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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

BRITTANY DAM, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

RUBBER-CAL, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 30-2020-01176087-CU-OE-CXC

**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 Labor Code § 2698, *et seq.* (California Labor Code Private Attorneys General Act of 2004); and
- (9) Violation of California Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff BRITTANY DAM (“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 California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

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 Orange. The majority 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, County of Orange.

PARTIES

5. Plaintiff BRITTANY DAM is an individual residing in the State of California, County of Orange.

6. Defendant RUBBER-CAL, INC., at all times herein mentioned, was and is, upon information and belief, a California corporation, and at all times herein mentioned, was and is, an employer whose employees are engaged throughout the State of California, including the County of Orange.

1 7. At all relevant times, Defendants RUBBER-CAL, INC. was the “employer” of
2 Plaintiff within the meaning of all applicable California laws and statutes.

3 8. At all times herein relevant, Defendants RUBBER-CAL, INC. and DOES 1
4 through 100, and each of them, were the agents, partners, joint venturers, joint employers,
5 representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each
6 of the other, and at all times relevant hereto were acting within the course and scope of their
7 authority as such agents, partners, joint venturers, joint employers, representatives, servants,
8 employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein
9 were duly committed with the ratification, knowledge, permission, encouragement,
10 authorization, and consent of each defendant designated herein.

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

19 10. Defendants RUBBER-CAL, INC. and DOES 1 through 100 will hereinafter
20 collectively be referred to as “Defendants.”

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

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CLASS ACTION ALLEGATIONS

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

13. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees of Defendants within the State of California at any time during the period from June 27, 2016¹ to final judgment.

14. Plaintiff reserves the right to establish subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff's claims are typical of all other class members' claims as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom she has a well-defined community of interest.

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¹ Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Accordingly, Plaintiff's claims were tolled during that time period.

1 c. Adequacy: Plaintiff will fairly and adequately protect the interests of
2 each class member, with whom she has a well-defined community of
3 interest and typicality of claims, as demonstrated herein. Plaintiff has no
4 interest that is antagonistic to the other class members. Plaintiff's
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiff has
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.

11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual joinder
13 of all class members is impractical.

14 e. Public Policy Considerations: Certification of this lawsuit as a class
15 action will advance public policy objectives. Employers of this great
16 state violate employment and labor laws every day. Current employees
17 are often afraid to assert their rights out of fear of direct or indirect
18 retaliation. However, class actions provide the class members who are
19 not named in the complaint anonymity that allows for the vindication of
20 their rights.

21 16. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the California Labor Code, was willful;

26 b. Whether Defendants failed to pay their hourly-paid or non-exempt
27 employees within the State of California for all hours worked, missed
28 meal periods and rest breaks in violation of California law;

- 1 c. Whether Defendants required Plaintiff and the other class members to
2 work over eight (8) hours per day and/or over forty (40) hours per week
3 and failed to pay the legally required overtime compensation to Plaintiff
4 and the other class members;
- 5 d. Whether Defendants properly calculated the regular rate for Plaintiff and
6 the other class members who worked overtime and earned incentive pay;
- 7 e. Whether Defendants deprived Plaintiff and the other class members of
8 meal and/or rest periods or required Plaintiff and the other class
9 members to work during meal and/or rest periods without compensation;
- 10 f. Whether Defendants failed to pay minimum wages to Plaintiff and the
11 other class members for all hours worked;
- 12 g. Whether Defendants failed to pay all wages due to Plaintiff and the other
13 class members within the required time upon their discharge or
14 resignation;
- 15 h. Whether Defendants failed to timely pay all wages due to Plaintiff and
16 the other class members during their employment;
- 17 i. Whether Defendants complied with wage reporting as required by the
18 California Labor Code, including, inter alia, section 226;
- 19 j. Whether Defendants failed to reimburse Plaintiff and the Class members
20 for necessary business-related expenses and costs;
- 21 k. Whether Defendants' conduct was willful or reckless;
- 22 l. Whether Defendants engaged in unfair business practices in violation of
23 California Business & Professions Code section 17200, *et seq.*;
- 24 m. The appropriate amount of damages, restitution, and/or monetary
25 penalties resulting from Defendants' violation of California law; and
- 26 n. Whether Plaintiff and the other class members are entitled to
27 compensatory damages pursuant to the California Labor Code.

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GENERAL ALLEGATIONS

17. 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.

