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9 Attorneys for Defendants  
 CALIBER HOLDINGS CORPORATION, CALIBER  
 10 COLLISION TRANSPORT SERVICES LLC and  
 CALIBER BODYWORKS, INC.  
 11

12 **UNITED STATES DISTRICT COURT**  
 13 **CENTRAL DISTRICT OF CALIFORNIA**  
 14

15 LUIS URIBE, as an individual and on  
 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 CALIBER HOLDINGS  
 19 CORPORATION, a Delaware  
 Corporation; CALIBER COLLISION  
 20 TRANSPORT SERVICES LLC, a  
 Delaware Limited Liability Company;  
 21 CALIBER BODYWORKS, INC., a  
 22 California Corporation; and DOES 1  
 through 10,

23 Defendants.  
 24

Case No.

25 **DEFENDANTS' NOTICE OF**  
**REMOVAL OF CIVIL ACTION TO**  
**FEDERAL COURT PURSUANT TO**  
**28 U.S.C. §§ 1332, 1446 AND 1453**

[Filed concurrently with: Civil Cover  
 Sheet; Certificate of Interested Parties;  
 Declaration of Robyn Baccus; Request for  
 Judicial Notice]

Complaint Filed: February 23, 2018  
 Trial Date: None Set

1 **TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL**  
2 **DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND HIS ATTORNEYS**  
3 **OF RECORD:**

4 **PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1332(d), 1446, and  
5 1453, Defendants Caliber Holdings Corporation (“Caliber Holdings”), Caliber  
6 Collision Transport Services LLC (“Caliber Collision”) and Caliber Bodyworks, Inc.  
7 (“Caliber Bodyworks”) (collectively “Defendants”) hereby remove the above-entitled  
8 action from the Superior Court of the State of California for the County of Los Angeles  
9 to the United States District Court for the Central District of California, under the Class  
10 Action Fairness Act (“CAFA”), pursuant to 28 U.S.C. §§ 1332(d), 1446 and 1453, on  
11 the grounds that: (1) Plaintiff Luis Uribe (“Plaintiff”) is a “citizen of a State different  
12 from” Defendant Caliber Holdings Corporation; (2) “the matter in controversy exceeds  
13 the sum or value of \$5,000,000, exclusive of interest and costs;” and (3) “the number  
14 of members of all proposed plaintiff classes in the aggregate is” more than 100. The  
15 foregoing facts were true when Plaintiff filed the Complaint, and remain true now.

16 Removal jurisdiction is therefore appropriate under CAFA as alleged in detail  
17 below.

18 **I. PROCEDURAL BACKGROUND AND TIMELINESS OF REMOVAL**

19 1. On February 23, 2018, Plaintiff filed an unverified Complaint in the  
20 Superior Court of the State of California, commencing the action entitled *Luis Uribe,*  
21 *as an individual and on behalf of all others similarly situated, Plaintiff, v. Caliber*  
22 *Holdings Corporation, a Delaware Corporation; Caliber Collision Transport*  
23 *Services LLC, a Delaware Limited Liability Company; Caliber Bodyworks, Inc., a*  
24 *California Corporation; and Does 1 through 100*, Case No. BC695726 (“Complaint”).  
25 A true and correct copy of the Complaint is attached as **Exhibit A** to this Notice of  
26 Removal. The Complaint alleges seven causes of action: (1) Minimum Wage  
27 Violations (Labor Code Sections 1182.12, 1194, 1194.2, 1197); (2) Failure to Pay All  
28 Overtime Wages (Labor Code Sections 204, 510, 558, 1194, 1198); (3) Meal Period

1 Violations (Labor Code Sections 226.7, 512, 558); (4) Rest Period Violations (Labor  
2 Code Sections 226.7, 516, 558); (5) Waiting Time Penalties (Labor Code Sections  
3 201-203); (6) Wage Statement Penalties (Labor Code Sections 226 *et seq.*); and (7)  
4 Unfair Competition (Business & Professions Code Section 17200 *et seq.* (the  
5 “UCL”)).

6 2. On March 12, 2018, Judge Kenneth R. Freeman, of the Los Angeles  
7 Superior Court, issued an Initial Status Conference Order (Class Action), scheduling  
8 a status conference for June 8, 2018 at 10:00 a.m. in Department 14. A copy of the  
9 Initial Status Conference Order (Class Action) is attached as **Exhibit B**. On that same  
10 day, Judge Freeman also issued an order designating the case as complex under  
11 California Rule of Court 3.400. A copy of the complex designation order is attached  
12 as **Exhibit C**.

13 3. Defendant Caliber Collision’s registered agent for service of process was  
14 served with the Complaint on March 29, 2018. A true and correct copy of the  
15 documents served on Defendant Caliber Collision’s registered agent is attached to this  
16 Notice as **Exhibit D**.

17 4. Defendant Caliber Bodyworks’ registered agent for service of process  
18 was served with the Complaint on March 29, 2018. A true and correct copy of the  
19 documents served on Defendant Caliber Bodyworks’ registered agent is attached to  
20 this Notice as **Exhibit E**.

21 5. Defendant Caliber Holdings’ registered agent for service of process was  
22 served with the Complaint on March 29, 2018. A true and correct copy of the  
23 documents served on Defendant Caliber Holdings’ registered agent is attached to this  
24 Notice as **Exhibit F**.

