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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

LUIS MIRANDA, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

NEW PRIDE TIRE, INC., a Delaware
corporation; FLEXI-VAN LEASING, LLC, a
Delaware limited liability company; NPT
VENTURES, LLC, a California limited
liability company; and DOES 3 through 100,
inclusive;

Defendants.

Case No.: RG20063513 [Lead Case]
[Consolidated with Case No. RG20063371]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code § 2698 *et seq.* (Private Attorneys General Act of 2004); and
- (9) Violation of California Business & Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff LUIS MIRANDA (“Plaintiff”), individually, on behalf of other members of the general public similarly situated, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act (“PAGA”) and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiff, including claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Alameda. Most of the acts and omissions alleged herein relating to Plaintiff took place in the State of California. Defendants employed Plaintiff within the State of California.

PARTIES

5. Plaintiff is an individual residing in the State of California.

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1 6. Defendant NEW PRIDE TIRE, INC., at all times herein mentioned, was and is,
2 upon information and belief, a Delaware corporation headquartered in Alameda County, and
3 at all times herein mentioned, was and is, an employer whose employees are engaged
4 throughout the State of California.

5 7. Defendant FLEXI-VAN LEASING, LLC, at all times herein mentioned, was
6 and is, upon information and belief, a Delaware limited liability company, and at all times
7 herein mentioned, was and is, an employer whose employees are engaged and/or had minimum
8 contacts throughout the State of California, including the County of Alameda.

9 8. Defendant NPT VENTURES, LLC, at all times herein mentioned, was and is,
10 upon information and belief, a California Limited liability company, and at all times here
11 mentioned, was and is, an employer whose employees are engaged throughout the State of
12 California, including County of Alameda.

13 9. At all relevant times, Defendants NEW PRIDE TIRE, INC., FLEXI-VAN
14 LEASING, LLC, and NPT VENTURES, LLC were the “employers” of Plaintiff within the
15 meaning of all applicable California laws and statutes.

16 10. At all times herein relevant, Defendants NEW PRIDE TIRE, INC., FLEXI-VAN
17 LEASING, LLC, NPT VENTURES, LLC, and DOES 3 through 100, and each of them, were
18 the agents, partners, joint venturers, joint employers, representatives, servants, employees,
19 successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant
20 hereto were acting within the course and scope of their authority as such agents, partners, joint
21 venturers, joint employers, representatives, servants, employees, successors, co-conspirators
22 and assigns, and all acts or omissions alleged herein were duly committed with the ratification,
23 knowledge, permission, encouragement, authorization, and consent of each defendant
24 designated herein.

25 11. The true names and capacities, whether corporate, associate, individual or
26 otherwise, of Defendants DOES 3 through 100, inclusive, are unknown to Plaintiff, who sues
27 said defendants by such fictitious names. Plaintiff is informed and believes, and based on that
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1 information and belief alleges, that each of the Defendants designated as a DOE is legally
2 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
3 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
4 Plaintiff will seek leave of court to amend this Complaint to show the true names and
5 capacities when the same have been ascertained.

6 12. Defendants NEW PRIDE TIRE, INC., FLEXI-VAN LEASING, LLC, NPT
7 VENTURES, LLC, and DOES 3 through 100 will hereinafter collectively be referred to as
8 “Defendants.”

9 13. Plaintiff further alleges that Defendants directly or indirectly controlled or
10 affected the working conditions, wages, working hours, and conditions of employment of
11 Plaintiff and the other class members so as to make each of said Defendants employers and
12 employers liable under the statutory provisions set forth herein.

13 **CLASS ACTION ALLEGATIONS**

14 14. Plaintiff brings this action on his own behalf and on behalf of all other members
15 of the general public similarly situated, and, thus, seeks class certification under Code of Civil
16 Procedure section 382.

17 15. The proposed class is defined as follows:

18 All current or former hourly-paid, non-exempt workers, whether direct hires of
19 Defendants or supplied through a staffing company and who are or were
20 assigned to New Pride Tire, Inc.’s and related entities’ Rancho Dominguez
21 location located at 2757 East Del Amo Blvd., Rancho Dominguez, California
22 90221 and/or Oakland location located at 8977 Railroad Ave., Oakland,
23 California 94621, from August 18, 2018, to the date of Preliminary Approval or
24 August 31, 2022, whichever date is earlier.

25 16. Plaintiff reserves the right to establish subclasses as appropriate.