18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid employee from October to December of 2017 in the State of California, County of Orange.

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

20. 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.

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

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

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

24. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees within the State of California. This scheme involved, inter alia, failing to pay them for all hours worked, missed meal periods, and missed rest breaks in violation of California law.

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

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

5 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knew or should have known that Plaintiff and the other class members were entitled to receive
7 all timely and complete meal periods or payment of one additional hour of pay at Plaintiff's
8 and the other class members' regular rate of pay when a meal period was missed, late or
9 interrupted, and that Plaintiff and the other class members did not receive all timely and proper
10 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal
11 period was missed.

12 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knew or should have known that Plaintiff and other class members were entitled to receive all
14 timely rest periods without interruption or payment of one additional hour of pay at Plaintiff
15 and the other class members' regular rate of pay when a rest period was missed, late or
16 interrupted, and that Plaintiff and the other class members did not receive all rest periods or
17 payment of one additional hour of pay at their regular rate of pay when a rest period was
18 missed.

19 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Plaintiff and the other class members were entitled to receive
21 at least minimum wages for compensation and that Plaintiff and the other class members were
22 not receiving at least minimum wages for all hours worked.

23 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knew or should have known that Plaintiff and the other class members were entitled to receive
25 the wages owed to them upon discharge or resignation, including overtime and minimum
26 wages and meal and rest period premiums, and that Plaintiff and the other class members did
27 not, in fact, receive such wages owed to them at the time of their discharge or resignation.

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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 the other class members were entitled to receive
3 complete and accurate wage statements in accordance with California law, but, in fact, Plaintiff
4 and the other class members did not receive complete and accurate wage statements from
5 Defendants. The deficiencies included, inter alia, the failure to include the total number of
6 hours worked by Plaintiff and the other class members.

7 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Plaintiff and the other class members were entitled to
9 reimbursement for necessary business-related expenses.

10 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 knew or should have known that Defendants had to keep complete and accurate payroll records
12 for Plaintiff and the other class members in accordance with California law, but, in fact, did not
13 keep complete and accurate payroll records for Plaintiff and the other class members.

14 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that they had a duty to compensate Plaintiff and the other class
16 members pursuant to California law, and that Defendants had the financial ability to pay such
17 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
18 represented to Plaintiff and the other class members that they were properly denied wages, all
19 in order to increase Defendants' profits.

20 35. During the relevant time period set forth herein, Defendants failed to pay
21 overtime wages to Plaintiff and the other class members for all hours worked. Plaintiff and
22 other class members were required to work more than eight (8) hours per day and/or forty (40)
23 hours per week without overtime compensation.

24 36. During the relevant time period set forth herein, Defendants failed to provide the
25 requisite uninterrupted and timely meal and rest periods to Plaintiff and the other class
26 members.

27 37. During the relevant time period set forth herein, Defendants failed to pay
28 Plaintiff and the other class members at least minimum wages for all hours worked.

38. During the relevant time period set forth herein, Defendants failed to pay Plaintiff and the other class members the wages owed to them upon discharge or resignation.

39. During the relevant time period set forth herein, Defendants failed to provide complete or accurate wage statements to Plaintiff and the other class members.

40. During the relevant time period set forth herein, Defendants failed to keep complete or accurate payroll records for Plaintiff and the other class members.

41. During the relevant time period set forth herein, Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs.

42. During the relevant time period set forth herein, Defendants failed to properly compensate Plaintiff and the other class members pursuant to California law in order to increase Defendants' profits.

43. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

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

(Against RUBBER-CAL, INC. and DOES 1 through 100)

44. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 43, and each and every part thereof with the same force and effect as though fully set forth herein.

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

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

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

9 48. California Labor Code section 510 codifies the right to overtime compensation
10 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
11 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
12 of work, and overtime compensation at twice the regular hourly rate for hours worked in
13 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
14 of work.

15 49. During the relevant time period set forth herein, Plaintiff and the other class
16 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a
17 week.

18 50. During the relevant time period set forth herein, Defendants intentionally and
19 willfully failed to pay overtime wages owed to Plaintiff and the other class members.

20 51. Defendants' failure to pay Plaintiff and the other class members the unpaid
21 balance of overtime compensation, as required by California laws, violates the provisions of
22 California Labor Code sections 510 and 1198, and is therefore unlawful.

23 52. Pursuant to California Labor Code section 1194, Plaintiff and the other class
24 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
25 attorneys' fees.