25 6. A defendant in a civil action has thirty (30) days from the date it is served  
26 with a summons and complaint in which to remove the action to federal court. 28  
27 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344,  
28 347-48 (1999). As Defendants’ registered agents for service of process were served

1 with the summons and Complaint on March 29, 2018, this Notice of Removal is  
2 timely. 28 U.S.C. § 1446(b), *see* Fed. R. Civ. P. 6(a)(1)(C); *Fleming v. United*  
3 *Teachers Associates Insurance Company*, 250 F. Supp. 2d 658, 661 (S.D. W.Va. 2003)  
4 (removal petition was timely where 30th day after service fell on Thanksgiving and  
5 removal petition was filed the following day); *Johnson v. Harper*, 66 F.R.D. 103 (E.D.  
6 Tenn. 1975) (removal was timely where 30th day after service fell on a Saturday and  
7 removal was filed the following Monday).

8 **II. PLAINTIFF’S COMPLAINT IS REMOVABLE PURSUANT TO CAFA**

9 7. The Court has original jurisdiction over this action pursuant to the Class  
10 Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). As such, this action  
11 may be removed to this Court by Defendants pursuant to 28 U.S.C. §§ 1332(d), 1446  
12 and 1453.

13 8. Under CAFA, the Federal District Court has jurisdiction if:

- 14 a) There are at least 100 class members in all proposed plaintiff  
15 classes; and
- 16 b) The combined claims of all class members exceed \$5 million  
17 exclusive of interest and costs; and
- 18 c) Any class member (named or not) is a citizen of a different state  
19 than any defendant. 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B) and  
20 1453(a).

21 **A. The Diversity Of Citizenship Requirement Is Satisfied**

22 9. The minimal diversity requirement of 28 U.S.C. § 1332(d) is met in this  
23 action because the Court need only find that there is diversity between one putative  
24 class member and one defendant. 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B), 1453(a).

25 10. Pursuant to 28 U.S.C. § 1332(c), “a corporation shall be deemed to be a  
26 citizen of every State and foreign state by which it has been incorporated and of the  
27 State or foreign state where it has its principal place of business.” A corporation’s  
28 headquarters is presumptively the location of its “principal place of business....”

1 *Hertz v. Friend*, 559 U.S. 77, 78 (2010) (“[I]n practice [a company’s principal place  
2 of business] should normally be the place where the corporation maintains its  
3 headquarters—provided that the headquarters is the actual center of direction, control  
4 and coordination, i.e., the ‘nerve center’....”).

5 11. Caliber Holdings Corporation is a corporation formed and organized in  
6 the State of Delaware. (Request for Judicial Notice, Ex. A.) Caliber Holdings’  
7 headquarters—which is its principal place of business and the center of its executive  
8 and administrative functions—is in the State of Texas. (Declaration of Robyn Baccus  
9 (“Baccus Decl.”) ¶ 8)

10 12. The minimal diversity requirement of 28 U.S.C. 1332(d) is met in this  
11 action because Defendant Caliber Holdings is a citizen of Delaware and Texas while  
12 Plaintiff, a putative class member, is a citizen of California. (Complaint at ¶ 3.)

13 13. The exceptions to CAFA jurisdiction under 28 U.S.C. § 1332(d) (3) and  
14 (d) (4) are inapplicable because Defendant Caliber Holdings is not a citizen of  
15 California. As such, the third requirement for CAFA jurisdiction is satisfied.

16 14. The citizenship of “Doe” defendants is disregarded for purposes of  
17 removal. 28 U.S.C. § 1441(b)(1). Therefore, the requisite minimal diversity exists  
18 between the parties.

19 **B. There Are At Least 100 Class Members in the Proposed Class**

20 15. Plaintiff’s Complaint is “on behalf of himself and all others similarly  
21 situated” and seeks to recover unpaid wages and penalties under California Business  
22 and Professions Code § 17200 *et seq.*, Labor Code §§ 201-204, 226, 226.7 *et seq.*, 510,  
23 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and Industrial Welfare Commission  
24 Wage Order 4 (‘Wage Order 4’), in addition to seeking declaratory relief and  
25 restitution.” (Complaint, ¶ 1.)

26 16. Specifically, Plaintiff purports to bring this action on behalf of six  
27 different classes, including:

28 (1) Minimum Wage Class: “all of Defendants’ current and former non-exempt

1 employees in California who worked as Bodymen (or similarly titled positions),  
2 during the four years immediately preceding the filing of the Complaint through  
3 the present”;

4 (2) Overtime Class: “all [of] Defendants’ current and former non-exempt  
5 employees in California who worked as Bodymen (or similarly titled positions),  
6 and who worked over 8.0 hours in a day and/or 40.0 hours in a week, during the  
7 four years immediately preceding the filing of the Complaint through the  
8 present”;

9 (3) Meal Period Class: “all of Defendants’ current and former non-exempt  
10 employees in California who worked as Bodymen (or similarly titled positions)  
11 for at least one shift in excess of 5.0 hours, during the four years immediately  
12 preceding the filing of the Complaint through the present”;

