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7 Attorneys for Defendant  
THE GOODYEAR TIRE AND RUBBER COMPANY

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 LUIS FRANCO, individually, on behalf of  
12 himself and all other similarly situated  
employees,

13 Plaintiff,

14 v.

15 THE GOODYEAR TIRE AND RUBBER  
16 COMPANY, an Ohio corporation and Does 1-5,

17 Defendant.  
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Case No.

**DEFENDANT’S NOTICE TO FEDERAL  
COURT OF REMOVAL**

**[28 U.S.C. §§ 1332, 1441, 1446]**

Complaint filed: January 18, 2022  
(Originally filed in Santa Clara County  
Superior Court)

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN**  
2 **DISTRICT OF CALIFORNIA, PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that Defendant THE GOODYEAR TIRE & RUBBER  
4 COMPANY (“Defendant” or “Goodyear”) hereby removes the above-entitled action to this Court  
5 from the Superior Court of the State of California for the County of Santa Clara, to the United States  
6 District Court, Northern District of California, pursuant to 28 U.S.C. sections 1332(d) (Class Action  
7 Fairness Act of 2005), 1441(b), and 1446 on the following grounds<sup>1</sup>:

8 **I. JURISDICTION AND VENUE ARE PROPER**

9 1. This Court has original jurisdiction over this action pursuant to the Class Action  
10 Fairness Act of 2005 (“CAFA”), which vests the United States District Courts with original  
11 jurisdiction of any civil action: (a) that is a class action with a putative class of more than a hundred  
12 members; (b) in which any member of a class of plaintiffs is a citizen of a state different from any  
13 defendant; and (c) in which the matter in controversy exceeds the sum or value of \$5,000,000,  
14 exclusive of interest and costs. *See* 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions in  
15 accordance with United States Code, title 28, section 1446. As set forth below,  
16 this case meets all of CAFA’s requirements for removal and is timely and properly removed by the  
17 filing of this Notice.

18 2. This action was filed in the Superior Court for the State of California, County of Santa  
19 Clara. Venue properly lies in the United States District Court for the Northern District of California,  
20 pursuant to 28 U.S.C. sections 84(a), 1391, 1441, and 1446.

21 **II. STATUS OF THE PLEADINGS**

22 3. On January 18, 2022, Plaintiff Luis Franco (“Plaintiff”) commenced this action by  
23 filing a complaint in the Superior Court of California, County of Santa Clara entitled *Luis Franco,*  
24 *individually, on behalf of himself and all other similarly situated employees v. The Goodyear Tire &*  
25 *Rubber Company, an Ohio corporation, and Does 1 to 50*, designated as Case No. 22CV393403

26 \_\_\_\_\_  
27 <sup>1</sup> “To remove a case from a state court to a federal court, a defendant must file in the federal forum a  
28 notice of removal ‘containing a short and plain statement of the grounds for removal.’” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547 (2014), *quoting* 28 U.S.C. §1446(a). “A statement ‘short and plain’ need not contain evidentiary submissions.” *See id.* at 547.

1 (“Complaint”). The Complaint alleges six causes of action: (1) Failure to Pay Proper Premiums for  
2 Non-Compliant Meal and Rest Periods in Violation of California Labor Code §§ 512 and 226.7 and  
3 IWC Wage Order; (2) Failure to Provide Rest Periods in Violation of California Labor Code § 226.7  
4 and IWC Wage Order; (3) Failure to Provide Accurate Itemized Wage Statements in Violation of  
5 California Labor Code § 226 and IWC Wage Order; (4) Failure to Pay Earned Wages Upon Separation  
6 in Violation of California Labor Code §§ 201-203; (5) Unlawful, Unfair and Fraudulent Business  
7 Practices (Cal. Bus. & Prof. Code §§ 17200 et. seq.); and (6) Civil Penalties Pursuant to Labor Code  
8 Private Attorneys General Act of 2004 (Cal. Lab. Code §§2698 *et seq* or “PAGA”). (See Declaration  
9 of Sarah E. Ross in Support of Defendant’s Notice to Federal Court of Removal (“Ross Decl.”) ¶ 2,  
10 Exhibit (“Exh.”) A.).

11 4. On January 19, 2022, Plaintiff filed a Proof of Service of Order Deeming Case  
12 Complex and Staying Discovery and Responsive Pleading Deadline. (Ross Decl., ¶ 3, Exh. B.)

13 5. On January 31, 2022, Plaintiff served Defendant with the Complaint, along with copies  
14 of the Summons, Complaint, Civil Case Cover Sheet, Alternative Dispute Resolution (ADR)  
15 Information Package, and Order Deeming Case Complex and Staying Discovery and Responsive  
16 Pleading Deadline, through Defendant’s agent for service of process. (Ross Decl., ¶ 4, Exh. C.)

17 6. On February 2, 2022, Plaintiff filed a Proof of Service of Summons and Complaint.  
18 (Ross Decl., ¶ 5, Exh. D.)

19 7. On March 1, 2022, Goodyear filed its state court answer to Plaintiff’s Complaint. (Ross  
20 Decl., ¶ 6, Exh. E.)

21 8. To Defendant’s knowledge, the documents attached to the Declaration of Sarah E. Ross  
22 constitute all process, pleadings, and orders served upon Defendant or filed in the State Court action  
23 by Defendant. (Ross Decl., ¶ 7.)

### 24 **III. TIMELINESS OF REMOVAL AND NOTICE**

25 9. An action may be removed from state court by filing a notice of removal, together with  
26 a copy of all process, pleadings, and orders served on the Defendant within 30 days of service on  
27 defendant of the initial pleading. See 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Mitchetti Pipe*  
28

1 *Stringing, Inc.*, 526 U.S. 344, 354 (1999) (the 30-day removal period runs from the service of the  
2 summons and complaint).

3 10. Plaintiff served Defendant on January 31, 2022. Thirty days from January 31, 2022 is  
4 March 2, 2022. This Notice of Removal is timely filed. 28 U.S.C. § 1446(b).<sup>2</sup>

5 **IV. CAFA JURISDICTION**

6 11. CAFA grants United States district courts original jurisdiction over: (a) civil class  
7 action lawsuits filed under federal or state law; (b) where the alleged class is comprised of at least 100  
8 individuals; (c) in which any member of a class of plaintiffs is a citizen of a state different from any  
9 defendant; and (d) where the matter's amount in controversy exceeds \$5,000,000, exclusive of interest  
10 and costs. *See* 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions in accordance with 28  
11 U.S.C. § 1446. As set forth below, this case meets each CAFA requirement for removal, and is timely  
12 and properly removed by the filing of this Notice of Removal.

13 **A. Plaintiff Filed a Class Action Under State Law**

14 12. Plaintiff filed his action as a class action based on alleged violations of California state  
15 law. (Complaint, ¶¶ 1-2.)

16 **B. The Proposed Class Contains At Least 100 Members**

17 13. Title 28 U.S.C. § 1332(d)(5)(B) states that the provisions of CAFA do not apply to any  
18 class action where “the number of members of all proposed plaintiff classes in the aggregate is less  
19 than 100.”

20 14. Plaintiff filed this action on behalf of a class (and five sub-classes) of current and  
21 former hourly non-exempt employees of Defendant who were employed by Defendant from January  
22 18, 2018 through the present. (Complaint, ¶¶ 29-30.)

23 15. Based on a review of Defendant's records, Defendant employed at least 1,796 non-  
24 exempt employees since January 18, 2018. (Declaration of Susan K. Buckley (“Buckley Decl.”), ¶ 5.)  
25 Accordingly, Defendant's internal records demonstrate that there are well over 100 putative class  
26 members in this matter.

27  
28 <sup>2</sup> Regardless, arguably, the 30-day deadline under 28 U.S.C. §1146(b)(1) does not apply to removals  
under CAFA. *See Roth v. CHA Hollywood Med. Ctr.*, 720 F.3d 1121, 123, 125-126 (9th Cir. 2013).

1           **C.     Defendant Is Not a Governmental Entity**

2           16.     Under 28 U.S.C. § 1332(d)(5)(A), CAFA does not apply to class actions where  
3     “primary defendants are States, State officials, or other governmental entities against whom the district  
4     court may be foreclosed from ordering relief.”

5           17.     Defendant is a corporation, not a state, state official, or other government entity exempt  
6     from CAFA. (Buckley Decl., ¶ 2.)

7           **D.     There Is Diversity Between At Least One Class Member and Defendant**

8           18.     “Under CAFA, complete diversity is not required; ‘minimal diversity’ suffices.”  
9     *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007).