26 17. The class is ascertainable and there is a well-defined community of interest in
27 the litigation:
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- 1 a. Numerosity: The class members are so numerous that joinder of all class
2 members is impracticable. The membership of the entire class is
3 unknown to Plaintiff at this time; however, the class is estimated to be
4 greater than fifty (50) individuals and the identity of such membership is
5 readily ascertainable by inspection of Defendants' employment records.
- 6 b. Typicality: Plaintiff's claims are typical of all other class members'
7 claims as demonstrated herein. Plaintiff will fairly and adequately
8 protect the interests of the other class members with whom he has a well-
9 defined community of interest.
- 10 c. Adequacy: Plaintiff will fairly and adequately protect the interests of
11 each class member, with whom he has a well-defined community of
12 interest and typicality of claims, as demonstrated herein. Plaintiff has no
13 interest that is antagonistic to the other class members. Plaintiff's
14 attorneys, the proposed class counsel, are versed in the rules governing
15 class action discovery, certification, and settlement. Plaintiff has
16 incurred, and during the pendency of this action will continue to incur,
17 costs and attorneys' fees, that have been, are, and will be necessarily
18 expended for the prosecution of this action for the substantial benefit of
19 each class member.
- 20 d. Superiority: A class action is superior to other available methods for the
21 fair and efficient adjudication of this litigation because individual joinder
22 of all class members is impractical.
- 23 e. Public Policy Considerations: Certification of this lawsuit as a class
24 action will advance public policy objectives. Employers of this great
25 state violate employment and labor laws every day. Current employees
26 are often afraid to assert their rights out of fear of direct or indirect
27 retaliation. However, class actions provide the class members who are
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1 not named in the complaint anonymity that allows for the vindication of
2 their rights.

3 18. There are common questions of law and fact as to the class members that
4 predominate over questions affecting only individual members. The following common
5 questions of law or fact, among others, exist as to the members of the class:

- 6 a. Whether Defendants' failure to pay wages, without abatement or
7 reduction, in accordance with the Labor Code, was willful;
- 8 b. Whether Defendants failed to pay their hourly-paid or non-exempt
9 employees within the State of California for all hours worked, missed
10 meal periods and rest breaks in violation of California law;
- 11 c. Whether Defendants required Plaintiff and the other class members to
12 work over eight (8) hours per day and/or over forty (40) hours per week
13 and failed to pay the legally required overtime compensation to Plaintiff
14 and the other class members;
- 15 d. Whether Defendants properly calculated the regular rate for Plaintiff and
16 the other class members to worked overtime and earned incentive pay;
- 17 e. Whether Defendants deprived Plaintiff and the other class members of
18 meal and/or rest periods or required Plaintiff and the other class members
19 to work during meal and/or rest periods without compensation;
- 20 f. Whether Defendants failed to pay minimum wages to Plaintiff and the
21 other class members for all hours worked;
- 22 g. Whether Defendants failed to pay all wages due to Plaintiff and the other
23 class members within the required time upon their discharge or
24 resignation;
- 25 h. Whether Defendants failed to timely pay all wages due to Plaintiff and
26 the other class members during their employment;
- 27 i. Whether Defendants complied with wage reporting as required by the
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Labor Code, including, *inter alia*, section 226;

- j. Whether Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs;
- k. Whether Defendants' conduct was willful or reckless;
- l. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code section 17200, *et seq.*;
- m. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- n. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the Labor Code.

GENERAL ALLEGATIONS

19. During the relevant time period set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California.

20. Defendants, jointly and severally, employed Plaintiff as an hourly-paid employee from in or about March of 2019 to August of 2019 in the State of California.

21. Defendants had the authority to hire and terminate Plaintiff and other class members; to set work rules and conditions governing Plaintiff's and other class members' employment; and to supervise their daily employment activities.

22. Defendants exercised sufficient authority over the terms and conditions of Plaintiff and other class members' employment for them to be joint employers of Plaintiff and the other class members.

23. Defendants directly hired and paid wages and benefits to Plaintiff and other class members.

24. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

25. Plaintiff and other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

1 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
3 employees within the State of California. This scheme involved, *inter alia*, failing to pay them
4 for all hours worked in violation of California law.

5 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knew or should have known that Plaintiff and other class members were entitled to receive
7 certain wages for overtime compensation and that Plaintiff and other class members were not
8 receiving wages for overtime compensation.

9 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 failed to provide Plaintiff and other class members the required rest and meal periods during
11 the relevant time period as required under the Industrial Welfare Commission Wage Orders
12 and thus they are entitled to any and all applicable penalties.

13 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knew or should have known that Plaintiff and other class members were entitled to receive all
15 timely and complete meal periods or payment of one additional hour of pay at Plaintiff's and
16 the other class members' regular rate of pay when a meal period was missed, late or
17 interrupted, and that Plaintiff and other class members did not receive all timely and proper
18 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal
19 period was missed.

20 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 knew or should have known that Plaintiff and other class members were entitled to receive all
22 timely rest periods without interruption or payment of one additional hour of pay at Plaintiff
23 and the other class members' regular rate of pay when a rest period was missed, late or
24 interrupted, and that Plaintiff and other class members did not receive all rest periods or
25 payment of one additional hour of pay at their regular rate of pay when a rest period was
26 missed.

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1 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and other class members were entitled to receive at
3 least minimum wages for compensation and that Plaintiff and other class members were not
4 receiving at least minimum wages for all hours worked.

5 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knew or should have known that Plaintiff and other class members were entitled to receive the
7 wages owed to them upon discharge or resignation, including overtime and minimum wages
8 and meal and rest period premiums, and that Plaintiff and other class members did not, in fact,
9 receive such wages owed to them at the time of their discharge or resignation.

