mediation Private arbitration

3. All parties agree to complete ADR within 90 days and certify that:

- a. No party to the case has requested a complex civil litigation determination hearing;
- b. All parties have been served and intend to submit to the jurisdiction of the court;
- c. All parties have agreed to a specific plan for sufficient discovery to make the ADR process meaningful;
- d. Copies of this stipulation and self-addressed stamped envelopes are provided for returning endorsed filed stamped copies to counsel and all parties;
- e. Case management statements are submitted with this stipulation;
- f. All parties will attend ADR conferences; and,
- g. The court will not allow more than 90 days to complete ADR.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ (TYPE OR PRINT NAME) ► _____ (SIGNATURE OF PLAINTIFF)

Date:

_____ (TYPE OR PRINT NAME) ► _____ (SIGNATURE OF ATTORNEY FOR PLAINTIFF)

ALA ADR-001

PLAINTIFF/PETITIONER:	CASE NUMBER: .
DEFENDANT/RESPONDENT:	

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR DEFENDANT)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

EMANUEL AGUILERA, ROCIO AGUILEARA, and SIMON GORO, individuals, on behalf of themselves and all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Craig Nicholas/Alex Tomasevic/Shawn Markley, Nicholas & Tomasevic, 225 Broadway, 19th Flr., San Diego, CA 92101

DEFENDANTS

MATCO TOOLS CORPORATION, a Delaware corporation,

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

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

Attorneys (If Known) Christian Rowley/Matthew Goodin, Eric Lloyd, Seyfarth Shaw LLP, 560 Mission St., Ste. 3100, San Francisco, CA 94105

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

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

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

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
X 1 1
2 2
3 3
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation
PTF DEF
4 4
5 X 5
6 6

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes categories like Personal Injury, Civil Rights, Prisoner Petitions, Habeas Corpus, and others.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. sections 1441, 1446; 28 USC sections 1332(d)(2), 1453

Brief description of cause:

Plaintiffs allege violations of the Cal. Labor Code and Usury laws.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

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

JUDGE

DOCKET NUMBER

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

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

DATE 01/18/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Eric Lloyd

Print

Save As...

Reset

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

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

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Matco Tools Corporation Hit with Distributors' Wage and Hour Class Action](#)