10          19.     CAFA’s minimal diversity requirement is satisfied, *inter alia*, when “any member of a  
11     class of plaintiffs is a citizen of a State different from any defendant.”  
12     28 U.S.C. §§ 1332(d)(2)(A), 1453(b). In a class action, only the citizenship of the named parties is  
13     considered for diversity purposes, and not the citizenship of the class members. *Snyder v. Harris*, 394  
14     U.S. 332, 340 (1969). Additionally, for removal purposes, diversity must exist both at the time the  
15     action was commenced in state court and at the time of removal. *See Strotek Corp. v. Air Trans. Ass’n*  
16     *of Am.*, 300 F.3d 1129, 1130-1131 (9th Cir. 2002). Minimal diversity of citizenship exists here because  
17     Plaintiff and Defendant are citizens of different states.

18          20.     For diversity purposes, a person is a “citizen” of the state in which she is domiciled.  
19     *See Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983); *see also Kanter v.*  
20     *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (confirming that person’s domicile is the  
21     place he resides with the intention to remain). Furthermore, allegations of residency in a state court  
22     complaint create a rebuttable presumption of domicile supporting diversity of citizenship. *Lew v.*  
23     *Moss*, 797 F.2d 747, 751 (9th Cir. 1986); *see also State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d  
24     514, 519 (10th Cir. 1994) (allegation by party in state court complaint of residency “created a  
25     presumption of continuing residence in [state] and put the burden of coming forward with contrary  
26     evidence on the party seeking to prove otherwise”); *Smith v. Simmons*, No. 1:05-CV-01187-OWW-  
27     GSA, 2008 WL 744709, at \*7 (E.D. Cal. Mar. 18, 2008) (finding a place of residence provides “‘prima  
28     facie’ case of domicile”).

1           21.     At all relevant times, Plaintiff has been a resident of Santa Clara County, California.  
2 (Complaint, ¶ 10.) Defendant has established by a preponderance of the evidence that Plaintiff is  
3 domiciled in California, and is, thus, a citizen of California. *See id.*; *Lew*, 797 F.2d at 751; *Smith*, 2008  
4 WL 744709, at \*7.

5           22.     For purposes of 28 U.S.C. § 1332, “a corporation shall be deemed to be a citizen of  
6 every State [] by which it has been incorporated and of the State [] where it has its principal place of  
7 business.” 28 U.S.C. § 1332(c)(1).

8           23.     Defendant is a publicly traded corporation, and is incorporated under the laws of the  
9 State of Ohio, and is therefore, a citizen of Ohio. (Buckley Decl., ¶ 2.)

10           24.     Defendant’s principal place of business is in Ohio. (*Id.* at ¶ 3.) To determine a  
11 corporation’s principal place of business, the courts apply the “nerve center test,” which deems the  
12 principal place of business to be the state where a corporation’s officers “direct, control, and coordinate  
13 the corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 80-81 (2010). In practice, the  
14 principal place of business is “where the corporation maintains its headquarters.” *Id.* at 92–93.  
15 Defendant maintains its principal place of business in Ohio, where its executive and administrative  
16 offices are located, and where the majority of its executive and administrative functions are performed.  
17 (Buckley Decl., ¶ 3.) Defendant’s principal place of business is where its officers direct, control and  
18 coordinate its activities. *See Hertz*, 559 U.S. at 92–93.

19           25.     The presence of Doe defendants in this case has no bearing on diversity with respect to  
20 removal. *See* 28 U.S.C. § 1441(b)(1) (“In determining whether a civil action is removable on the basis  
21 of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious  
22 names shall be disregarded.”).

23           26.     Accordingly, the named Plaintiff is a citizen of a state (California) different from  
24 Defendant (Ohio), and diversity exists for purposes of CAFA jurisdiction. *See* 28 U.S.C. §§  
25 1332(d)(2)(A), 1453.

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1           **E. The Amount In Controversy Exceeds \$5,000,000<sup>3</sup>**

2           27. This Court has jurisdiction under the CAFA, which authorizes the removal of class  
3 actions in which, among the other factors mentioned above, the amount in controversy for all class  
4 members exceeds \$5,000,000. 28 U.S.C. § 1332(d). “The claims of the individual class members shall  
5 be aggregated to determine whether the matter in controversy exceeds” this amount. 28 U.S.C.  
6 § 1332(d)(6).

7           28. The removal statute requires that a defendant seeking to remove a case to federal court  
8 must file a notice “containing a short and plain statement of the grounds for removal.” 28 U.S.C. §  
9 1446(a). The Supreme Court, in *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547,  
10 554 (2014), recognized that “as specified in §1446(a), a defendant’s notice of removal need include  
11 only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” The  
12 defendant’s “amount-in-controversy allegation should be accepted” just as a plaintiff’s amount-in-  
13 controversy allegation is accepted when a plaintiff invokes federal court jurisdiction. *Id.* at 553.

14           29. Defendant denies the validity and merit of the entirety of Plaintiff’s alleged claims, the  
15 legal theories upon which they are ostensibly based, and the alleged claims for monetary and other  
16 relief that flow therefrom. For purposes of removal only, however, and without conceding that Plaintiff  
17 or the putative class are entitled to any damages or penalties whatsoever, it is readily apparent that the  
18 aggregated claims of the putative class establishes, by a preponderance of evidence, that the amount  
19 in controversy well exceeds the jurisdiction minimum of \$5,000,000. *See Lewis v. Verizon Communs.,*  
20 *Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (the “amount in controversy is simply an estimate of the total  
21 amount in dispute, not a prospective assessment of [D]efendant’s liability”); *see also Roth v. CHA*  
22 *Hollywood Med. Ctr., L.P.*, 720 F.3d 1121, 1123 (9th Cir. Cal. 2013) (a defendant “may remove when  
23 it discovers, based on its own investigation, that a case is removable.”).

24           30. For purposes of determining whether a defendant has satisfied the amount in  
25 controversy requirement, the Court must presume that the plaintiff will prevail on their claims.  
26 *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F.Supp.2d 993, 1001 (C.D. Cal. 2002)

27 <sup>3</sup> The alleged damages calculations contained herein are for purposes of removal only. Defendant  
28 denies that Plaintiff or the putative class are entitled to any relief whatsoever and expressly reserves  
the right to challenge Plaintiff’s alleged damages in this case.

1 (citing *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1096 (11th Cir. 1994) (stating that the amount in  
2 controversy analysis presumes that “plaintiff prevails on liability.”). The ultimate inquiry is what  
3 amount is put “in controversy” by a plaintiff’s complaint, not what a defendant might actually owe.  
4 *Rippee v. Boston Mkt. Corp.*, 408 F.Supp.2d 982, 986 (S.D. Cal. 2005); accord *Ibarra v. Manheim*  
5 *Inv., Inc.* 775 F.3d 1193, 1198 n.1 (9th Cir. 2015) (explaining that even when the court is persuaded  
6 the amount in controversy exceeds \$5,000,000, defendants are still free to challenge the actual amount  
7 of damages at trial because they are only estimating the amount in controversy).

8 31. Here, Plaintiff does not allege the amount in controversy in the Complaint, though he  
9 alleges “uniform unlawful practices” and “common policy and practice” by Defendant that  
10 purportedly deprived class members of wages. (Complaint, ¶¶ 2, 20, 45.) He further alleges Defendant  
11 allegedly, engaged in unlawful practices and policies against its employees. (Complaint, ¶¶ 83-84.)

12 32. As discussed above, Plaintiff filed his Complaint on January 18, 2022, and he alleges  
13 claims for failure to pay proper premiums for non-compliant meal and rest periods, failure to provide  
14 rest periods, failure to provide accurate itemized wage statements, failure to pay earned wages upon  
15 separation, claims under the California Unfair Competition Law (“UCL”), and civil penalties pursuant  
16 to the Private Attorneys General Act (“PAGA”). (Complaint, ¶¶ 42-99.)

17 **1. Amount in Controversy – Plaintiff’s Claim for Failure to Provide Rest**  
18 **Breaks (Labor Code § 226.7)**

19 33. In his Second Cause of Action, Plaintiff alleges that Defendant failed to provide to  
20 Plaintiff and the class “with adequate and compliant rest periods as required by California law and  
21 failed to compensate Plaintiff and other similarly situated employees one additional hour of pay....”  
22 (Complaint, ¶ 56.) Plaintiff’s cause of action for violation of the UCL extends the statute of limitations  
23 on Plaintiff’s meal period and rest break causes of action to four years. (Complaint, ¶¶ 76-88; see Cal.  
24 Bus. & Prof. Code § 17208.)

25 34. Based on a review of its records, Defendant employed at least 1,796 non-exempt  
26 employees since January 18, 2018; the average hourly rate of pay for non-exempt employees during  
27  
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1 this time period was approximately \$17.84<sup>4</sup>; and each employee worked an average of 69 weeks.  
2 (Buckley Decl., ¶ 5.)