10 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 knew or should have known that Plaintiff and other class members were entitled to receive
12 complete and accurate wage statements in accordance with California law, but, in fact,
13 Plaintiff and other class members did not receive complete and accurate wage statements from
14 Defendants. The deficiencies included, *inter alia*, the failure to include the total number of
15 hours worked by Plaintiff and other class members.

16 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 knew or should have known that Plaintiff and the other class members were entitled to
18 reimbursement for necessary business-related expenses.

19 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Defendants had to keep complete and accurate payroll records
21 for Plaintiff and other class members in accordance with California law, but, in fact, did not
22 keep complete and accurate payroll records for Plaintiff and other class members.

23 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knew or should have known that they had a duty to compensate Plaintiff and other class
25 members pursuant to California law, and that Defendants had the financial ability to pay such
26 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
27 represented to Plaintiff and other class members that they were properly denied wages, all to
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1 increase Defendants' profits.

2 37. As a pattern and practice, during the relevant time period set forth herein,
3 Defendants failed to pay overtime wages to Plaintiff and other class members for all hours
4 worked. Plaintiff and other class members were required to work more than eight (8) hours
5 per day and/or forty (40) hours per week without overtime compensation.

6 38. As a pattern and practice, during the relevant time period set forth herein,
7 Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to
8 Plaintiff and other class members.

9 39. As a pattern and practice, during the relevant time period set forth herein,
10 Defendants failed to pay Plaintiff and other class members at least minimum wages for all
11 hours worked.

12 40. As a pattern and practice, during the relevant time period set forth herein,
13 Defendants failed to pay Plaintiff and other class members the wages owed to them upon
14 discharge or resignation.

15 41. As a pattern and practice, during the relevant time period set forth herein,
16 Defendants failed to provide complete or accurate wage statements to Plaintiff and other class
17 members.

18 42. As a pattern and practice, during the relevant time period set forth herein,
19 Defendants failed to keep complete or accurate payroll records for Plaintiff and other class
20 members.

21 43. As a pattern and practice, during the relevant time period set forth herein,
22 Defendants failed to properly compensate Plaintiff and other class members pursuant to
23 California law in order to increase Defendants' profits.

24 44. Labor Code section 218 states that nothing in Article 1 of the Labor Code shall
25 limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him
26 [or her] under this article."

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 510 and 1198)**

3 **(Against NEW PRIDE TIRE, INC., FLEXI-VAN LEASING, LLC, NPT VENTURES,**
4 **LLC, and DOES 3 through 100)**

5 45. Plaintiff incorporates by reference the allegations contained in Paragraphs 1
6 through 44, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 46. Labor Code section 1198 and the applicable Industrial Welfare Commission
9 (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating
10 them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay,
11 depending on the number of hours worked by the person on a daily or weekly basis.

12 47. Specifically, the applicable IWC Wage Order provides that Defendants are and
13 were required to pay Plaintiff and other class members employed by Defendants, who
14 work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at
15 the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
16 than forty (40) hours in a workweek.

17 48. The applicable IWC Wage Order further provides that Defendants are and were
18 required to pay Plaintiff and other class members overtime compensation at a rate of two times
19 their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

20 49. Labor Code section 510 codifies the right to overtime compensation at one-and-
21 one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day
22 or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work,
23 and overtime compensation at twice the regular hourly rate for hours worked in excess of
24 twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

25 50. During the relevant time period set forth herein, Plaintiff and other class
26 members worked over eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

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1 51. As a pattern and practice, during the relevant time period set forth herein,
2 Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and other
3 class members (but not all).

4 52. Defendants' pattern and practice of failing to pay Plaintiff and other class
5 members the unpaid balance of overtime compensation, as required by California laws,
6 violates the provisions of Labor Code sections 510 and 1198, and is therefore unlawful.

7 53. Pursuant to Labor Code section 1194, Plaintiff and other class members are
8 entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys'
9 fees.

10 **SECOND CAUSE OF ACTION**

11 **(Violation of California Labor Code §§ 226.7 and 512(a))**

12 **(Against NEW PRIDE TIRE, INC., FLEXI-VAN LEASING, LLC, NPT VENTURES,**
13 **LLC, and DOES 3 through 100)**

14 54. Plaintiff incorporates by reference the allegations contained in paragraphs 1
15 through 53, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 55. During the relevant time period set forth herein, the IWC Order and Labor Code
18 sections 226.7 and 512(a) were applicable to Plaintiff's and other class members' employment
19 by Defendants.

20 56. During the relevant time period set forth herein, Labor Code section 226.7
21 provides that no employer shall require an employee to work during any meal or rest period
22 mandated by an applicable order of the IWC.

23 57. During the relevant time period set forth herein, the applicable IWC Wage Order
24 and Labor Code section 512(a) provide that an employer may not require, cause or permit an
25 employee to work for a work period of more than five (5) hours per day without providing the
26 employee with a meal period of not less than thirty (30) minutes, except that if the total work
27 period per day of the employee is no more than six (6) hours, the meal period may be waived
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1 by mutual consent of both the employer and employee.

2 58. During the relevant time period set forth herein, the applicable IWC Wage Order
3 and Labor Code section 512(a) further provide that an employer may not require, cause, or
4 permit an employee to work for a work period of more than ten (10) hours per day without
5 providing the employee with a second uninterrupted meal period of not less than thirty (30)
6 minutes, except that if the total hours worked is no more than twelve (12) hours, the second
7 meal period may be waived by mutual consent of the employer and the employee only if the
8 first meal period was not waived.