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1 **SECOND CAUSE OF ACTION**

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

3 **(Against RUBBER-CAL, INC. and DOES 1 through 100)**

4 53. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 52, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 54. During the relevant time period set forth herein, the IWC Order and California
8 Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and the other class
9 members' employment by Defendants.

10 55. During the relevant time period set forth herein, California Labor Code section
11 226.7 provides that no employer shall require an employee to work during any meal or rest
12 period mandated by an applicable order of the California IWC.

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

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

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1 58. During the relevant time period set forth herein, Plaintiff and the other class
2 members who were scheduled to work for a period of time no longer than six (6) hours, and
3 who did not waive their legally-mandated meal periods by mutual consent, were required to
4 work for periods longer than five (5) hours without an uninterrupted meal period of not less
5 than thirty (30) minutes and/or without a rest period.

6 59. During the relevant time period set forth herein, Plaintiff and the other class
7 members who were scheduled to work for a period of time no longer than twelve (12) hours,
8 and who did not waive their legally-mandated meal periods by mutual consent, were required
9 to work for periods longer than ten (10) hours without an uninterrupted meal period of not less
10 than thirty (30) minutes and/or without a rest period.

11 60. During the relevant time period set forth herein, Plaintiff and the other class
12 members who were scheduled to work for a period of time in excess of six (6) hours were
13 required to work for periods longer than five (5) hours without an uninterrupted meal period of
14 not less than thirty (30) minutes and/or without a rest period.

15 61. During the relevant time period set forth herein, Plaintiff and the other class
16 members who were scheduled to work for a period of time in excess of twelve (12) hours were
17 required to work for periods longer than ten (10) hours without an uninterrupted meal period of
18 not less than thirty (30) minutes and/or without a rest period.

19 62. During the relevant time period set forth herein, Defendants intentionally and
20 willfully required Plaintiff and the other class members to work during meal periods and failed
21 to compensate Plaintiff and the other class members the full meal period premium for work
22 performed during meal periods.

23 63. During the relevant time period set forth herein, Defendants failed to pay
24 Plaintiff and the other class members the full meal period premium due pursuant to California
25 Labor Code section 226.7.

26 64. Defendants' conduct violates applicable IWC Wage Order and California Labor
27 Code sections 226.7 and 512(a).

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

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against RUBBER-CAL, INC. and DOES 1 through 100)

66. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 65, and each and every part thereof with the same force and effect as though fully set forth herein.

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

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

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

70. During the relevant time period set forth herein, Defendants required Plaintiff and the other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

71. During the relevant time period set forth herein, Defendants willfully required Plaintiff and the other class members to work during rest periods and failed to pay Plaintiff and the other class members the full rest period premium for work performed during rest periods.

72. During the relevant time period set forth herein, Defendants failed to pay Plaintiff and the other class members the full rest period premium due pursuant to California Labor Code section 226.7.

73. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

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

FOURTH CAUSE OF ACTION

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

(Against RUBBER-CAL, INC. and DOES 1 through 100)

75. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 74 and each and every part thereof with the same force and effect as though fully set forth herein.

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

77. During the relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194 and 1197.

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

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

FIFTH CAUSE OF ACTION

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

(Against RUBBER-CAL, INC. and DOES 1 through 100)

80. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 79, and each and every part thereof with the same force and effect as though fully set forth herein.

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

82. During the relevant time period set forth herein, Defendants intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

83. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

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

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

SIXTH CAUSE OF ACTION

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

(Against RUBBER-CAL, INC. and DOES 1 through 100)

86. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 85, and each and every part thereof with the same force and effect as though fully set forth herein.

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

88. Defendants have intentionally and willfully failed to provide Plaintiff and the other class members with complete and accurate wage statements. The deficiencies include but are not limited to: the failure to include the total number of hours worked by Plaintiff and other class members.

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1 89. As a result of Defendants' violation of California Labor Code section 226(a),
2 Plaintiff and the other class members have suffered injury and damage to their statutorily
3 protected rights.

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

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

12 92. Plaintiff and the other class members are also entitled to injunctive relief to
13 ensure compliance with this section, pursuant to California Labor Code section 226(g).

14 **SEVENTH CAUSE OF ACTION**

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

16 **(Against RUBBER-CAL, INC. and DOES 1 through 100)**

17 93. Plaintiff incorporates by reference the allegations contained in paragraphs 1
18 through 92, and each and every part thereof with the same force and effect as though fully set
19 forth herein.