3 35. Defendant denies the validity and merit of Plaintiff's rest break claim. For purposes of  
4 removal, only, based on Plaintiff's legal theory, and assuming two rest period violations per week, the  
5 amount in controversy for Plaintiff's rest break claim is approximately **\$4,421,608.32** (\$17.84 hourly  
6 rate \* 2 missed rest breaks \* 69 workweeks \* 1,796 employees). *See Mortley v. Express Pipe & Supply*  
7 *Co.*, Case No. SACV 17-1938-JLS-JDE, 2018 WL 708115, at \*4 (C.D. Cal. Feb. 5, 2018)  
8 (assumption of two missed rest periods per week reasonable based on allegations of a policy and  
9 practice of understaffing and "routine and systematic" violations); *Giannini v. Northwestern Mut. Life*  
10 *Ins. Co.*, Case No. C 12-77 CW, 2012 WL 1535196, at \*3 (N.D. Cal. Apr. 30, 2012) (finding one  
11 hundred percent violation rate for rest period claim reasonable based on allegation that the putative  
12 class members "routinely" did not receive rest periods).

13 **2. Amount in Controversy – Plaintiff's Claim for Inaccurate Wage**  
14 **Statements (Labor Code § 226)**

15 36. In his Third Cause of Action, Plaintiff alleges that Defendant, "consistently failed to  
16 provide Plaintiff and Class Members with adequate pay statements as required by California Labor  
17 Code section 226," and thus failed to keep accurate payroll records. (Complaint, ¶¶ 64-65.)

18 37. Labor Code section 226(e) provides for a statutory penalty for violations of Labor Code  
19 section 226(a)'s wage statement requirements of \$50 or actual damages per employee for the initial  
20 pay period in which a violation occurs, and \$100 per employee for each violation in a subsequent pay  
21 period, not exceeding an aggregate amount of \$4,000 per employee. CAL. LABOR CODE § 226(a). The  
22 statutory period for Labor Code section 226(e) penalties is one year. CAL. CODE CIV. PROC. § 340.

23 38. Defendant denies the validity and merit of Plaintiff's wage statement claim. For  
24 purposes of removal only, based on a review of its records, Defendant has employed at least 835 non-  
25 exempt employees since January 18, 2021, for at least 22,290 pay periods. (Buckley Decl., ¶¶ 6-7.)  
26 Therefore, the average number of pay periods per employee is more than 26 pay periods (22,290 pay  
27

28 <sup>4</sup> For purposes of this removal calculation, Defendant is using the average *hourly* rate. Utilizing the  
average *regular rate* would only increase this calculation.

1 periods/835 employees), and the resulting average penalties per employee are \$2,550 ( $[\$50 * 1] +$   
 2  $[\$100 * 25]$ ). Multiplying that number by the 835 employees at issue equals **\$2,129,250.00**.

3 **3. Amount in Controversy – Plaintiff’s Waiting Time Penalties Claim (Labor**  
 4 **Code § 203)**

5 39. In his Fourth Cause of Action, Plaintiff seeks waiting time penalties pursuant to  
 6 California Labor Code sections 201-203. (Complaint, ¶¶ 68-75.) The statute of limitations for  
 7 Plaintiff’s Labor Code section 203 waiting time penalty claim is three years. *Pineda v. Bank of Am.,*  
 8 *N.A.*, 50 Cal. 4th 1389, 1395 (2010) (“no one disputes that when an employee sues to recover both  
 9 unpaid final wages and the resulting section 203 penalties, the suit is governed by the same three-year  
 10 limitations period that would apply had the employee sued to recover only the unpaid wages”).

11 40. The Labor Code’s penalty for failure to pay wages at termination is up to 30 days’  
 12 wages for each employee. CAL. LABOR CODE § 203(a).

13 41. For purposes of removal only, based on a review of its records, at least 770 employees  
 14 have separated from Defendant’s employment since January 18, 2019. (Buckley Decl., ¶ 8.) The  
 15 average pay rate for employees who separated from Defendant since January 18, 2019 is \$16.77. (*Id.*)  
 16 Therefore, the amount in controversy for Plaintiff’s waiting time penalties claim in his Fourth Cause  
 17 of Action is approximately **\$3,099,096.00** (770 employees \* 8 hours \* 30 days \* \$16.77 average rate  
 18 of pay).

19 **4. Amount in Controversy – Plaintiff’s Claim for Attorneys’ Fees**

20 42. Finally, Plaintiff seeks attorneys’ fees and costs in his Complaint. (Complaint, Prayer  
 21 for Relief ¶ c.) Thus, the Court must consider attorneys’ fees in determining whether the amount in  
 22 controversy is met as it is well-settled that claims for statutory attorneys’ fees are to be included in the  
 23 amount in controversy. *See, e.g., Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005), *cert.*  
 24 *denied*, 127 S.Ct. 157 (2006); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (“We  
 25 hold that where an underlying statute authorizes an award of attorneys’ fees, either with mandatory or  
 26 discretionary language, such fees may be included in the amount in controversy.”).

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1           43. In California, it is not uncommon for an attorneys' fee award to be 25 to 33 percent of  
 2 a settlement or judgment. *See, e.g., McGuigan v. City of San Diego*,  
 3 183 Cal. App. 4th 610, 638 (2010) (noting attorneys' fees paid in settlement of \$1.6 million); *Vasquez*  
 4 *v. California*, 45 Cal. 4th 243, 249 (2008) (noting award of \$435,000 in attorneys' fees for class claims  
 5 involving failure to pay wages, liquidated damages, penalties, and waiting time penalties); *Amaral v.*  
 6 *Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1216-1218 (2008) (affirming award of \$727,000 in  
 7 attorneys' fees plus a multiplier that equated to total fees of \$1,199,550 in class case involving  
 8 violations of a living wage ordinance, the California Labor Code, as well as unfair competition and  
 9 contract claims); *see also Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex.  
 10 2000) ("Empirical studies show that, regardless whether the percentage method or the lodestar method  
 11 is used, fee awards in class actions average around one-third of the recovery.").

12           44. The attorneys' fees benchmark in the Ninth Circuit is 25 percent.  
 13 *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989)  
 14 ("We note with approval that one court has concluded that the 'bench mark' percentage for the fee  
 15 award should be 25 percent."); *Lo v. Oxnard Euro. Motors, LLC*, 2012 WL 1932283, at \*3 (S.D. Cal.  
 16 May 29, 2012) ("The Ninth Circuit has accepted as a benchmark for an attorneys' fees awards a  
 17 twenty-five percent of the common fund recovery.").

18           45. Based on the above, the amount in controversy for failure to provide rest breaks, failure  
 19 to pay wages at termination, and wage statement penalties, which does not consider Plaintiff's claims  
 20 for Defendant's purported failure to pay the proper rate for meal and rest break premiums and violation  
 21 of the UCL, is conservatively **\$9,649,954.32**. This subtotal exceeds \$5,000,000 absent any inclusion  
 22 of attorneys' fees. However, considering attorneys' fees at the benchmark percentage of 25 percent  
 23 further increases the amount in controversy by \$2,412,488.58, a total amount in controversy of  
 24 **\$12,062,422.90**.

#### 25           F. Amount in Controversy – Summary

26           46. As explained above, removal of this action is proper, as the aggregate value of  
 27 Plaintiff's causes of action for failure to pay rest period premiums, failure to pay wages at time of  
 28 termination, wage statement penalties, and attorneys' fees are well in excess of the CAFA

1 jurisdictional requirement of \$5 million. *See* 28 U.S.C. § 1332(d)(2). Notably, as discussed above, this  
 2 estimate does not account for Plaintiff's claim in his First Cause of Action for failure to pay proper  
 3 meal and rest break premiums, nor does it include any other damages, penalties, or restitution that  
 4 Defendant may be ordered to pay pursuant to Plaintiff's UCL claim (Fifth Cause of Action). Figuring  
 5 those claims into the equation further reinforces that the amount in controversy exceeds five million  
 6 dollars.

7 47. Accordingly, although Defendant denies Plaintiff's claims as alleged in the Complaint,  
 8 the jurisdictional minimum is satisfied for purposes of determining the amount in controversy, as it  
 9 exceeds the \$5,000,000 threshold required under CAFA.

<b>Plaintiffs' Alleged Claim</b>	<b>Amount in Controversy Conservative Estimate</b>
Failure to Provide Rest Periods	\$4,421,608.32
Waiting Time Penalties in Fourth Cause of Action	\$3,099,096.00
Inaccurate Wage Statements	\$2,129,250.00
Attorneys' Fees	\$2,412,488.58
<b>Amount in Controversy</b>	<b>\$12,062,442.90</b>

## 17 V. NOTICE TO THE COURT AND PARTIES

18 48. Contemporaneously with the filing of this notice of removal in the United States  
 19 District Court for the Northern District of California, written notice of such filing will be given by the  
 20 undersigned to Plaintiff's counsel of record and a copy of the notice of removal will be filed with the  
 21 clerk of the court for the Superior Court of the County of Santa Clara. (Ross Decl., ¶ 8.)

22 WHEREFORE, Defendant hereby removes this action from the Superior Court of the  
 23 State of California, County of Santa Clara, to the United States District Court for the Northern District  
 24 of California.