13 (4) Rest Period Class: “all of Defendants’ current and former non-exempt  
14 employees in California who worked as Bodymen (or similarly titled positions),  
15 and who worked at least one shift in excess of 3.5 hours, during the four years  
16 immediately preceding the filing of the Complaint through the present”;

17 (5) Waiting Time Class: “all formerly employed members of the Minimum  
18 Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class, who  
19 separated their employment from Defendants in the three years immediately  
20 preceding the filing of this Complaint through the present”; and,

21 (6) Wage Statement Class: “all members of the Minimum Wage Class,  
22 Overtime Class, Meal Period Class, and/or Rest Period Class, who worked for  
23 Defendants in California during the one year immediately preceding the filing  
24 of the Complaint through the present.” (Complaint, ¶ 16)

25 17. There were at least 751 current employees in California who currently  
26 hold the title of Body Tech and who have performed work during the period from  
27 February 23, 2014, through April 20, 2018. (Baccus Decl. ¶ 4.) Thus, the putative  
28 Minimum Wage Class, Overtime Class, Meal Period Class, and Rest Period Class, as

1 defined by Plaintiff’s Complaint, are each comprised of at least 751 persons during the  
2 relevant statutory period.

3 18. The CAFA numerosity requirement is fulfilled because there are more  
4 than 100 class members implicated in Plaintiff’s Complaint. 28 U.S.C. § 1332(d).

5 **C. The Requisite \$5 Million Amount In Controversy Is Satisfied**

6 19. Based on the allegations in the Complaint, the alleged amount in  
7 controversy exceeds, in the aggregate, five million dollars, as demonstrated below.<sup>1</sup>

8 20. Plaintiff alleges that he “worked shifts in excess of 3.5 hours, and was  
9 never provided with a paid rest period for every 4-hour period worked, or major  
10 fraction thereof, because Defendants’ piece-rate/commission compensation plan fails  
11 to separately compensate Plaintiff for required rest periods.” (Complaint, ¶ 12).  
12 Plaintiff further alleges that Defendants “failed to separately compensate Plaintiff and  
13 members of the Rest Period Class for each rest period to which they were entitled[.]”  
14 (Complaint ¶ 40).

15 21. There are at least 751 members of the putative Rest Period Class. (*See*  
16 Paragraph 18, *supra*.) Plaintiff and other members of the putative Rest Period Class  
17 typically worked five days per workweek, and in general a workday is eight hours.  
18 (Baccus Decl. ¶ 7.)

19 22. Under California law, employees who miss rest periods are entitled to  
20 one hour of premium pay for each day that a rest period is missed. *See Marlo v. United*  
21 *Parcel Service, Inc.*, No. CV 03-04336 DDP RZX, 2009 WL 1258491, at \*7 (C.D.  
22 Cal. May 5, 2009). Rest period claims are properly considered in determining the  
23 amount in controversy. *See, e.g., Muniz v. Pilot Travel Ctr. LLC*, No. CIV. S-07-

24  
25  
26 <sup>1</sup> In alleging the amount in controversy for purposes of CAFA removal, Defendants  
27 do not concede in any way that the allegations in the Complaint are accurate, or that  
28 Plaintiff is entitled to any of the monetary relief requested in the Complaint. Nor do  
Defendants concede that any or all of the putative class members are entitled to any  
recovery in this case, or are appropriately included in the putative class.

1 0325FCDEFB, 2007 WL 1302504, at \*4 (E.D. Cal. May 1, 2007); *Helm v. Alderwoods*  
2 *Group, Inc.*, No. C 08-01184SI, 2008 WL 2002511, at \*8 (N.D. Cal. May 7, 2008).

3 23. Plaintiff also alleges that the failure to provide rest periods constitutes  
4 unfair competition within the meaning of the UCL. (Complaint, ¶ 45.) The statute of  
5 limitations for claims under the UCL is four years. Cal. Bus. & Prof. Code § 17208  
6 (“Any action to enforce any cause of action pursuant to this chapter shall be  
7 commenced within four years after the cause of action accrued”); *Cortez v. Purolator*  
8 *Air Filtration Products Co.*, 23 Cal. 4th 163, 178-179 (2000) (the four-year statute of  
9 limitations applies to any UCL claim, notwithstanding that the underlying claims have  
10 shorter statutes of limitation). Accordingly, the measure of potential damages for rest  
11 break claims is based on a four year limitations period.

12 24. Defendants’ calculations are based on the following: (1) Plaintiff and the  
13 members of the putative Rest Period Class consistently worked five days per week  
14 (Baccus Decl. ¶ 7); and (2) for each day worked, there was at least 1 missed rest break.  
15 *See Stevenson v. Dollar Tree Stores, Inc.*, No. CIV S-11-1433 KJM, 2011 WL  
16 4928753, at \*3-4 (E.D. Cal. Oct 17, 2011) (defendant’s calculation of potential missed  
17 meal period damages at 100% of the shifts was appropriate where plaintiff alleged that  
18 class members were *routinely* denied meal periods or were not compensated for meal  
19 periods).

20 25. Plaintiff and the putative Rest Period Class provided services during at  
21 least 77,000 workweeks in the four-year statutory period, and their average hourly rate  
22 was at least \$15.00. (Baccus Decl., ¶¶ 5-6).