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

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95. Defendants have intentionally and willfully failed to reimburse the other class members for all necessary business-related expenses and costs. the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code § 2698, *et seq.* (“PAGA”))

(Against RUBBER-CAL, INC. and DOES 1 through 100)

96. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 95, and each and every part thereof with the same force and effect as though fully set forth herein.

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

98. On May 23, 2018, the Court of Appeal published its decision in the case *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, clarifying that an employee who brings a representative action and who 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 also for violations affecting other employees and can recover penalties.

99. On November 11, 2021, Plaintiff provided written notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the Labor Code she contends were violated and the theories supporting her contentions. Plaintiff believes that on or about January 17, 2022, the sixty-five (65) days’ notice period will expire, and Plaintiff will have exhausted the statutory time period to bring this action.

1 100. Plaintiff and the other non-exempt employees are “aggrieved employees” as
2 defined by California Labor Code section 2699(c) in that they all are or were California non-
3 exempt employees of Defendant at any during the period from November 11, 2020, to
4 December 23, 2021, and one or more of the alleged violations was committed against them.

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

6 101. At all times relevant herein, Defendants were required to compensate their non-
7 exempt employees minimum wages for all hours worked and overtime wages (including
8 double time wages) for all hours worked in excess of eight (8) hours in a day or forty (40)
9 hours in a workweek, pursuant to the mandates of Labor Code sections 510, 1194, 1197, and
10 1198.

11 102. As a pattern and practice, Defendants failed to compensate Plaintiff and other
12 aggrieved employees for all hours worked, resulting in a failure to pay all minimum wages and
13 overtime wages (including double time wages), where applicable.

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

15 103. At all times relevant herein, Defendants were required to authorize and permit
16 their non-exempt employees to take a 10-minute rest break for every four (4) hours worked or
17 major fraction thereof and were further required to provide their non-exempt employees with a
18 30-minute meal period for every five (5) hours worked, pursuant to the mandates of Labor
19 Code sections 226.7 and 512.

20 104. As a pattern and practice, Defendants failed to provide Plaintiff and other
21 aggrieved employees with legally mandated meal periods and rest breaks and failed to pay
22 proper compensation for this failure.

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

24 105. At all times relevant herein, Defendants were required to pay their employees
25 within a specified time period, pursuant to the mandate of Labor Code section 204.

26 106. As a pattern and practice, Defendants regularly failed to pay Plaintiff and other
27 aggrieved employees all wages due and owing them within the required time period.

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

2 107. At all times relevant herein, Defendants were required to pay their employees all
3 wages owed in a timely fashion at the end of employment, pursuant to the mandates of Labor
4 Code sections 201 through 204.

5 108. As a pattern and practice, as a result of Defendants' Labor Code violations
6 alleged above, Defendants failed to pay Plaintiff and other aggrieved former employees their
7 final wages, pursuant to the mandates of Labor Code sections 201 through 204. Accordingly,
8 Defendants owe waiting time penalties pursuant to Labor Code section 203.

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

10 109. At all times relevant herein, Defendants were required to keep *accurate* records
11 regarding their California employees, pursuant to the mandates of Labor Code sections 226 and
12 1174.

13 110. As a pattern and practice, as a result of Defendants' various Labor Code
14 violations, Defendants willfully failed to keep accurate records regarding Plaintiff and other
15 aggrieved employees. Specifically, Defendants willfully failed in their affirmative obligations
16 to keep accurate records regarding Plaintiff's and other aggrieved employees' gross wages
17 earned, total hours worked, net wages earned, as well as all deductions, all applicable hourly
18 rates, and the number of hours worked at each hourly rate. Defendants thereby failed to
19 provide Plaintiff and other aggrieved employees with complete and accurate wage statements,
20 pursuant to the mandates of Labor Code section 226(a). Defendants also willfully failed to
21 keep accurate and complete payroll records showing the hours worked daily and the wages
22 paid to Plaintiff and other aggrieved employees, pursuant to the mandate of Labor Code
23 section 1174(d). Accordingly, Defendants owe penalties pursuant to Labor Code section
24 1174.5.