1 Dated: March 2, 2022



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SARAH E. ROSS  
ALEXANDRA BERNSTEIN  
LITTLER MENDELSON, P.C.  
Attorneys for Defendant  
THE GOODYEAR TIRE AND RUBBER  
COMPANY

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# **EXHIBIT A**

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Clerk of Court  
Superior Court of CA,  
County of Santa Clara  
22CV393403  
Reviewed By: R. Walker

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7 **SUPERIOR COURT OF CALIFORNIA**  
8 **COUNTY OF SANTA CLARA**  
9 **UNLIMITED JURISDICTION**

10  
11 Luis Franco, individually, on behalf of himself  
12 and all other similarly situated employees,

13 Plaintiff,

14 vs.

15 The Goodyear Tire and Rubber Company, an  
16 Ohio corporation, and Does 1-5

17 Defendants.  
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CASE NO.: 22CV393403

CLASS ACTION COMPLAINT FOR DAMAGES

1. Failure to Pay Proper Premiums For Non-Compliant Meal and Rest Periods in Violation of California Labor Code §§512 and 226.7 and IWC Wage Order;
2. Failure to Provide Rest Periods in Violation of California Labor Code §226.7 and IWC Wage Order;
3. Failure to Provide Accurate Itemized Wage Statements in Violation of California Labor Code §226 and IWC Wage Order;
4. Failure to Pay Earned Wages Upon Separation in Violation of California Labor Code §§ 201-203;
5. Unlawful, Unfair and Fraudulent Business Practices) (Cal. Bus. & Prof. Code §§ 17200 et. seq.); and
6. Civil Penalties Pursuant to Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq* or "PAGA").

1 Plaintiff Luis Franco, individually and on behalf of all other similarly situated employees,  
2 alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff Luis Franco (“Plaintiff”), individually and on behalf of all other similarly situated  
5 employees, brings this class action against his former employers The Goodyear Tire and Rubber  
6 Company and Does 1-5 (“Defendants”) to recover (1) underpaid premiums for non-compliant  
7 meal and rest breaks, (2) unpaid premiums for non-compliant rest periods; (3) waiting time  
8 penalties; (4) statutory penalties for failure to provide accurate wage statements; and (5) all  
9 applicable civil penalties, interest, reasonable attorneys’ fees and costs.

10 2. This class action asserts claims against Defendants for violations of (a) California Labor  
11 Code, (b) Industrial Wage Commission (“IWC”) Order 9-2001 or other applicable Wage Order,  
12 and (c) California Business and Professions Code section 17200 *et. seq.* For at least four years<sup>1</sup>  
13 prior to the filing of this action, Defendants have engaged in a system of violations of California  
14 wage-and-hour laws by implementing and adopting the following uniform unlawful practices:

15 a. Defendants failed to pay Plaintiff and the Proposed Class one hour of pay at the  
16 employees’ *regular rate of compensation* for each workday that the meal period was not  
17 provided. Specifically, Defendants failed to include into meal break premium payments  
18 the hourly value of any nondiscretionary earnings (such as nondiscretionary bonuses).  
19 Meal break premiums cannot be paid at an employee’s base hourly rate. Defendants have  
20 had a consistent policy of paying meal period premiums at the base rate and not the  
21 blended rate in violation of Labor Code §§ 226.7 and 512.

22 b. Defendants failed to pay Plaintiff and Proposed Class one hour of pay at the employees’  
23 *regular rate of compensation* for each workday that the rest period was not provided.

24  
25 <sup>1</sup> Any limitations period referenced in this complaint is extended pursuant to Emergency  
26 Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of  
27 Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed  
28 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding  
any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days  
are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the relevant time period or  
statute of limitations referenced in this complaint is extended into the past by the number of days  
in which this tolling was in effect.



1 Specifically, Defendants failed to include into rest break premium payments the hourly  
2 value of any nondiscretionary earnings (such as nondiscretionary bonuses). Rest break  
3 premiums cannot be paid at an employee's base hourly rate. Defendants have had a  
4 consistent policy of paying rest period premiums at the base rate and not the blended rate  
5 in Violation of Labor Code §§ 226.7 and 512.

6 c. Defendants failed to apprise Plaintiff and the Proposed Class of their rights associated with  
7 rest periods and failed to provide compliant rest periods. Defendants maintained a  
8 consistent policy of failing to provide Plaintiff and the Proposed Class rest periods of at  
9 least ten (10) minutes per four (4) hours worked or major fraction thereof. Plaintiff and  
10 the Proposed Class were required to work four hours or more without being provided all  
11 legally required ten (10) minute rest periods.

12 d. Defendants failed to comply with Industrial Welfare Commission ("IWC") Wage Order 9-  
13 2001 and Labor Code § 226(a) by failing to issue Plaintiff and the Proposed Class accurate  
14 itemized wage statements that show all applicable hourly rates in effect during the pay  
15 period and the corresponding number of hours worked at each hourly rate by the employee.  
16 Plaintiff and the Proposed Class are issued wage statements that do not include meal and  
17 rest premiums as a result of the claims alleged above and when they do include the  
18 premiums, they are not at the applicable rate.

19 e. Defendants failed to comply with Labor Code §§ 201 and 2020 by failing to pay all wages  
20 due at the time of termination or resignation to Plaintiff and the Proposed Class.

21 3. Plaintiff, on behalf of himself and all Proposed Class Members brings this action pursuant  
22 to Labor Code §§201 - 204, 210, 226(a), 226.7, and 512; Wage Order 9-2001; and California Code  
23 of Regulations, Title 8, Section 11090, seeking meal and rest period premiums, all applicable  
24 statutory penalties, equitable relief, and reasonable attorneys' fees and costs.

25 4. Plaintiff, on behalf of himself and all Proposed Class Members, pursuant to Business &  
26 Professions Code §§17200-17208, also seeks restitution, and disgorgement of all benefits  
27 Defendants enjoyed from its unlawful conduct as described herein.

28 5. Plaintiff also seeks to serve as representatives of the general public to enforce and uphold

1 California's wage and hour laws and recover all applicable civil penalties as representatives and  
2 private attorneys' general as expressly permitted by Labor Code section 2698 *et seq.*, pursuant to  
3 the Private Attorneys general Act of 2004 ("PAGA Act"). Plaintiff has complied with all notice  
4 provisions and is an aggrieved employee as required by the PAGA to serve as private attorneys  
5 general as a representative on behalf of the general public.

6 **II. JURISDICTION AND VENUE**

7 6. This class action is brought pursuant to California Code of Civil Procedure section 382.  
8 The monetary damages sought by Plaintiff on behalf of himself and on behalf of all other similarly  
9 situated employees exceed the minimal jurisdictional limits of the Superior Court.

10 7. This Court has jurisdiction over Plaintiff and other similarly situated employees' claims  
11 pursuant to the California Constitution, Article VI, section 10, which grants the Superior Court,  
12 "original jurisdiction in all causes except those given by statute to other courts." The statutes  
13 which this action is brought do not specify any other basis for jurisdiction.

14 8. This Court has jurisdiction over Defendants because upon information and belief, each  
15 party is either a citizen of California, has sufficient minimum contacts in California, or otherwise  
16 intentionally avails itself of the California market so as to render the exercise of jurisdiction over it  
17 by the California courts consistent with traditional notions of fair play and substantial justice.  
18 Specifically, Defendants employed Plaintiff and other similarly situated employees in California.

19 9. Venue as to Defendants is proper in this judicial district pursuant to California Code of  
20 Civil Procedure §395(a). Defendants are located within Santa Clara County, transact business,  
21 have agents, and are otherwise within this Court's jurisdiction for purposes of service of process.  
22 The unlawful acts alleged herein have a direct effect on Plaintiff, other similarly situated  
23 employees and those similarly situated within the State of California and County of Santa Clara.  
24 Defendants operate business and have employed Plaintiff and other similarly situated employees  
25 in the County of Santa Clara, as well as within other counties across the State of California.

26 **III. PARTIES**

27 **A. Plaintiff**

28 10. At all relevant times, Plaintiff Luis Franco was an individual over the age of eighteen (18)

1 and a resident of Santa Clara County, California.

2 **B. Defendants**

3 **1. Corporate Defendant**

4 11. Defendant The Goodyear Tire and Rubber Company has been doing business in the State  
5 of California. Defendant The Goodyear Tire and Rubber Company is an Ohio corporation,  
6 registered with the California Secretary of State to do business in California as a corporation under  
7 the same name as “The Goodyear Tire and Rubber Company” (Entity No. C0331433).

8 **2. Doe Defendants**

9 The true names and capacities of Defendants Does 1 through 5, inclusive, are currently  
10 unknown to Plaintiff, whom, therefore, Plaintiff sues by their fictitious names pursuant to  
11 California Code of Civil Procedure section 474. Plaintiff is informed and believes and thereon  
12 alleges that each of those Defendants was in some manner responsible for the events and  
13 happenings alleged in this complaint and for Plaintiff’s injuries and damages. Plaintiff will either  
14 seek leave to amend this Complaint or file a Doe statement to allege the true names and capacities  
15 of Does 1 through 5, when they are ascertained.