23 26. Based on the foregoing, Plaintiff and the Rest Period Class allege at least  
24 \$5,000,000 in rest break penalties based on an hourly pay rate of at least \$15.00, one  
25 rest break penalty per day, five workdays per workweek, and at least 77,000  
26 workweeks for the Rest Period Class.

27 27. Accordingly, removal of this action under CAFA is proper under 28  
28 U.S.C. §1332(d).



1 **III THE PROCEDURAL REQUIREMENTS OF 28 U.S.C. § 1446 ARE**  
2 **SATISFIED**

3 28. In accordance with 28 U.S.C. §1446(a), this Notice of Removal is filed  
4 in the District in which the action is pending. The Los Angeles County Superior Court  
5 is located within the Central District of California. Therefore, venue is proper in this  
6 Court because it is the “district and division embracing the place where such action is  
7 pending.” 28 U.S.C. § 1441(a).

8 29. In accordance with 28 U.S.C. §1446(a), copies of all process, pleadings,  
9 and orders served upon Defendants are attached as Exhibits to this Notice.

10 30. In accordance with 28 U.S.C. §1446(d), a copy of this Notice is being  
11 served upon counsel for Plaintiff, and a notice will be filed with the Clerk of the  
12 Superior Court of California for the County of Los Angeles. Notice of Compliance  
13 shall be filed promptly afterwards with this Court.

14 31. As required by Federal Rule of Civil Procedure 7.1 and Local Rule 7.1–1,  
15 Defendants concurrently filed their Certificate of Interested Parties.

16 WHEREFORE, Defendants remove the above-captioned action to the United  
17 States District Court for the Central District of California.

18  
19 DATED: April 27, 2018

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

21  
22 By: /s/ Douglas J. Farmer  
23 Douglas J. Farmer  
24 Brian D. Berry  
Sarah Zenewicz

25 Attorneys for Defendants  
26 CALIBER HOLDINGS CORPORATION,  
27 CALIBER COLLISION TRANSPORT  
28 SERVICES LLC and CALIBER  
BODYWORKS, INC.

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**CERTIFICATE OF SERVICE**

I certify that on April 27, 2018, I electronically filed the foregoing DEFENDANTS’ NOTICE OF REMOVAL OF CIVIL ACTION TO FEDERAL COURT PURSUANT TO 28 U.S.C. §§ 1332, 1446 AND 1453 and that it is available for viewing and downloading from the Court’s CM/ECF system, and that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

By: /s/ Douglas J. Farmer  
Douglas J. Farmer

33790251.5

# **Exhibit A**

COPY

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Attorneys for Plaintiff

CONFORMED COPY  
 ORIGINAL FILED  
 Superior Court of California  
 County of Los Angeles

FEB 23 2018

Sherri R. Carter, Executive Officer/Clerk  
 By M. Soto, Deputy  
 Moses Soto

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

12 LUIS URIBE, as an individual and on behalf  
 13 of all others similarly situated,

Plaintiff,

vs.

16 CALIBER HOLDINGS CORPORATION, a  
 17 Delaware Corporation; CALIBER  
 18 COLLISION TRANSPORT SERVICES  
 19 LLC, a Delaware Limited Liability  
 20 Company; CALIBER BODYWORKS, INC.,  
 a California Corporation; and DOES 1  
 through 10,

Defendants.

Case No.: BC 695726

CLASS ACTION COMPLAINT:

- (1) MINIMUM WAGE VIOLATIONS (LABOR CODE §§ 1182.12, 1194, 1194.2, 1197);
- (2) FAILURE TO PAY ALL OVERTIME WAGES (LABOR CODE §§ 204, 510, 558, 1194, 1198);
- (3) MEAL PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 512, AND 558);
- (4) REST PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 516, 558);
- (5) WAITING TIME PENALTIES (LABOR CODE §§ 201-203);
- (6) WAGE STATEMENT PENALTIES (LABOR CODE § 226 et seq.);
- (7) UNFAIR COMPETITION (BUS. & PROF. CODE § 17200 et seq.); and

DEMAND FOR JURY TRIAL  
UNLIMITED CIVIL CASE

FILED

1 Plaintiff Luis Uribe (hereinafter "Plaintiff") on behalf of himself and all others similarly  
2 situated, hereby brings this Class Action Complaint ("Complaint") against Caliber Holdings  
3 Corporation, a Delaware Corporation; Caliber Collision Transport Services LLC, a Delaware  
4 Limited Liability Company; Caliber Bodyworks, Inc., a California Corporation; and DOES 1 to  
5 10, inclusive (collectively "Defendants"), and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, hereby brings this Complaint for recovery of unpaid wages and penalties  
8 under California Business and Professions Code § 17200 *et seq.*, Labor Code §§ 201 - 204, 226,  
9 226.7 *et seq.*, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and Industrial Welfare  
10 Commission Wage Order 4 ("Wage Order 4"), in addition to seeking declaratory relief and  
11 restitution. This Complaint is brought pursuant to California Code of Civil Procedure § 382. This  
12 Court has jurisdiction over Defendants' violations of the California Labor Code because the  
13 amount in controversy exceeds this Court's jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil  
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein  
17 occurred in the County of Los Angeles. Defendants own, maintain offices, transact business, have  
18 an agent or agents within the County of Los Angeles, and/or otherwise are found within the  
19 County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of  
20 service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,  
23 Plaintiff was and currently is, a California resident. During the four years immediately preceding  
24 the filing of the Complaint in this action and within the statute of limitations periods applicable  
25 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt  
26 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of  
27 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code  
28 §§ 201 - 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and