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- 1 d. Penalties under Labor Code section 1197.1 in the amount of a hundred
2 dollars (\$100) for each aggrieved employee per pay period for the initial
3 violation, and two hundred fifty dollars (\$250) for each aggrieved
4 employee per pay period for each subsequent violation;
- 5 e. Wages under California Labor Code section 558 in addition to, and
6 entirely independent and apart from, any other penalty provided in the
7 California Labor Code;
- 8 f. Any and all additional penalties as provided by the Labor Code and/or
9 other statutes; and
- 10 g. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194,
11 and 2699, and any other applicable statute.

12 **NINTH CAUSE OF ACTION**

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

14 **(Against RUBBER-CAL, INC. and DOES 1 through 100)**

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

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

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

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1 117. A violation of California Business & Professions Code section 17200, *et seq.*
2 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
3 policy and practice of requiring Plaintiff and the other class members work overtime hours
4 without paying them proper compensation violate California Labor Code sections 510 and
5 1198. Additionally, Defendants' policy and practice of requiring Plaintiff and the other class
6 members, to work through their meal and rest periods without paying them proper
7 compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants'
8 policy and practice of failing to timely pay wages to Plaintiff and the other class members
9 violate California Labor Code sections 201 and 202. Defendants also violated California Labor
10 Code sections 226(a), 1194, 1197, 2800 and 2802.

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

13 119. Plaintiff and the other class members have been personally injured by
14 Defendants' unlawful business acts and practices as alleged herein, including but not
15 necessarily limited to the loss of money and/or property.

16 120. Pursuant to California Business & Professions Code section 17200, *et seq.*,
17 Plaintiff and the other class members are entitled to restitution of the wages withheld and
18 retained by Defendants during a period that commences four years prior to the filing of this
19 Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section
20 1021.5 and other applicable laws; and an award of costs.

21 **DEMAND FOR JURY TRIAL**

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

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general
26 public similarly situated, prays for relief and judgment against Defendants, jointly and
27 severally, as follows:

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Class Certification

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

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California 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 California 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;
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 California Labor Code section 226.7(b);

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

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

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

5 **As to the Third Cause of Action**

6 17. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
8 rest periods to Plaintiff and the other class members;

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

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

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

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

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

18 **As to the Fourth Cause of Action**

19 23. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiff and
21 the other class members;

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

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

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

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

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

2 **As to the Fifth Cause of Action**

3 29. That the Court declare, adjudge and decree that Defendants violated California
4 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
5 time of termination of the employment of Plaintiff and other class members no longer
6 employed by Defendants;

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

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

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

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

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

15 34. That the Court declare, adjudge and decree that Defendants violated the record
16 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
17 as to Plaintiff and the other class members, and willfully failed to provide accurate itemized
18 wage statements thereto;

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

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

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

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

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

25 39. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code sections 2800 and 2802 by willfully failing to reimburse the other class members
27 for all necessary business-related expenses as required by California Labor Code sections 2800
28 and 2802;

- 1 40. For actual, consequential and incidental losses and damages, according to proof;
2 41. For the imposition of civil penalties and/or statutory penalties;
3 42. For punitive damages and/or exemplary damages according to proof at trial;
4 43. For reasonable attorneys' fees and costs of suit incurred herein; and
5 44. For such other and further relief as the court may deem just and proper.

6 **As to the Eighth Cause of Action**

7 45. For civil penalties pursuant to Labor Code section 2699 *et seq.*, for Defendants'
8 violations of Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.3, 226.7, 510, 512(a),
9 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800 and 2802;

10 46. For costs and attorneys' fees pursuant to Labor Code sections 210, 218.5, 1194,
11 2699, and any other applicable statute; and

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

13 **As to the Ninth Cause of Action**

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

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

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

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

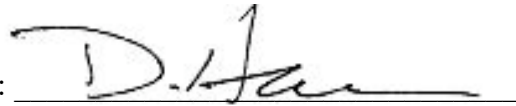
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1 52. For injunctive relief to ensure compliance with this section, pursuant to
2 California Business and Professions Code section 17200, *et seq.*; and

3 53. For such other and further relief as the court may deem just and proper.
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5 Dated: December 6, 2021

JUSTICE LAW CORPORATION

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8 By: 

Douglas Han
Shunt Tatavos-Gharajeh
Arsiné Grigoryan
Attorneys for Plaintiff

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On December 8, 21, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case:	Dam v. Rubber-Cal, Inc.
LWDA/Court Case No.:	LWDA-CM-852055-21
	30-2020-01176087-CU-OE-CXC
	Orange County 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 December 8, 2021, at Pasadena, California.

Madison Luna
Madison Luna