16 12. Unless otherwise stated, The Goodyear Tire and Rubber Company and Does 1-5 are  
17 hereinafter referred to as “Defendants.”

18 13. Plaintiff is informed and believes and thereon alleges that at all relevant times, The  
19 Goodyear Tire and Rubber Company and Does 1-5 were a joint employer of Plaintiff and other  
20 similarly situated employees because The Goodyear Tire and Rubber Company and Does 1-5  
21 jointly exercised control over Plaintiff’s and other similarly situated employees’ wages, hours or  
22 working conditions, and suffered or permitted to work Plaintiff and other similarly situated  
23 employees under the working conditions described herein.

24 **IV. COMMON FACTUAL ALLEGATIONS**

25 14. Defendants are in business of providing automotive and tire services to the general public  
26 in California. They own, operate, manage, and/or oversee a network of service centers in  
27 California. Defendants employed Plaintiff Franco as a service advisor from 2009 through October  
28 2, 2021 at two service centers located at 486 N Winchester Blvd, San Jose, California and 3146

1 Stevens Creek Blvd, San Jose, California. For services provided, Defendants paid Plaintiff Franco  
2 hourly compensation ranging from \$16 to \$19 plus a nondiscretionary bonus, known as SPIFF.

3 15. At all relevant times, as hourly non-exempt employees, Plaintiff and other similarly  
4 situated employees were entitled to the benefits and protections of California Labor Code and  
5 California Industrial Welfare Commission Occupational Wage Order No. 9-2001 (Title 8  
6 California Code of Regulations §11090 or other applicable Wage Order(s). As such, they were  
7 entitled to meal and rest periods as required by California law, as well as to meal/rest period  
8 premiums at their “*regular rate of compensation*” when the opportunity for meal and rest periods  
9 was not provided.

10 16. During the relevant class period, Plaintiff and Defendants’ other non-exempt California  
11 employees were eligible for and at times received non-discretionary bonuses, commissions,  
12 variable rates, and other items of compensation. For example, Plaintiff and Defendants’ other non-  
13 exempt California employees were eligible for and received the SPIFF nondiscretionary bonus.

14 17. During the relevant class period, Plaintiff and Defendants’ other non-exempt California  
15 employees were also frequently denied the opportunity to take off-duty, timely, and uninterrupted  
16 meal and rest periods in accordance with, and as required by, California law.

17 18. During the relevant class period, on many occasions when Plaintiff and Defendants’ other  
18 non-exempt California employees were denied such opportunities, Defendants paid Plaintiff and  
19 Defendants’ other non-exempt California employees an amount designated as “CA Meal  
20 Premium” on their wage statements. The rate paid for “CA Meal Premium” was *always* Plaintiff’s  
21 and Defendants’ other non-exempt California employees’ base hourly rate and not their “regular  
22 rate of pay” or “regular rate of compensation.” The table below shows some instances when  
23 Defendants failed to include the non-discretionary SPIFF pay into Plaintiff’s regular rate of  
24 compensation for non-complaint meal periods:

25	26	27	28			
	Pay Period	# of Non- Compliant Meal Periods	Base Hourly Rate	Regular Rate of Pay	Meal Break Premiums Owed	
	8/02/2019 - 8/08/2019	1	\$19	\$19.38	\$0.38	
	8/23/2019 - 8/29/2019	2	\$19	\$21.04	\$4.08	

1	10/04/2019-10/10/2019	1	\$19	\$20.62	\$1.62
2	11/08/2019-11/14/2019	1	\$19	\$20.04	\$1.04
3	12/27/2019-01/02/2020	1	\$19	\$21.84	\$2.84
4	1/24/2020-01/30/2020	1	\$19	\$23.82	\$4.82
5	2/28/2020-03/05/2020	1	\$19	\$20.88	\$1.88

19. On the occasions when Defendants denied Plaintiff and their other non-exempt employees the opportunity for meal and rest periods, and thus paid them CA Meal or Rest Premium amounts, they did so only at the employees' base hourly rate as opposed to the "regular rate of compensation" as required by Labor Code section 226.7.<sup>2</sup>

20. During the relevant class period, as a matter of policy and practice, due to a staff shortage, Defendants failed to provide Plaintiff and their other non-exempt employees with an opportunity to take a 10-minute off-duty rest period for each four hours of work or major fraction thereof. As a matter of policy and practice, Defendants neither permitted nor authorized Plaintiff and their other non-exempt employees to take a full off-duty rest period due to a staff shortage, Plaintiff and their other non-exempt employees could not be relieved of all duties for their 10-minute rest periods. Defendants failed to pay one additional hour of pay for instances when Plaintiff and their other non-exempt employees could not take a 10-minute rest period for each four hours of work or major fraction thereof per shift.

21. During the relevant class period, the wage statements furnished by Defendants to their non-exempt California employees violated California Labor Code section 226(a) insofar as they failed to accurately show:

- a. The gross wages earned (because CA Meal and Rest Premiums were not properly paid) in violation of Labor Code section 226(a)(1);
- b. The net wages earned (because CA Meal and Rest Premiums were not properly paid) in violation of Labor Code section 226(a)(5); and
- c. All applicable hourly rates in effect during the pay period in violation of section

<sup>2</sup> *Ferra v. Loews Hollywood Hotel, LLC* (2021) –P.3d— 2021 WL 2965438; *Studley v. Alliance Healthcare Svcs., Inc.* (C.D. Cal. 2012) 2012 WL 12286522 \* 4; *Ibarra v. Wells Fargo Bank, N.A.* (C.D. Cal. 2018) 2018 WL 2146380 \*4-5.

1                   226(a)(9).

2           22. Defendants were, at all times relevant herein, aware of the requirements of California  
3 Labor Code section 226.

4           23. Defendants have, at all times relevant herein, furnished wage statements to each of their  
5 nonexempt California employees pursuant to an established set of policies, procedures and  
6 practices.

7           24. Plaintiff and Defendants' other non-exempt California employees, both current and former,  
8 have suffered injury as a result of Defendants' knowing and intentional failure to comply with  
9 California Labor Code section 226(a).

10           25. Plaintiff and Defendants' other non-exempt California employees, both current and former,  
11 who were not provided compliant meal and rest periods, were unable to promptly and easily  
12 determine their gross wages earned, net wages earned, and all applicable hourly rates, from the  
13 wage statements furnished by Defendants.

14           26. Plaintiff's employment with Defendants ended on approximately October 2, 2021. At the  
15 time Plaintiff's employment ended, Defendants owed him outstanding earned wages including  
16 undisputed wages for the last pay period and underpaid meal and rest period premiums. Those  
17 wages remain outstanding.

18           27. As a result of the failure to properly calculate meal and rest period premiums, Defendants  
19 failed to pay Plaintiff and their other current and former employees whose employment had ended  
20 all wages due and owing at the time of separation within the time parameters mandated by Labor  
21 Code sections 201 and 202.

22           28. From at least four years prior to the filing of this action, Defendants adopted and  
23 employed unfair and unlawful business practices. These unfair and unlawful business practices  
24 include, but are not limited to, failing to properly calculate and pay meal and rest period premium  
25 wages and failure to provide compliant rest periods.

26           **V. CLASS ACTION ALLEGATIONS**

27           29. Plaintiff brings this action on behalf of himself as a class action, pursuant to California  
28 Code of Civil Procedure Section 382, on behalf of all persons similarly situated and defined as:

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- a. All individuals currently or formerly employed by Defendants in California as hourly non-exempt employees at any time commencing four years prior to the filing of this Complaint to the final disposition of this case (the “Class” or “Class Members” and the “Class Period”)

30. Further, Plaintiff proposes the following subclasses:

- a. All Class Members who earned non-discretionary bonuses, shift differentials, or other items of remuneration during periods when they were denied a meal period and paid a CA Meal Premium at any time commencing four years prior to the filing of this Complaint to the final disposition of this case (the “Underpaid Meal Premium Subclass”);
- b. All Class Members who earned non-discretionary bonuses, shift differentials, or other items of remuneration during periods when they were denied a rest period and paid a CA Rest Premium at any time commencing four years prior to the filing of this Complaint to the final disposition of this case (the “Underpaid Rest Premium Subclass”);
- c. All Class Members who worked shifts of four hours or major fraction thereof without being authorized or permitted an uninterrupted rest period of at least 10 minutes, who were not paid one hour at the regular rate of compensation for each of those days (“Rest Period Subclass”);
- d. All Class Members who separated from employment with Defendants at any time commencing three years prior to the filing of this Complaint and who were not paid all wages owed at the time of their separation. (the “Waiting Time Subclass”);
- e. All Class Members who received a wage statement from Defendants in violation of Labor Code Section 226(a) at any time commencing one year prior to the filing of this Complaint. (the “Wage Statement Subclass”);

31. Defendants and their officers, directors, and all exempt employees are excluded from the

1 Plaintiff Class.

2 32. Plaintiff reserves the right to move the Court to amend or modify the class definitions and  
3 to establish additional classes and subclasses as appropriate.