9 59. As a pattern and practice, during the relevant time period set forth herein,
10 Plaintiff and other class members (but not all) who were scheduled to work for a period of
11 time no longer than six (6) hours, and who did not waive their legally-mandated meal periods
12 by mutual consent, were required to work for periods longer than five (5) hours without an
13 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

14 60. As a pattern and practice, during the relevant time period set forth herein,
15 Plaintiff and other class members (but not all) who were scheduled to work for a period of
16 time no longer than twelve (12) hours, and who did not waive their legally-mandated meal
17 periods by mutual consent, were required to work for periods longer than ten (10) hours
18 without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest
19 period.

20 61. As a pattern and practice, during the relevant time period set forth herein,
21 Plaintiff and other class members (but not all) who were scheduled to work for a period of
22 time in excess of six (6) hours were required to work for periods longer than five (5) hours
23 without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest
24 period.

25 62. As a pattern and practice, during the relevant time period set forth herein,
26 Plaintiff and other class members (but not all) who were scheduled to work for a period of
27 time in excess of twelve (12) hours were required to work for periods longer than ten (10)
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1 hours without an uninterrupted meal period of not less than thirty (30) minutes and/or without
2 a rest period.

3 63. As a pattern and practice, during the relevant time period set forth herein,
4 Defendants intentionally and willfully required Plaintiff and other class members (but not all)
5 to work during meal periods and failed to compensate Plaintiff and the other class members
6 (but not all) the full meal period premium for work performed during meal periods.

7 64. As a pattern and practice, during the relevant time period set forth herein,
8 Defendants failed to pay Plaintiff and other class members (but not all) the full meal period
9 premium due pursuant to Labor Code section 226.7.

10 65. Defendants' conduct violates applicable IWC Wage Order and Labor Code
11 sections 226.7 and 512(a).

12 66. Pursuant to the applicable IWC Wage Order and Labor Code section 226.7(b),
13 Plaintiff and other class members are entitled to recover from Defendants one additional hour
14 of pay at the employee's regular rate of compensation for each workday that the meal or rest
15 period is not provided.

16 **THIRD CAUSE OF ACTION**

17 **(Violation of California Labor Code § 226.7)**

18 **(Against NEW PRIDE TIRE, INC., FLEXI-VAN LEASING, LLC, NPT VENTURES,**
19 **LLC, and DOES 3 through 100)**

20 67. Plaintiff incorporates by reference the allegations contained in paragraphs 1
21 through 66, and each and every part thereof with the same force and effect as though fully set
22 forth herein.

23 68. During the relevant time period set forth herein, the applicable IWC Wage Order
24 and Labor Code section 226.7 were applicable to Plaintiff's and other class members'
25 employment by Defendants.

26 69. During the relevant time period set forth herein, Labor Code section 226.7
27 provides that no employer shall require an employee to work during any rest period mandated
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1 by an applicable order of the IWC.

2 70. During the relevant time period set forth herein, the applicable IWC Wage Order
3 provides that “[e]very employer shall authorize and permit all employees to take rest periods,
4 which insofar as practicable shall be in the middle of each work period” and that the “rest
5 period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
6 rest time per four (4) hours or major fraction thereof” unless the total daily work time is less
7 than three and one-half (3 ½) hours.

8 71. As a pattern and practice, during the relevant time period set forth herein,
9 Defendants required Plaintiff and other class members (but not all) to work four (4) or more
10 hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour
11 period worked.

12 72. As a pattern and practice, during the relevant time period set forth herein,
13 Defendants willfully required Plaintiff and other class members (but not all) to work during
14 rest periods and failed to pay Plaintiff and the other class members the full rest period premium
15 for work performed during rest periods.

16 73. As a pattern and practice, during the relevant time period set forth herein,
17 Defendants failed to pay Plaintiff and the other class members (but not all) the full rest period
18 premium due pursuant to Labor Code section 226.7

19 74. Defendants’ conduct violates applicable IWC Wage Orders and Labor Code
20 section 226.7.

21 75. Pursuant to the applicable IWC Wage Orders and Labor Code section 226.7(b),
22 Plaintiff and the other class members are entitled to recover from Defendants one additional
23 hour of pay at the employees’ regular hourly rate of compensation for each workday that the
24 rest period was not provided.

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1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 1194 and 1197)**

3 **(Against NEW PRIDE TIRE, INC., FLEXI-VAN LEASING, LLC, NPT VENTURES,**
4 **LLC, and DOES 3 through 100)**

5 76. Plaintiff incorporates by reference the allegations contained in paragraphs 1
6 through 75 and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 77. During the relevant time period set forth herein, Labor Code sections 1194 and
9 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser
10 wage than the minimum so fixed, is unlawful.

11 78. As a pattern and practice, during the relevant time period set forth herein,
12 Defendants failed to pay minimum wages to Plaintiff and other class members (but not all) as
13 required, pursuant to Labor Code sections 1194 and 1197.