1 Industrial Welfare Commission Wage Order 4 which sets employment standards for the  
2 professional and technical industries.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four  
4 years preceding the filing of the Complaint and continuing to the present, Defendants did (and  
5 continue to do) business by operating automotive collision repair centers, and employed Plaintiff  
6 and other, similarly-situated non-exempt employees within Los Angeles County and the state of  
7 California and, therefore, were (and are) doing business in the State of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,  
9 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said  
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to  
11 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,  
12 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,  
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,  
14 and proximately caused Plaintiff and the Classes (as defined in Paragraph 16) to be subject to the  
15 unlawful employment practices, wrongs, injuries and damages complained of herein.

16 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned  
17 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

18 7. At all times herein mentioned, each of said Defendants participated in the doing  
19 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the  
20 Defendants, and each of them, were the agents, servants, and employees of each and every one of  
21 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned  
22 were acting within the course and scope of said agency and employment. Defendants, and each  
23 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or  
24 omissions complained of herein.

25 8. At all times mentioned herein, Defendants, and each of them, were members of  
26 and engaged in a joint venture, partnership, and common enterprise, and acting within the course  
27 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,  
28 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all

1 members of the Classes.

2 **GENERAL FACTUAL ALLEGATIONS**

3 9. Defendants operate automotive collision repair centers and bill themselves as the  
4 “nation’s largest collision repair company.” Defendants operate over one hundred (100) repair  
5 centers in the State of California, and offer a wide range of automotive repair services, including  
6 major collision repairs, dent repair and removal, and auto glass repair. Plaintiff was employed by  
7 Defendants from approximately January 2016 until February 2018 in the non-exempt position of  
8 “Bodyman” (or similarly titled position). Plaintiff’s primary job responsibility as a Bodyman was  
9 to perform body work on damaged vehicles.

10 10. At all times while employed as a Bodyman, Plaintiff has been paid on a piece-rate  
11 (or commission) basis, whereby Plaintiff is paid a certain piece-rate (or commission) per repair  
12 completed, known as a Flat Rate or Commission Pay. Despite the fact that Plaintiff records his  
13 actual hours worked pursuant to company policy, wages earned for these hours worked are  
14 treated as an advance against Plaintiff’s piece-rate/commission earnings, as only those piece-  
15 rate/commission earnings in excess of the “hourly wages” are paid out as piece-rate/commission  
16 earnings, which have at times been denoted as “productivity compensation” on Plaintiff’s wage  
17 statements. Plaintiff and other Bodymen are pressured and encouraged to be highly productive  
18 and were told not to leave until all repairs were finished, even completing work after clocking  
19 out. As a result, Plaintiff and other Bodymen infrequently have piece-rate/commission earnings  
20 that do not exceed their hourly wages.

21 11. Because Defendants’ pay system is simply a subterfuge for a piece-  
22 rate/commission compensation system, Plaintiff and other Bodymen are not separately  
23 compensated for time spent working on tasks which are not compensated on a piece-  
24 rate/commission basis, including hours spent cleaning and maintaining tools, performing  
25 administrative tasks and attending mandatory meetings (i.e., “non-productive” time worked).  
26 As a result, Plaintiff was not paid at least the minimum wage for all hours actually worked, and  
27 was not credited with all overtime hours actually worked.  
28

1           12.     While working on a piece-rate/commission basis, Plaintiff worked shifts in excess  
2 of 3.5 hours, and was never provided with a paid rest period for every 4-hour period worked, or  
3 major fraction thereof, because Defendants’ piece-rate/commission compensation plan fails to  
4 separately compensate Plaintiff for required rest periods. As a result, Plaintiff was not provided  
5 with compensated rest periods as required by Wage Order 4, §12(A), nor have Defendants  
6 compensated Plaintiff pursuant to Labor Code section 226.7 for their failure to provide “paid”  
7 rest periods.

8           13.     Because Defendants’ pay system is simply a subterfuge for a piece-  
9 rate/commission compensation system, Plaintiff and other Bodymen were encouraged to clock  
10 out for lunch without actually taking a lunch break and to clock out for the end of the day but to  
11 continue to work until all repairs were completed, resulting in many hours of off-the-clock work,  
12 and falsely reported meal periods that were never provided. In addition, Defendants have failed  
13 to provide Plaintiff and other Bodymen with a legally compliant second meal period when they  
14 work shifts in excess of 10 hours.

15           14.     As a result of Plaintiff being paid on a piece-rate/commission basis, Defendants  
16 failed properly calculate Plaintiff’s regular rate of pay for purposes of calculating overtime  
17 compensation. As a result, Plaintiff was not properly compensated at one and a half times his  
18 regular rate of pay for hours worked in excess of 8 hours per day and/or 40 hours per week, and  
19 was therefore deprived of all overtime compensation.

20           15.     As a result of Defendants’ failure to pay all minimum wages, overtime wages, and  
21 meal and rest period premium wages, Defendants maintain inaccurate payroll records and issue  
22 inaccurate wage statements to Plaintiff, and did not pay Plaintiff all wages due to Plaintiff at the  
23 termination of his employment.