4 33. This action has been brought and may properly be maintained as a class action under  
5 California Code of Civil Procedure § 382 because there is a well-defined community of interest in  
6 the litigation and the proposed Class is easily ascertainable.

7 **A. Numerosity**

8 34. A class action is the only available method for the fair and efficient adjudication of this  
9 controversy. The class of persons in each of the proposed classes and sub-classes are so numerous  
10 that joinder of all members is impractical, if not impossible, insofar as the Plaintiff is informed  
11 and believes and, on that basis, alleges that the total number of Class Members is, at least one  
12 thousand individuals. Membership in the Class will be determined by and upon analysis of  
13 employee and payroll records, among other records maintained by Defendants.

14 **B. Commonality**

15 35. Plaintiff and the Class Members share a community of interests in that there are numerous  
16 common questions and issues of fact and law which predominate over any questions and issues  
17 solely affecting individual members. There are numerous common questions of law and fact  
18 arising out of Defendants' conduct. This class action focuses on Defendants': (a) systematic  
19 failure to pay premiums for non-compliant meal and rest periods at a proper rate of compensation;  
20 (b) systemic failure to authorize and permit rest breaks or to pay the requisite premiums; and (c)  
21 systematic failure to comply with Labor Code section 226(a). The predominating common or  
22 class-wide questions of law and fact include the following:

- 23 a. Whether items of nondiscretionary bonuses such as "SPIFFs" (or other  
24 items of additional remuneration) are components of Class Member's  
25 "regular rate of compensation" and thus needed to be included when  
26 determining the meal and rest periods premium rates;
- 27 b. Whether the miscalculations in meal and rest period premium pay rates  
28 resulted in outstanding wages due and owing at separation;



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- a. Whether Defendants violated Labor Code sections 512 and 226.7 when they failed to provide Class Members with an opportunity to take an uninterrupted rest period of at least 10 minutes or pay one hour at the regular rate of compensation for each of days when rest period was not provided;
- b. Whether Defendants violated California Labor Code sections 201-204 by failing to pay Plaintiff and the Class Members all wages due and owed during the pendency of employment and/or at the time of the termination of employment with Defendants;
- c. Whether Defendants willfully withheld those wages that were due and owing at separation;
- a. Whether Defendants violated California Labor Code section 226(a) by failing to provide Plaintiff and the Class Members with accurate itemized wage statements containing all applicable hourly rates, gross and net wages earned during the pay period;
- b. Whether the alleged violations constitute unfair or unlawful business practices; and
- c. Whether the Class is entitled to unpaid wages, statutory penalties and/or restitutionary relief.

36. The defenses of Defendants, to the extent that such defenses apply, are applicable generally to the whole Class and are not distinguishable as to the proposed class members.

**C. Typicality:**

37. Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and the Class Members sustained damages arising out of and caused by Defendants' common course of conduct in violation of law, as alleged herein.

**D. Adequacy of Representation:**

38. Plaintiff in this class action is an adequate representative of the Class Members in that Plaintiff's claims are typical of those of the Class Members and the Plaintiff has the same interest

1 in the litigation of this case as the Class Members. Plaintiff is committed to vigorous prosecution  
2 of this case and has retained competent counsel who is experienced in conducting litigation of this  
3 nature. Plaintiff is not subject to any individual defenses unique from those conceivably applicable  
4 to the Class Members as a whole. Plaintiff anticipates no management difficulties in this litigation.

5 **E. Superiority of Class Action:**

6 39. Since the damages suffered by individual Class Members, while not inconsequential, may  
7 be relatively small, the expense and burden of individual litigation by each member makes or may  
8 make it impractical for members of the Class to seek redress individually, for the wrongful  
9 conduct alleged herein. Should separate actions be brought, or be required to be brought, by each  
10 individual member of the Class, the resulting multiplicity of lawsuits would cause undue hardship  
11 and expense for the Court and the litigants. The prosecution of separate actions would also create a  
12 risk of inconsistent rulings which might be dispositive of the interests of other Class Members  
13 who are not parties to the adjudications and/or may substantially impede their ability to adequately  
14 protect their interests. Furthermore, Class members still working for Defendants may be fearful of  
15 retaliation if they were to bring individual claims. Most importantly, public policy encourages the  
16 use of class actions to enforce employment laws and protect individuals who, by virtue of their  
17 subordinate position, are particularly vulnerable.

18 40. Judicial economy will be served by maintenance of this lawsuit as a class action. To  
19 process numerous virtually identical individual cases will significantly increase the expense on the  
20 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this  
21 matter. There are no obstacles to effective and efficient management of this lawsuit as a class  
22 action by this Court and doing so will provide multiple benefits to the litigating parties including,  
23 but not limited to, efficiency, economy, and uniform adjudication with consistent results.

24 41. Plaintiff intends to send notice to all members of the California Class to the extent required  
25 by Section 382. The names and addresses of the Class Members are available from Defendants.

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**FIRST CAUSE OF ACTION**

**Failure to Pay Proper Premiums For Non-Compliant Meal and Rest Periods**

**(Cal. Labor Code §§ 512, 226.7, 204, 2010 and Wage Order 9-2001)**

**(Plaintiff Individually and On Behalf of Similarly Situated Employees Against All Defendants)**

42. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs of this Complaint.

43. Labor Code Section 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Similarly, IWC Wage Order No. 9-2001 prohibits an employer from "employ [ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. Section 12 of IWC Wage Order No. 9-2001 similarly required an employer to authorize and permit all employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

44. IWC Wage Order No. 9-2001 further obligates employers to provide an employee to "pay the employee one (1) hour of pay at the employee's regular *rate of compensation* for each workday that the meal period is not provided. Accordingly, for each day that Plaintiff, the Class Members did not receive compliant meal or rest periods, they were entitled to receive meal period premiums pursuant to Labor Code § 226.7 and Wage Order No. 9-2001.

45. During the relevant class period, Defendants had a common policy and practice of failing to include compensation associated with non-discretionary bonuses to determine Plaintiff's, the Class', the Underpaid Meal Premium Subclass', and "Underpaid Rest Premium Subclass' regular rate of pay for purposes of paying the California meal and rest break premiums for non-complaint breaks. Instead of paying meal/rest period premiums at employees' regular rates, Defendants improperly paid the California meal and rest break premiums at the employee's hourly base rate instead of at their regular rate. Defendant often referred to such premiums by pay codes, including, but not limited to, "CA Meal Premium" on the itemized wage statements that it issued to Plaintiff,

1 the Class, the Underpaid Meal Premium Subclass, and Underpaid Rest Premium Subclass.  
2 Defendant's policies and practices as alleged above violated *Labor Code § 226.7*.

3 46. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,  
4 Plaintiff, the Class, the Underpaid Meal Premium Subclass, and Underpaid Rest Premium  
5 Subclass have sustained damages, including underpaid meal and rest break premiums, in an  
6 amount to be established at trial.

7 47. Pursuant to Labor Code section 226.7, Plaintiff, the Class, the Underpaid Meal Premium  
8 Subclass, and Underpaid Rest Premium Subclass are entitled to damages in an underpaid amount  
9 equal to one (1) hour of wages at the regular rate of compensation per missed meal and rest break,  
10 per day in a sum to be proven at trial.

11 48. Pursuant to Labor Code section 210, Plaintiff, the Class, the Underpaid Meal Premium  
12 Subclass, and Underpaid Rest Premium Subclass are entitled to statutory penalty in an amount  
13 equal to one hundred dollars (\$100) for each failure to pay each employee.

14 49. Wherefore, Plaintiff prays for relief as set forth below.

15 **SECOND CAUSE OF ACTION**

16 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

17 **[Cal. Lab. Code § 226.7 and Wage Order 9-2001]**

18 **(Plaintiff Individually and On Behalf of Similarly Situated Employees)**

19 50. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs  
20 of this Complaint.

21 51. At all relevant times, Defendants were employers subject to California Labor Code section  
22 512 and California Industrial Welfare Commission Wage Order 9-2001, which include provisions  
23 requiring Defendants to provide timely, uninterrupted, and complete off-duty rest periods to  
24 Plaintiff and the Class.

25 52. At all relevant times, Defendants were aware of and were under a duty to comply with  
26 California Labor Code sections 226.7, as well as Wage Order 9-2001 of the Industrial Welfare  
27 Commission.

28 53. California Industrial Welfare Commission Wage Order 9-2001 also provides that every

1 employer shall authorize and permit all employees to take off-duty uninterrupted rest periods,  
2 which insofar as practicable shall be in the middle of each work period. The authorized rest period  
3 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per  
4 four (4) hours or major fraction thereof.