14 79. Defendants' failure to pay Plaintiff and other class members the minimum wage
15 as required violates Labor Code sections 1194 and 1197. Pursuant to those sections, Plaintiff
16 and other class members are entitled to recover the unpaid balance of their minimum wage
17 compensation as well as interest, costs, and attorney's fees, and liquidated damages in an
18 amount equal to the wages unlawfully unpaid and interest thereon.

19 80. Pursuant to Labor Code section 1194.2, Plaintiff and other class members are
20 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and
21 interest thereon.

22 **FIFTH CAUSE OF ACTION**

23 **(Violation of California Labor Code §§ 201 and 202)**

24 **(Against NEW PRIDE TIRE, INC., FLEXI-VAN LEASING, LLC, NPT VENTURES,**
25 **LLC, and DOES 3 through 100)**

26 81. Plaintiff incorporates by reference the allegations contained in paragraphs 1
27 through 80, and each and every part thereof with the same force and effect as though fully set
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1 forth herein.

2 82. During the relevant time period set forth herein, Labor Code sections 201 and
3 202 provide that if an employer discharges an employee, the wages earned and unpaid at the
4 time of discharge are due and payable immediately, and if an employee quits his or her
5 employment, his or her wages shall become due and payable not later than seventy-two (72)
6 hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her
7 intention to quit, in which case the employee is entitled to his or her wages at the time of
8 quitting.

9 83. As a pattern and practice, during the relevant time period set forth herein,
10 Defendants intentionally and willfully failed to pay Plaintiff and other class members (but not
11 all) who are no longer employed by Defendants their wages, earned and unpaid, within
12 seventy-two (72) hours of their leaving Defendants' employ.

13 84. Defendants' pattern and practice of failing to pay Plaintiff and other class
14 members who are no longer employed by Defendants their wages, earned and unpaid, within
15 seventy-two (72) hours of their leaving Defendants' employ, is in violation of Labor Code
16 sections 201 and 202.

17 85. Labor Code section 203 provides that if an employer willfully fails to pay wages
18 owed, in accordance with sections 201 and 202, then the wages of the employee shall continue
19 as a penalty from the due date thereof at the same rate until paid or until an action is
20 commenced; but the wages shall not continue for more than thirty (30) days.

21 86. Plaintiff and other class members are entitled to recover from Defendants the
22 statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum
23 as provided by Labor Code section 203.

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1 **SIXTH CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226(a))**

3 **(Against NEW PRIDE TIRE, INC., FLEXI-VAN LEASING, LLC, NPT VENTURES,**
4 **LLC, and DOES 3 through 100)**

5 87. Plaintiff incorporates by reference the allegations contained in paragraphs 1
6 through 86, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 88. During the relevant time period set forth herein, Labor Code section 226(a)
9 provides that every employer shall furnish each of his or her employees an accurate itemized
10 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
11 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
12 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders
13 of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
14 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
15 his or her social security number, (8) the name and address of the legal entity that is the
16 employer, and (9) all applicable hourly rates in effect during the pay period and the
17 corresponding number of hours worked at each hourly rate by the employee. The deductions
18 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
19 showing the month, day, and year, and a copy of the statement or a record of the deductions
20 shall be kept on file by the employer for at least three years at the place of employment or at
21 a central location within the State of California.

22 89. As a pattern and practice, Defendants have intentionally and willfully failed to
23 provide Plaintiff and other class members (but not all) with complete and accurate wage
24 statements. The deficiencies include but are not limited to: the failure to include the total
25 number of hours worked by Plaintiff and other class members.

26 90. As a result of Defendants' violation of Labor Code section 226(a), Plaintiff and
27 other class members have suffered injury and damage to their statutorily protected rights.
28

1 91. More specifically, Plaintiff and other class members have been injured by
2 Defendants' intentional and willful violation of Labor Code section 226(a) because they were
3 denied both their legal right to receive, and their protected interest in receiving, accurate and
4 itemized wage statements pursuant to Labor Code section 226(a).

5 92. Plaintiff and other class members are entitled to recover from Defendants the
6 greater of their actual damages caused by Defendants' failure to comply with Labor Code
7 section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

8 93. Plaintiff and other class members are also entitled to injunctive relief to ensure
9 compliance with this section, pursuant to Labor Code section 226(g).

10 **SEVENTH CAUSE OF ACTION**

11 **(Violation of California Labor Code §§ 2800 and 2802)**

12 **(Against NEW PRIDE TIRE, INC., FLEXI-VAN LEASING, LLC, NPT VENTURES,**
13 **LLC, and DOES 3 through 100)**

14 94. Plaintiff incorporates by reference the allegations contained in paragraphs 1
15 through 93, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 95. Pursuant to Labor Code sections 2800 and 2802, an employer must reimburse its
18 employee for all necessary expenditures incurred by the employee in direct consequence of the
19 discharge of his or her job duties or in direct consequence of his or her obedience to the
20 directions of the employer.

21 96. Defendants have intentionally and willfully failed to reimburse Plaintiff and other
22 class members (but not all) for all necessary business-related expenses and costs. Plaintiff and
23 other class members are entitled to recover from Defendants their business-related expenses and
24 costs incurred during the course and scope of their employment, plus interest accrued from the
25 date on which the employee incurred the necessary expenditures at the same rate as judgments
26 in civil actions in the State of California.