24                                **CLASS ACTION ALLEGATIONS**

25           16.     **Class Definitions:** Plaintiff brings this action on behalf of himself and the  
26 following Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure:

- 27           a.     The Minimum Wage Class consists of all of Defendants’ current and former non-  
28 exempt employees in California who worked as Bodymen (or similarly titled



1 positions), during the four years immediately preceding the filing of the Complaint  
2 through the present.

3 b. The Overtime Class consists of all Defendants' current and former non-exempt  
4 employees in California who worked as Bodymen (or similarly titled positions),  
5 and who worked over 8.0 hours in a day and/or 40.0 hours in a week, during the  
6 four years immediately preceding the filing of the Complaint through the present.

7 c. The Meal Period Class consists of all of Defendants' current and former non-  
8 exempt employees in California who worked as Bodymen (or similarly titled  
9 positions) for at least one shift in excess of 5.0 hours, during the four years  
10 immediately preceding the filing of the Complaint through the present.

11 d. The Rest Period Class consists of all of Defendants' current and former non-  
12 exempt employees in California who worked as Bodymen (or similarly titled  
13 positions), and who worked at least one shift in excess of 3.5 hours, during the  
14 four years immediately preceding the filing of the Complaint through the present.

15 e. The Waiting Time Class consists of all formerly employed members of the  
16 Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period  
17 Class, who separated their employment from Defendants in the three years  
18 immediately preceding the filing of this Complaint through the present.

19 f. The Wage Statement Class consists of all members of the Minimum Wage Class,  
20 Overtime Class, Meal Period Class, and/or Rest Period Class, who worked for  
21 Defendants in California during the one year immediately preceding the filing of  
22 the Complaint through the present.

23  
24 17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that  
25 joinder of all members would be unfeasible and not practicable. The membership of the Classes  
26 is unknown to Plaintiff at this time; however, it is estimated that the members of each of the  
27 Classes number greater than one hundred (100) individuals. The identity of such membership is  
28 readily ascertainable via inspection of Defendants' employment records.

1           18.     **Common Questions of Law and Fact Predominate/Well Defined Community**  
2 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly  
3 situated employees, which predominate over questions affecting only individual members  
4 including, without limitation to:

- 5           i.       Whether Defendants violated the applicable Labor Code provisions including, but  
6               not limited to §§ 1182.12, 1194, 1194.2 and 1197 by failing to pay all members of  
7               the Minimum Wage Class at least the minimum wage for all hours worked;  
8           ii.      Whether Defendants violated the applicable Labor Code provisions including, but  
9               not limited to §§ 510 and 1194 by requiring overtime work and not paying for said  
10              work according to the overtime laws of the State of California;  
11           iii.     Whether Defendants authorized and permitted all legally compliant meal periods  
12              to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;  
13           iv.     Whether Defendants authorized and permitted all legally compliant rest periods to  
14              members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;  
15           v.      Whether Defendants' policies and/or practices for the timing and amount of  
16              payment of final wages to members of the Waiting Time Class at the time of their  
17              separation of employment were lawful; and  
18           vi.     Whether Defendants furnished legally compliant wage statements to members of  
19              the Wage Statement Class pursuant to Labor Code § 226.

20           19.     **Predominance of Common Questions:** Common questions of law and fact  
21 predominate over questions that affect only individual members of the Classes. The common  
22 questions of law set forth above are numerous and substantial and stem from Defendants' policies  
23 and/or practices applicable to each individual class member, such as Defendants' uniform Flat  
24 Rate or Commission Plans and rest period policies/practices. As such, the common questions  
25 predominate over individual questions concerning each individual class member's showing as to  
26 their eligibility for recovery or as to the amount of their damages.  
27

28           20.     **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because

1 Plaintiff was employed by Defendants as a non-exempt employee in California during the  
2 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged  
3 herein, Plaintiff, like the members of the Classes, was deprived of all earned minimum and  
4 overtime wages, was not authorized and permitted all required meal and rest periods, Plaintiff did  
5 not receive all final wages owed to him upon his separation of employment with Defendants,  
6 Defendants failed to furnish Plaintiff with complete and accurate wage statements.

7       21.     **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps  
8 to represent fairly and adequately the interests of the members of the Classes. Moreover,  
9 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of  
10 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-  
11 and-hour class actions in state and federal courts in the past and are committed to vigorously  
12 prosecuting this action on behalf of the members of the Classes.  
13

14       22.     **Superiority:** The California Labor Code is broadly remedial in nature and serves  
15 an important public interest in establishing minimum working conditions and standards in  
16 California. These laws and labor standards protect the average working employee from  
17 exploitation by employers who have the responsibility to follow the laws and who may seek to  
18 take advantage of superior economic and bargaining power in setting onerous terms and  
19 conditions of employment. The nature of this action and the format of laws available to Plaintiff  
20 and members of the Classes make the class action format a particularly efficient and appropriate  
21 procedure to redress the violations alleged herein. If each employee were required to file an  
22 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they  
23 would be able to exploit and overwhelm the limited resources of each individual plaintiff with  
24 their vastly superior financial and legal resources. Moreover, requiring each member of the  
25 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by  
26 employees who would be disinclined to file an action against their former and/or current employer  
27 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent  
28 employment. Further, the prosecution of separate actions by the individual class members, even