5 54. Labor Code section 226.7 and the applicable Wage Orders of the Industrial Welfare  
6 Commission provide that if an employer fails to provide an employee a rest period in accordance  
7 with the Order, the employer shall pay the employee one (1) hour of pay at the employee's regular  
8 rate of compensation for each work day that the rest period is not provided.

9 55. During the relevant class period, Plaintiff, the Class, and Rest Period Subclass regularly  
10 worked for at least four (4) hours per workday.

11 56. During the Class Period, Defendants failed to provide Plaintiff, the Class, and Rest Period  
12 Subclass with adequate and compliant rest periods as required by California law and failed to  
13 compensate Plaintiff and other similarly situated employees one additional hour of pay and for  
14 each workday that adequate and complaint rest periods with one additional hour of pay (rest break  
15 premiums). For example, Plaintiff regularly could not take rest periods because he had to serve  
16 Defendants' customers and no other service advisor could relieve him so that he could take an off-  
17 duty rest period. If there were any rest periods, such rest periods were less than 10 minutes or  
18 often interrupted. Plaintiff observed how other members of the Class and Rest Period Subclass  
19 also could not take rest breaks due to the staff shortage.

20 57. By failing to regularly provide timely, uninterrupted, complete, and unrestricted rest  
21 periods, during which Plaintiff, the Class, and Rest Period Subclass were required to be relieved of  
22 all duty, Defendants violated California Labor Code sections 226.7 and Wage Order No. 9-2001 or  
23 other applicable Wage Orders of the Industrial Welfare Commission.

24 58. Because Defendants failed to provide the required rest breaks, Defendants are liable to  
25 Plaintiff, the Class, and Rest Period Subclass for one (1) hour of additional pay at the regular rate  
26 of compensation for each workday that the proper rest breaks were not provided pursuant to Labor  
27 Code section 226.7 and Wage Order 9-2001.

28 59. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,

1 Plaintiff, the Class, and Rest Period Subclass have sustained damages, including lost  
2 compensation resulting from missed rest periods, in an amount to be established at trial.

3 60. Pursuant to Labor Code section 210, Plaintiff, the Class, and Rest Period Subclass are  
4 entitled to statutory penalty in an amount equal to one hundred dollars (\$100) for each failure to  
5 pay each employee.

6 61. Wherefore, Plaintiff prays for relief as set forth below.

7 **THIRD CAUSE OF ACTION**

8 **Failure to Provide Accurate Itemized Wage Statements**

9 **(Cal. Lab. Code §§ 226(a) & (e) and Wage Order 9-2001)**

10 **(Plaintiff Individually and On Behalf of Similarly Situated Employees Against All**  
11 **Defendants)**

12 62. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs  
13 of this Complaint.

14 63. Labor Code section 226(a) provides that every employer shall furnish each of his or her  
15 employees an accurate itemized wage statement in writing showing nine pieces of information,  
16 including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of  
17 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,  
18 (4) all deductions, provided that all deductions made on written orders of the employee may be  
19 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for  
20 which the employee is paid, (7) the name of the employee and the last four digits of his or her  
21 social security number or an employee identification number other than a social security number,  
22 (8) the name and address of the legal entity that is the employer and, (9) all applicable hourly rates  
23 in effect during the pay period and the corresponding number of hours worked at each hourly rate  
24 by the employee.

25 64. California Labor Code section 226(e) further provides that any employee suffering injury  
26 due to a willful violation of the aforementioned obligations may collect the greater of either actual  
27 damages or \$50 for the first inadequate pay statement and \$100 for each inadequate statement  
28 thereafter. During the course of Plaintiff employment, Defendants consistently failed to provide

1 Plaintiff and Class Members with adequate pay statements as required by California Labor Code  
2 section 226.

3 65. As set forth above, Defendants failed to provide such adequate statements willingly and  
4 with full knowledge of their obligations under section 226. Defendants' failure to provide such  
5 adequate statements has caused injury to the Plaintiff and Class Members.

6 66. Plaintiff and the Wage Statement Subclass are entitled to recover the greater of actual  
7 damages or penalties as a result of Defendants' failure to provide accurate wage statements, in an  
8 amount to be proven at trial.

9 67. Wherefore, Plaintiff prays for relief as set forth below.

10 **FOURTH CAUSE OF ACTION**

11 **Failure to Pay All Wages Due at Separation**

12 **(Cal. Labor Code §§ 201 – 203)**

13 **(Plaintiff Individually and On Behalf of Similarly Situated Employees Against All**  
14 **Defendants)**

15 68. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs  
16 of this Complaint.

17 69. Labor Code section 201 provides that an employer is required to provide an employee who  
18 is terminated all accrued wages and compensation at the time of termination. Labor Code section  
19 202 similarly requires Defendants to pay their employees all wages due not later than 72 hours  
20 after employee's quit notice, unless the employee has given 72 hours previous notice of his  
21 intention to quit. Under Labor Code section 203, if an employer willfully fails to pay such wages,  
22 for every day that final wages or any part of the final wages remain unpaid, the employer is liable  
23 for a penalty equivalent to the employee's daily wage, for a maximum of 30 days.

24 70. As set forth above, Plaintiff and the other members of the Underpaid Meal Premium  
25 Subclass, Underpaid Rest Premium Subclass, and Rest Period Subclass were not properly paid  
26 meal and rest period premium wages at their regular rate of compensation. As a result, members of  
27 the Underpaid Meal Premium Subclass, Underpaid Rest Premium Subclass, and Rest Period  
28 Subclass whose employment with Defendants have ended necessarily had outstanding wages due

1 and owing at the time they separated; those wages remain outstanding.

2 71. Since the date of Plaintiff and the other members of the Waiting Time Subclass' separation  
3 to this date, Plaintiff and the other members of the Waiting Time Subclass have been available and  
4 ready to receive the wages due and owing to them. Plaintiff and the other members of the Waiting  
5 Time Subclass have not refused to receive any payment from Defendants.

6 72. Wherefore, Plaintiff and the other members of the Waiting Time Subclass have been  
7 injured as set forth above and request relief as hereafter provided.

8 73. Defendants' failure and refusal to pay Plaintiff and the other members of the Waiting Time  
9 Subclass' wages due and owing constitute a violation of Labor Code section 203 that provides that  
10 an employee's wages will continue as a penalty until paid up to 30 days from the time the wages  
11 were due. Therefore, Plaintiff and the other members of the Waiting Time Subclass are entitled to  
12 a waiting time penalty in an amount to be determined at trial, as well as recovery of attorneys' fees  
13 and costs, and restitution, pursuant to Labor Code sections 201-203.

14 74. Plaintiff and the other members of the Waiting Time Subclass seek waiting time penalties  
15 provided by Labor Code section 203 for violations of Labor Code §§ 201-202.

16 75. Wherefore, Plaintiff prays for relief as set forth below.

17 **FIFTH CAUSE OF ACTION**

18 **Unlawful, Unfair and Fraudulent Business Practices**

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

20 **(Plaintiff Individually and On Behalf of Similarly Situated Employees Against All**  
21 **Defendants)**

22 76. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs  
23 of this Complaint.

24 77. The California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et*  
25 *seq.*, prohibits unfair competition in the form of any unlawful, unfair or fraudulent business act or  
26 practice. UCL Section 17202 provides: "Notwithstanding Section 2289 of the Civil Code, specific  
27 or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in case of unfair  
28 competition."



1 78. UCL Section 17203 provides that the Court may restore to any person in interest any  
2 money or property which may have been acquired by means of such unfair competition. UCL  
3 Section 17203 also provides that any person who meets the standing requirements of Section  
4 17204 and complies with California Code of Civil Procedure Section 382 may pursue  
5 representative claims for relief on behalf of others.

6 79. UCL Section 17204 allows "any person who has suffered injury in fact and has lost money  
7 or property as a result of such unfair competition" to prosecute a civil action for violation of the  
8 Unfair Business Practices Act.

9 80. Labor Code Section 90.5(a) states that it is the public policy of California to vigorously  
10 enforce minimum labor standards in order to ensure employees are not required to work under  
11 substandard and unlawful conditions, and to protect employers who comply with the law from  
12 those who attempt to gain competitive advantage at the expense of their workers by failing to  
13 comply with the minimum standards law.

14 81. Pursuant to UCL Section 17202, Plaintiff and other member of the Class are entitled to  
15 enforce all applicable provisions of the Labor Code. Beginning at an exact date unknown to  
16 Plaintiff, but at least since the date four years prior to the filing of this suit, Defendants have  
17 committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging  
18 in the unlawful, unfair and fraudulent practices and acts described in this Complaint, including,  
19 but not limited to:

- 20 a. Failure to pay meal and rest break premiums at a proper regular rate of  
21 compensation (Cal. Lab. Code §§ 512, 226.7 and IWC Wage Order No. 9-  
22 2001, Sections 11 and 12); and
- 23 b. Failure to provide rest periods or pay a premium when rest periods were not  
24 provided (Cal. Lab. Code §§ 512, 226.7, 558, and 2699 and IWC Wage  
25 Order No. 9-2001, Sections 11 and 12).