27 ///

1 **EIGHT CAUSE OF ACTION**

2 **(Violation of Labor Code Sections 2698, et seq. (“PAGA”))**

3 **(Against NEW PRIDE TIRE, INC., FLEXI-VAN LEASING, LLC, NPT VENTURES,**
4 **LLC, and DOES 3 through 100)**

5 97. Plaintiff incorporates by reference the allegations contained in paragraphs 1
6 through 96, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 98. PAGA expressly establishes that any provision of the Labor Code which provides
9 for a civil penalty to be assessed and collected by the California Labor and Workforce
10 Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards,
11 agencies, or employees for a violation of the Labor Code, may be recovered through a civil
12 action brought by an aggrieved employee on behalf of himself or herself, and other current or
13 former employees.

14 99. On February 7, 2020, Plaintiff provided written notice to the LWDA and
15 Defendant NEW PRIDE TIRE, INC. of the specific provisions of the Labor Code he contends
16 were violated, and the theories supporting his contentions. Plaintiff believes that on or about
17 April 13, 2020, the sixty-five (65) day notice period expired, and the LWDA did not take any
18 action to investigate or prosecute this matter. Attached hereto as **Exhibit 1** and incorporated by
19 reference is a copy of the written notice to the LWDA. Therefore, Plaintiff exhausted the
20 statutory time period to bring this action.

21 100. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved
22 employees” as defined by Labor Code section 2699(c) in that they are all current or former
23 hourly-paid, non-exempt workers, whether direct hires of Defendants or supplied through a
24 staffing company and who are or were assigned to New Pride Tire, Inc.’s and related entities’
25 Rancho Dominguez location located at 2757 East Del Amo Blvd., Rancho Dominguez,
26 California 90221 and/or Oakland location located at 8977 Railroad Ave., Oakland, California
27 94621, from February 7, 2019, to the date of Preliminary Approval or August 31, 2022,
28

1 whichever date is earlier, and one or more of the alleged violations was committed against them.

2 **Failure to Pay Minimum and Overtime Wages**

3 101. At all times relevant herein, Defendant NEW PRIDE TIRE, INC. was required to
4 compensate its non-exempt employees minimum wages for all hours worked and overtime
5 wages for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a
6 workweek, pursuant to the mandate of Labor Code sections 510, 1194, 1197, and 1198.

7 102. As a pattern and practice, Defendant NEW PRIDE TIRE, INC. failed to
8 compensate Plaintiff and other aggrieved current and former employees for all hours worked,
9 resulting in a failure to pay all minimum wages and overtime wages, where applicable.

10 **Failure to Provide Meal Periods and Rest Breaks**

11 103. In accordance with the mandates of Labor Code sections 226.7 and 512,
12 Defendant NEW PRIDE TIRE, INC. was required to authorize and permit its non-exempt
13 employees to take a 10-minute rest break for every four (4) hours worked or major fraction
14 thereof, and were further required to provide their non-exempt employees with a 30-minute meal
15 period for every five (5) hours worked.

16 104. As a pattern and practice, Defendant NEW PRIDE TIRE, INC. failed to provide
17 Plaintiff and other aggrieved current and former employees with legally-mandated meal periods
18 and rest breaks and failed to pay proper compensation for this failure.

19 **Failure to Timely Pay Wages During Employment**

20 105. At all times relevant herein, Defendant NEW PRIDE TIRE, INC. was required to
21 pay its employees within a specified time period pursuant to the mandate of Labor Code sections
22 204.

23 106. As a pattern and practice, Defendant NEW PRIDE TIRE, INC. failed to pay
24 Plaintiff and other aggrieved current and former employees all wages due and owing them
25 within the required time period.

26 **Failure to Timely Pay Wages Upon Termination**

27 107. At all times relevant herein, Defendant NEW PRIDE TIRE, INC. was required to
28

1 pay its employees all wages owed in a timely fashion at the end of employment pursuant to
2 Labor Code sections 201 to 204.

3 108. As a result of Defendant NEW PRIDE TIRE, INC.'s Labor Code violations
4 alleged above, Defendant NEW PRIDE TIRE, INC. failed to pay Plaintiff and the other
5 aggrieved former employees their final wages pursuant to Labor Code sections 201 to 204 and
6 accordingly owe waiting time penalties pursuant to Labor Code section 203.

7 **Failure to Provide Complete and Accurate Wage Statements**

8 109. At all times relevant herein, Defendant NEW PRIDE TIRE, INC. was required to
9 keep accurate records regarding its California employees pursuant to the mandate of Labor Code
10 sections 226 and 1174.

11 110. As a result of Defendant NEW PRIDE TIRE, INC.'s various Labor Code
12 violations, Defendant NEW PRIDE TIRE, INC. failed to keep accurate records regarding
13 Plaintiff and other aggrieved current and former employees. For example, Defendant NEW
14 PRIDE TIRE, INC. failed in its affirmative obligation to keep accurate records regarding
15 Plaintiff and other aggrieved current and former employees' gross wages earned, total hours
16 worked, all deductions, net wages earned, and all applicable hourly rates and the number of
17 hours worked at each hourly rate.