1 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications  
2 with respect to the individual class members against Defendants herein; and which would  
3 establish potentially incompatible standards of conduct for Defendants; and/or legal  
4 determinations with respect to individual class members which would, as a practical matter, be  
5 dispositive of the interest of the other class members not parties to adjudications or which would  
6 substantially impair or impede the ability of the class members to protect their interests. Further,  
7 the claims of the individual members of the Class are not sufficiently large to warrant vigorous  
8 individual prosecution considering all of the concomitant costs and expenses attending thereto.  
9 As such, the Classes are maintainable as classes under Rule 23 of the Federal Rules of Civil  
10 Procedure.

11 **FIRST CAUSE OF ACTION**  
12 **MINIMUM WAGE VIOLATIONS**  
13 **(AGAINST ALL DEFENDANTS)**

14 23. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 24. Wage Order 4, § 4 and Labor Code §§ 1197 and 1182.12 establish the right of  
16 employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor  
17 Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal  
18 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with  
19 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid  
20 wages and interest thereon. At all relevant times herein, Defendants failed to conform their pay  
21 practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum  
22 Wage Class for all hours worked, including, but not limited to, all hours they were subject to  
23 Defendants' control and/or were suffered or permitted to work under the Labor Code and Wage  
24 Order 4.

25 25. At all relevant times herein, Defendants failed to conform their pay practices to  
26 the requirements of the law. This unlawful conduct includes, but is not limited to Defendants'  
27 uniform commission compensation structure for Plaintiff and members of the Minimum Wage  
28

1 Class, which resulted in these individuals only being paid on Defendants' commission-based  
2 system, as opposed to being paid for all hours actually worked. Accordingly, Plaintiff and  
3 Minimum Wage Class members were not paid at least the legal minimum wage for all hours  
4 actually worked.

5 26. California Labor Code § 1198 makes unlawful the employment of an employee  
6 under conditions that the Industrial Welfare Commission prohibits. California Labor Code §§  
7 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal  
8 minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well  
9 as liquidated damages in an amount equal to the wages due and interest thereon.

10 27. As a direct and proximate result of Defendants' unlawful conduct as alleged  
11 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but  
12 not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are  
13 entitled to recover economic and statutory damages and penalties and other appropriate relief as  
14 a result of Defendants' violations of the California Labor Code and Wage Order 4.

15 28. Defendants' practice and uniform administration of corporate policy regarding  
16 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and  
17 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,  
18 liquidated damages, including interest thereon, statutory penalties, civil penalties, attorneys' fees,  
19 and costs of suit according to California Labor Code §§ 204, 210, 216, 1194 *et seq.*, and 1198;  
20 and Code of Civil Procedure § 1021.5.

21 29. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and  
22 members of the Minimum Wage Class seek penalties pursuant to the Wage Order 4, § 20(A) and  
23 California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and  
24 Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2;  
25 attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages  
26 and/or penalties pursuant to California Labor Code § 558(a).  
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**SECOND CAUSE OF ACTION**  
**FAILURE TO PAY ALL OVERTIME WAGES**  
**(AGAINST ALL DEFENDANTS)**

30. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

31. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to all overtime wages and compensation for hours worked, and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

32. At all times relevant herein, Defendants were obligated to properly compensate non-exempt employees, including Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to Labor Code § 1194 and Wage Order 4. Wage Order 4, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of eight hours per workday and/or in excess of forty hours of work in the workweek, and for the first eight (8) hours worked on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime hours, but did not compensate Plaintiff at one and one-half times his regular rate of pay for such hours.

33. Defendants’ policy/practice of requiring overtime work and not paying at the proper overtime rates for said work violates Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Wage Order 4.

34. The foregoing policies/practices alleged herein are unlawful and create entitlement to recovery by Plaintiff in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil penalties, attorneys’ fees, and costs of suit according to Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

**THIRD CAUSE OF ACTION**  
**MEAL PERIOD VIOLATIONS**  
**(AGAINST ALL DEFENDANTS)**

35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

36. Defendants failed to provide Plaintiff and members of the Meal Period Class with

1 proper meal periods in accordance with the mandates of the California Labor Code and the IWC  
2 Wage Order. As such, Defendants are responsible for paying premium compensation for meal  
3 period violations pursuant to Labor Code §§ 226.7, 512, and 558, and the IWC Wage Order.

4 37. Plaintiff is informed and believes that Defendants maintained a policy and/or  
5 practice of failing to pay meal period premiums at the employee’s regular rate of pay, despite  
6 Plaintiff not being provided with a legally complaint meal period. As a result, Plaintiff is owed  
7 unpaid wages per California Labor Code §§ 204, 210 and 558 and meal period premium payments  
8 per California Labor Code § 512 and 226.7, including interest thereon, statutory penalties, civil  
9 penalties, reasonable attorney’s fees, and costs of suit.

10 **FOURTH CAUSE OF ACTION**

11 **REST PERIOD VIOLATIONS**

12 **(AGAINST ALL DEFENDANTS)**

13 38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 39. Wage Order 4, § 12 and Labor Code §§ 226.7 and 516 establish the right of  
15 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour  
16 period worked, or major fraction thereof.