26 82. By violating these statutes and regulations, the acts of Defendants constitute unfair and  
27 unlawful business practices under UCL Sections 17200 *et seq.*

28 83. The violations of these laws and regulations, as well as of fundamental California public

1 policies protecting workers, serve as unlawful predicate acts and practices for purposes of UCL  
2 Sections 17200 and 17203, *et seq.*

3 84. The acts and practices described above constitute unfair, unlawful and fraudulent business  
4 practices, and unfair competition, within the meaning of UCL Sections 17200 and 17203, *et seq.*  
5 Defendants' violation of the law and regulations described above constitutes a business practice  
6 because it was done repeatedly over a significant period of time and in a systematic manner to the  
7 detriment of Plaintiff and the Class Members. Defendants' practices of having Plaintiff and other  
8 Class members to work long hours without rest periods, to which they were entitled by law, and  
9 which are important to employee safety, was in violation of the law. The acts and practices  
10 described above have allowed Defendants to gain an unfair competitive advantage over law-  
11 abiding employers and competitors.

12 85. As a direct and proximate result of the acts and practices described herein, Plaintiff and  
13 Class Members have been denied compensation, in an amount to be proven at trial. Plaintiff and  
14 those similarly situated have accordingly each suffered injury in fact and have lost money or  
15 property as a result of Defendants' unfair, unlawful and fraudulent business practices, and unfair  
16 competition.

17 86. Plaintiff and the Class Members are entitled to restitution pursuant to UCL Section 17203  
18 for all wages and other compensation unlawfully withheld from employees during the four-year  
19 period prior to the filing of the complaint.

20 87. Plaintiff's success in this class action will enforce important rights affecting the public  
21 interest. Therefore, Plaintiff sues on behalf of the general public, as well as themselves and the  
22 Class Members.

23 88. An award of attorneys' fees is appropriate pursuant to California Code of Civil Procedure  
24 Section 1021.5 and other applicable laws, because: 1) this action will confer a significant benefit  
25 upon a large class of persons; 2) there is a financial burden involved in pursuing this action; and 3)  
26 it would be against the interest of justice to force Plaintiff to pay attorneys' fees from any amount  
27 recovered in this action.

28

1 **SIXTH CAUSE OF ACTION**

2 **Civil Penalties for Violation of Private Attorneys General Act of 2004**

3 **(Cal. Lab. Code §§ 2698 *et seq.*)**

4 **(Representative PAGA Action)**

5 **(Plaintiff on behalf of himself and all aggrieved employees Against All Defendants)**

6 89. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs  
7 of this Complaint.

8 90. On January 17, 2022, Plaintiff notified Defendants and the California Labor and  
9 Workforce Development Agency (“LWDA”) via certified mail of Defendants’ violations pursuant  
10 to Labor Code section 2966.3.

11 91. From January 17, 2022 to the present, Defendants did not take any remedial action and the  
12 LWDA did not intervene to investigate Plaintiff’s claims. Accordingly, Plaintiff files this  
13 Complaint as a representative action under the Labor Code section 2699.3(a)(2)(C) and he is  
14 entitled to recover civil penalties and unpaid wage for violations committed by Defendants during  
15 the period commencing one year prior to filing this Complaint through the present (“PAGA  
16 Period”) on behalf of himself and all other aggrieved non-exempt employees of Defendants  
17 pursuant to Labor Code sections 2698 *et seq.*

18 92. Under the California Private Attorneys General Act (“PAGA”) of 2004, Cal. Lab. Code §§  
19 2698-2699.5, an aggrieved employee, on behalf of himself and other current or former employees  
20 as well as the general public, may bring a representative action as a private attorney general to  
21 recover penalties for an employer’s violations of the California Labor Code and IWC Wage  
22 Orders. These civil penalties are in addition to any other relief available under the California  
23 Labor Code, 75% must be allocated to California’s Labor and Workforce Development Agency  
24 (“LWDA”) and 25% to the aggrieved employee, pursuant to California Labor Code § 2699.

25 93. Plaintiff is an aggrieved employee withstanding to bring this cause of action under the  
26 PAGA Act because of his employment with Defendants and Defendants’ failure to comply with  
27 various California Labor Code violations for work performed in California.

28 94. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to

1 enforce California's labor laws, including, without limitation, the penalty provisions identified in  
2 Labor Code section 2699.5. From January 17, 2022 to the present, the LWDA did not inform  
3 Plaintiff that it would be investigating the claims set forth herein. Since the LWDA took no steps  
4 from January 17, 2022 to the present and because Defendants took no corrective action to remedy  
5 the allegations set forth above Plaintiff, as a representative of the people of the State of California,  
6 will seek any and all civil penalties otherwise capable of being collected by the Labor Commission  
7 and/or the Department of Labor Standards Enforcement (DLSE).

8 95. Plaintiff alleges, on behalf of himself and all aggrieved employees, as well as the general  
9 public, that Defendants have violated the following provisions of the California Labor Code and  
10 the following provisions of the IWC Wage Orders that are actionable through the California Labor  
11 Code and PAGA, as previously alleged herein:

- 12 a. Failure to pay meal and rest break premiums at a proper regular rate of  
13 compensation (Cal. Lab. Code §§ 512, 558, 226.7, 2699 and IWC Wage  
14 Order No. 9-2001, Sections 11 and 12);
- 15 b. Failure to provide rest periods or pay a premium when rest periods were not  
16 provided (Cal. Lab. Code §§ 512, 226.7, 558, and 2699 and IWC Wage  
17 Order No. 9-2001, Sections 11 and 12);
- 18 c. Failure to Provide Accurate Wage Statements (Cal. Lab. Code §§ 226 and  
19 2699); and
- 20 d. Failure to Pay All Wages Upon Separation (Cal. Lab. Code §§ 201-203, and  
21 2699).

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

23 For all provisions of this code except those for which a civil penalty is  
24 specifically provided, there is established a civil penalty for a violation of  
25 these provisions, as follows: . . . (2) If, at the time of the alleged violation, the  
26 person employs one or more employees, the civil penalty is one hundred  
27 dollars (\$100) for each aggrieved employee per pay period for the initial  
violation and two hundred dollars (\$200) for each aggrieved employee per pay  
period for each subsequent violation.

28 97. Plaintiff is entitled to civil penalties, to be paid by Defendants and allocated as PAGA

1 requires, pursuant to California Labor Code § 2699(a) for Defendants' violations of the California  
2 Labor Code and IWC Wage Orders for which violations a civil penalty is already specifically  
3 provided by law.

4 98. Furthermore, Plaintiff is entitled to civil penalties, to be paid by Defendants and allocated  
5 as PAGA requires, pursuant to California Labor Code § 2699(f) for Defendants' violations of the  
6 California Labor Code and IWC Wage Orders for which violations a civil penalty is not already  
7 specifically provided.

8 99. Under PAGA, Plaintiff and the State of California are entitled to recover the maximum  
9 civil penalties permitted by law for the violations of the California Labor Code and IWC Wage  
10 Order No. 9-2001 or other applicable Wage Order(s) that are alleged in this Complaint.

11 **VI. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff on behalf of himself and the proposed Class demands judgment against  
13 Defendants as follows:

- 14 a. For an order, pursuant to California CCP § 382, certifying this action as a class action,  
15 appointing Plaintiff as Class Representative, and Plaintiff's attorneys as Class Counsel;
- 16 a. All compensatory and general damages against all Defendants in an amount according  
17 to proof, including unpaid meal and rest break premiums, statutory penalties under  
18 Labor Code section 201 and 226 and waiting time penalties under Labor Code section  
19 203;
- 20 b. For a declaratory judgment that Defendants have violated California Labor Laws and  
21 applicable Wage Order, as alleged herein;
- 22 a. For all applicable civil penalties pursuant to Labor Code sections 558 and 2698, *et seq.*
- 23 b. For prejudgment and post-judgment interest according to any applicable provision of  
24 law, according to proof;
- 25 c. For reasonable attorneys' fees and costs of suit, pursuant to the California Labor Code  
26 sections 558, 226, and 2698 *et. seq.* and California Code of Civil Procedure Section  
27 1021.5

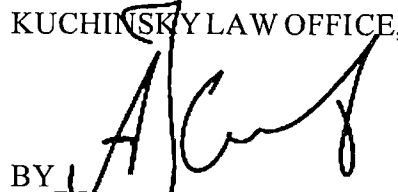
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d. Other relief as this Court deems just and proper.

Dated: January 18, 2022

KUCHINSKY LAW OFFICE, P.C.



BY  
Alexei Kuchinsky  
Attorney for Plaintiff and Proposed Class

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Alleges Goodyear Underpaid California Workers for Missed Breaks](#)

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