18 **Failure to Reimburse Business Expenses**

19 111. At all times relevant herein, Defendant NEW PRIDE TIRE, INC. was required to
20 reimburse its employees for any and all necessary expenditures or losses incurred by the
21 employees in direct consequences of the discharge or his or her duties pursuant to the mandate
22 of Labor Code sections 2800 and 2802.

23 112. As a pattern and practice, Defendant NEW PRIDE TIRE, INC. failed to pay
24 Plaintiff and other aggrieved current and former employees all business expenses incurred and
25 owing them within the required time period.

26 ///

27 ///

Penalties

113. Pursuant to Labor Code section 2699, Plaintiff, individually, and on behalf of other current and former aggrieved employees, requests and is entitled to recover from Defendant NEW PRIDE TIRE, INC. civil penalties, interest, attorneys' fees and costs pursuant, including but not limited to:

- a. Penalties under Labor Code section 2699 in the amount of a hundred 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;
- b. Penalties under Code of Regulations Title 8 section 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the Labor Code in the amount of a hundred 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;
- d. Penalties under Labor Code section 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;
- e. Any and all additional penalties as provided by the Labor Code and/or other statutes; and
- f. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194, and 2699, and any other applicable statute.

1 **NINTH CAUSE OF ACTION**

2 **(Violation of California Business & Professions Code §§ 17200, *et seq.*)**

3 **(Against NEW PRIDE TIRE, INC., FLEXI-VAN LEASING, LLC, NPT VENTURES,**
4 **LLC, and DOES 3 through 100)**

5 114. Plaintiff incorporates by reference the allegations contained in paragraphs 1
6 through 113, and each and every part thereof with the same force and effect as though fully
7 set forth herein.

8 115. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
9 unlawful, and harmful to Plaintiff, other class members, to the general public, and Defendants'
10 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public
11 interest within the meaning of Code of Civil Procedure section 1021.5.

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

15 117. A violation of Business & Professions Code section 17200, *et seq.* may be
16 predicated on the violation of any state or federal law. In this instant case, Defendants' pattern
17 and practice of requiring Plaintiff and other class members work overtime hours without
18 paying them proper compensation violate Labor Code sections 510 and 1198. Additionally,
19 Defendants' pattern and practice of requiring Plaintiff and other class members, to work
20 through their meal and rest periods without paying them proper compensation violate Labor
21 Code sections 226.7 and 512(a). Moreover, Defendants' pattern and practice of failing to
22 timely pay wages to Plaintiff and other class members violate Labor Code sections 201 and
23 202. Defendants also violated Labor Code sections 226(a), 1194, 1197, 2800 and 2802.

24 118. As a result of the herein described violations of California law, Defendants
25 unlawfully gained an unfair advantage over other businesses.

26 119. Plaintiff and other class members (but not all) have been personally injured by
27 Defendants' unlawful business acts and practices as alleged herein, including but not
28

1 necessarily limited to the loss of money and/or property.

2 120. Pursuant to Business & Professions Code sections 17200, *et seq.*, Plaintiff and
3 other class members are entitled to restitution of the wages withheld and retained by
4 Defendants during a period that commences four years prior to the filing of this Complaint;
5 an award of attorneys' fees pursuant to Code of Civil procedure section 1021.5 and other
6 applicable laws; and an award of costs.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff, individually, and on behalf of other members of the general public similarly
9 situated, requests a trial by jury.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, individually, on behalf of all other members of the general
12 public similarly situated, and on behalf of aggrieved employees pursuant to PAGA prays for
13 relief and judgment against Defendants, jointly and severally, as follows:

14 **Class Certification**

- 15 1. That this action be certified as a class action;
- 16 2. That Plaintiff be appointed as representative of the Class;
- 17 3. That counsel for Plaintiff be appointed as Class Counsel; and
- 18 4. That Defendants provide to Class Counsel immediately the names and most
19 current contact information (address, email, and telephone numbers) of all class members.

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

- 21 5. That the Court declare, adjudge, and decree that Defendants violated Labor Code
22 sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
23 overtime wages due to Plaintiff and other class members (but not all);

- 24 6. For general unpaid wages at overtime wage rates and such general and special
25 damages as may be appropriate;

- 26 7. For pre-judgment interest on any unpaid overtime compensation commencing
27 from the date such amounts were due;

- 28 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Labor

Code section 1194; and

9. For such other and further relief as the court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members (but not all);

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

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

13. For premium wages pursuant to Labor Code section 226.7(b);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge, and decree that Defendants violated Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members (but not all);

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

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

20. For premium wages pursuant to Labor Code section 226.7(b);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiff and the other class members (but not all);

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

25. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Labor Code section 1194(a);

27. For liquidated damages pursuant to Labor Code section 1194.2; and

28. For such other and further relief as the court may deem just and proper.

As to the Fifth Cause of Action

29. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and other class members (but not all) no longer employed by Defendants;

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

31. For statutory wage penalties pursuant to Labor Code section 203 for the other class members who have left Defendants' employ;

32. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

33. For such other and further relief as the court may deem just and proper.

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

2 34. That the Court declare, adjudge, and decree that Defendants violated the record
3 keeping provisions of Labor Code section 226(a) and applicable IWC Wage Orders as to
4 Plaintiff and other class members (but not all), and willfully failed to provide accurate itemized
5 wage statements thereto;

6 35. For actual, consequential, and incidental losses and damages, according to proof;

7 36. For statutory penalties pursuant to Labor Code section 226(e);

8 37. For injunctive relief to ensure compliance with this section, pursuant to Labor
9 Code section 226(g); and

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

11 **As to the Seventh Cause of Action**

12 39. That the Court declare, adjudge, and decree that Defendants violated Labor Code
13 sections 2800 and 2802 by willfully failing to reimburse Plaintiff and other class members
14 (but not all) for all necessary business-related expenses as required by Labor Code sections
15 2800 and 2802;

16 40. For actual, consequential, and incidental losses and damages, according to proof;

17 41. For the imposition of civil penalties and/or statutory penalties;

18 42. For punitive damages and/or exemplary damages according to proof at trial;

19 43. For reasonable attorneys' fees and costs of suit incurred herein; and

20 44. For such other and further relief as the court may deem just and proper.

21 **As to the Eight Cause of Action**

22 45. Upon the Eight Cause of Action, for civil penalties pursuant to statute as set forth
23 in Labor Code sections 2698 *et seq.*, for Defendant NEW PRIDE TIRE, INC.'s violations of
24 Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558,
25 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

26 46. Upon the Eight Cause of Action, for costs and attorneys' fees pursuant to Labor
27 Code sections 210, 218.5, 1194, and 2699, and any other applicable statute; and
28

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

As to the Ninth Cause of Action

48. That the Court declare, adjudge, and decree that Defendants violated Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, failing to pay Plaintiff's and other class members' wages timely as required by Labor Code sections 201 and 202.

49. For restitution of unpaid wages to Plaintiff and other class members and all pre-judgment interest from the day such amounts were due and payable;

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

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

52. For injunctive relief to ensure compliance with this section, pursuant to Business and Professions Code sections 17200, *et seq.*; and

53. For such other and further relief as the court may deem just and proper.

Dated: May 10, 2022

JUSTICE LAW CORPORATION

By: _____

Haig Hogdanian

Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Haig Hogdanian
Attorneys for Plaintiff

EXHIBIT 1

February 7, 2020

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: NEW PRIDE TIRE, INC.

Dear Representative:

We have been retained to represent Luis Miranda against New Pride Tire, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "NPT").

Mr. Miranda is pursuing his California Labor Code sections 2698 *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Miranda may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

New Pride Tire, Inc. is a Delaware corporation headquartered at 2900 Main St. Building 137, Suite 201A, Alameda, CA 94501, US

NPT employed Mr. Miranda as an hourly-paid non-exempt within one year of the date of this letter (until in or around August of 2019) in the State of California. NPT directly controlled the wages, hours and working conditions of Mr. Miranda's employment.

The "aggrieved employees" that Mr. Miranda may seek penalties on behalf of are all current and former hourly-paid or non-exempt employee (whether hired directly or through a labor contractor or staffing agency) of NPT within the State of California.

NPT failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements, and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

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¹ Mr. Miranda does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Miranda will amend this notice when the true names and capacities are known. Mr. Miranda is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Miranda and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Miranda has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at NPT, regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

NPT has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Miranda and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. NPT failed to compensate Mr. Miranda and other aggrieved employees for all hours work and work performed off-the-clock, including pre- and post-shift, and during meal breaks. NPT also failed to include non-discretionary bonuses and incentives in aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Mr. Miranda and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, NPT routinely required Mr. Miranda and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with NPT policies and expectations, and meet production goals. Additionally, NPT failed to authorize and permit aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, NPT failed to compensate Mr. Miranda and other aggrieved employees all the premium wages they were owed.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, NPT failed to pay Mr. Miranda and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204.

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, NPT did not provide Mr. Miranda and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from NPT were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Miranda and other aggrieved employees, (2) total hours worked by Mr. Miranda and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Miranda and other aggrieved employees (4) all deductions for Mr. Miranda and other aggrieved employees, (5) net wages earned by Mr. Miranda and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Miranda and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Miranda and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties and wages. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Miranda and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, NPT failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Miranda and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, NPT did not provide Mr. Miranda and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift work, and during meal breaks.

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California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Miranda and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by NPT, including for purchasing personal protective equipment they were required to wear while working,

We believe that Mr. Miranda and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties and wages as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Miranda will seek these penalties and wages on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of NPT within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in dark ink, appearing to read "D. Han", written over a horizontal line.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only)

Ryan S. Gores
c/o New Pride Tire, Inc.
One Dole Drive
Westlake Village, California 91362
Agent for Service of Process for New Pride Tire, Inc.

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On May 12, 2022, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Miranda v. New Pride Tire, Inc.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-771390-20**
Court Case No.: RG20063513
Alameda Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on May 12, 2022, at Pasadena, California.



Mariah Anderson