17 40. As alleged herein, Defendants failed to separately compensate Plaintiff and  
18 members of the Rest Period Class for each rest period to which they were entitled while working  
19 pursuant to the Commission Compensation Plans.

20 41. The Foregoing violation create an entitlement to recovery by Plaintiff and  
21 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums  
22 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according  
23 to Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

24 **FIFTH CAUSE OF ACTION**

25 **WAITING TIME PENALTIES**

26 **(AGAINST ALL DEFENDANTS)**

27 42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 43. This cause of action is brought pursuant to Labor Code §§ 201-203 which require

1 an employer to pay all wages earned immediately at the time of termination of employment in the  
2 event the employer discharges the employee or the employee provides at least 72 hours of notice  
3 of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her  
4 intent to quit, said employee's wages become due and payable not later than 72 hours upon said  
5 employee's last date of employment.

6 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
7 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them  
8 at the time of their separation which includes, among other things, underpaid minimum wages,  
9 overtime wages, and meal and rest period premiums. Defendants' failure to pay all final wages  
10 was willful within the meaning of Labor Code § 203.

11 45. Defendants' willful failure to timely pay Plaintiff his earned wages upon  
12 separation from employment results in a continued payment of wages up to thirty (30) days from  
13 the time the wages were due. Therefore, Plaintiff is entitled to compensation pursuant to Labor  
14 Code § 203, plus reasonable attorneys' fees and costs of suit.

15 **SIXTH CAUSE OF ACTION**

16 **WAGE STATEMENT VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

18 46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
20 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff  
21 and members of the Wage Statement Class with complete and accurate wage statements with  
22 respect to his actual regular hours worked, overtime hours worked, total gross wages earned, and  
23 total net wages earned, in violation of Labor Code § 226 *et seq.*

24 48. Defendants' failures in furnishing Plaintiff with complete and accurate itemized  
25 wage statements resulted in actual injury, as said failure led to, among other things, the non-  
26 payment of all earned overtime, and deprived him of the information necessary to identify the  
27 discrepancies in Defendants' reported data.

28 49. Defendants' failures create an entitlement to recovery by Plaintiff in a civil action



1 for all damages and/or penalties pursuant to Labor Code § 226 *et seq.*, including statutory  
2 penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California  
3 Labor Code § 226 *et seq.*

4 **SEVENTH CAUSE OF ACTION**  
5 **UNFAIR COMPETITION**  
6 **(AGAINST ALL DEFENDANTS)**

7 50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 51. Defendants have engaged and continue to engage in unfair and/or unlawful  
9 business practices in California in violation of California Business and Professions Code § 17200  
10 *et seq.*, by failing to properly pay all overtime and minimum wages and failing to furnish complete  
11 and accurate itemized wage statements.

12 52. Defendants' utilization of these unfair and/or unlawful business practices deprived  
13 Plaintiff of compensation to which he is legally entitled, constitutes unfair and/or unlawful  
14 competition, and provides an unfair advantage over Defendants' competitors who have been  
15 and/or are currently employing workers and attempting to do so in honest compliance with  
16 applicable wage and hour laws.

17 53. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged  
18 herein, Plaintiff seeks full restitution of monies, as necessary and according to proof, to restore  
19 any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and  
20 Professions Code §§ 17203 and 17208.

21 54. The acts complained of herein occurred within the last four years immediately  
22 preceding the filing of the Complaint in this action

23 55. Plaintiff was compelled to retain the services of counsel to file this court action to  
24 protect his interests, and to enforce important rights affecting the public interest. Plaintiff has  
25 thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover  
26 under Code of Civil Procedure § 1021.5.

27 **PRAYER**

28 WHEREFORE, Plaintiff prays for judgment for himself against Defendants, jointly and

1 severally, as follows:

2 1. Upon the First Cause of Action for compensatory, consequential, general and  
3 special damages according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;

4 2. Upon the Second Cause of Action, for compensatory, consequential, general and  
5 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

6 3. Upon the Third Cause of Action, for compensatory, consequential, general and  
7 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

8 4. Upon the Fourth Cause of Action, for compensatory, consequential, general and  
9 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

10 5. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to  
11 Labor Code §§ 201- 203;

12 6. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §  
13 226;

14 7. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the  
15 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or  
16 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*  
17 *seq.*;


18 8. Prejudgement interest on all due and unpaid wages pursuant to California Labor  
19 Code § 218.6 and Civil Code §§ 3287 and 3289;

20 9. On all Causes of action, for attorneys’ fees and costs as provided by Labor Code  
21 §§ 226, 1194 *et seq.*, and Code of Civil Procedure § 1021.5; and

22 10. For such other and further relief the court may deem just and proper.

23  
24  
25 Dated: February 23, 2018

Respectfully submitted,  
**HAINES LAW GROUP, APC**

26  
27 By:   
28 Paul K. Haines  
Attorneys for Plaintiff


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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: February 23, 2018

Respectfully submitted,  
**HAINES LAW GROUP, APC**

By:   
\_\_\_\_\_  
Paul K. Haines  
Attorneys for Plaintiff

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Operators of Caliber Collision Centers Facing Former Repairman's Wage and Hour Suit](#)

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