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

JOSE GOMAR, as an individual and on behalf of  
all others similarly situated, and as a private  
attorney general,

Plaintiff,

vs.

EAST BAY TIRE CO., a California corporation;  
and DOES 1 through 50, inclusive,

Defendants.

Case No. 24CV002591

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION COMPLAINT**

- (1) Unpaid Wages**  
**(Lab. Code §§ 1182.12, 1197);**
- (2) Unpaid Overtime**  
**(Lab. Code §§ 510, 1198);**
- (3) Unpaid Sick Pay Wages**  
**(Lab. Code §§ 201-204, 233, 246);**
- (4) Inaccurate Itemized Wage Statements**  
**(Lab. Code § 226(a));**
- (5) Unfair or Unlawful Business Practices**  
**(Bus. & Prof. Code §§ 17200 et seq.); and**
- (6) Violations of the California Labor Code**  
**(Lab. Code §§ 2698 et seq.)**

**DEMAND OVER \$25,000.00**

1 On behalf of himself and other similarly situated current and former employees of Defendants,  
2 Plaintiff, Jose Gomar, submits this First Amended Class and Representative Action Complaint (the  
3 “Complaint”) against Defendant, East Bary Tire Co., and Does 1 through 50 (collectively,  
4 “Defendants”).

## 5 INTRODUCTION

6 1. This class and representative action challenges systemic employment practices resulting  
7 in violations of the California Labor Code against individuals who worked for Defendants. Plaintiff is  
8 informed and believes that Defendants have jointly and severally acted intentionally and with deliberate  
9 indifference and conscious disregard to the rights of employees by failing to pay all regular and  
10 overtime wages, failing to pay all sick pay wages, failing to timely pay all wages during employment or  
11 upon termination of employment, and by failing to provide complete and accurate itemized wage  
12 statements. The Complaint seeks damages, penalties, and other relief pursuant to, among other  
13 provisions, Labor Code sections 201-204, 210, 218, 218.5, 218.6, 226, 226.3, 233, 246, 510, 558, 1174,  
14 1182.12, 1194, 1197, 1197.1, 1198, and 2698 et seq., and the Unfair Competition Law, codified at  
15 Business and Professions Code sections 17200 et seq. (the “UCL”).<sup>1</sup>

16 2. Plaintiff and other non-exempt employees are required to work on-call shifts. When  
17 Plaintiff and other non-exempt employees are required to work more than 3.0 hours during on-call  
18 shifts, they are paid for 3.0 hours only.

19 3. Defendants also fail to pay sick pay wages at the regular rate of pay. Plaintiff and other  
20 non-exempt employees earn non-base hourly wages or other non-hourly, non-discretionary  
21 remuneration, including for example commissions, bonuses, and incentives. Defendants fail to consider  
22 such wages when paying sick pay wages. Rather than pay sick pay wages at the regular rate of pay,  
23 Defendants underpay sick pay wages to Plaintiff and other non-exempt employees at their base rates of  
24 pay.

25 4. Because Plaintiff and other non-exempt employees are underpaid regular and overtime  
26 wages and are underpaid sick pay wages, Defendants routinely fail to timely pay Plaintiff and other  
27 non-exempt employees all wages during employment or upon separation of employment. Moreover,  
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<sup>1</sup> Except as otherwise noted, all “Section” references are to the Labor Code.

1 Defendants also routinely fail to furnish wage statements that accurately show and itemize the total  
2 hours worked, all applicable hourly rates in effect during the pay period, gross wages earned, and net  
3 wages earned.

4 5. Plaintiff is informed and believes that Defendants have engaged in, among other things, a  
5 system of willful violations of the Labor Code by creating and maintaining policies, practices, and  
6 customs that knowingly deny its employees the above stated rights and benefits.

7 6. The policies, practices, and customs of Defendants result in unjust enrichment of  
8 Defendants and an unfair business advantage over businesses that comply with the Labor Code.

### 9 JURISDICTION AND VENUE

10 7. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of  
11 Defendants' violations of Sections 201-204, 226, 233, 246, 510, 1182.12, 1197, and 1198, and the UCL.

12 8. Venue is proper in the County of Monterey, where Plaintiff performed work for  
13 Defendants.

### 14 PARTIES

15 9. Plaintiff was employed by Defendants as a tire technician and worked in California for  
16 Defendants for 30 or more days within a year of hiring. Until his employment ended in April of 2024,  
17 Plaintiff was required to work on-call shifts. When Plaintiff worked more than 3.0 hours during on-call  
18 shifts, Plaintiff was paid for 3.0 hours only. Moreover, Plaintiff was paid on an hourly basis as a non-  
19 exempt employee and earned non-base hourly wages or other non-hourly, non-discretionary  
20 remuneration, including for example commissions, bonuses, and incentives. Plaintiff also accrued and  
21 actually used sick leave. When sick leave was used in workweeks that Plaintiff earned non-base hourly  
22 wages or other non-hourly, non-discretionary remuneration in addition to his base hourly wages, sick  
23 pay wages were paid at Plaintiff's base rate of pay rather than his regular rate of pay. Plaintiff was not  
24 timely paid all due wages during employment or upon separation of employment and also was not  
25 provided with accurate itemized wage statements. Plaintiff thus is a victim of the policies, practices, and  
26 customs of Defendants complained of in this action in ways that have deprived her of the rights  
27 guaranteed by the Labor Code and the UCL.

1           10. Plaintiff is informed and believes that East Bay Tire Co. was and is a California  
2 corporation. Plaintiff is informed and believes that at all times herein mentioned named defendants and  
3 Does 1 through 50, were and are corporations, business entities, individuals, or partnerships that are and  
4 were licensed to do business and actually doing business in the State of California. Based upon all the  
5 facts and circumstances incident to Defendants' business, Defendants are subject to Sections 201-204,  
6 226, 233, 246, 510, 1182.12, 1197, and 1198, and the UCL.

7           11. Plaintiff does not know the true names or capacities of the defendants sued herein as  
8 Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are  
9 sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names  
10 and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was  
11 responsible in some way for the matters alleged herein and proximately caused the illegal employment  
12 practices, wrongs, and injuries complained of herein.

13           12. At all times mentioned herein, each of said Defendants participated in the doing of the  
14 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of  
15 the other Defendants, as well as the agents of all Defendants, and were acting within the course and  
16 scope of said agency and employment.

17           13. Plaintiff is informed and believes that at all times material hereto, each of said  
18 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,  
19 each of the other Defendants and was acting within the course and scope of such agency, employment,  
20 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by  
21 certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or  
22 omissions of the acting Defendants.

23           14. Plaintiff is informed and believes that at all times material hereto each of the Defendants  
24 (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the  
25 alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in  
26 pursuance of, a joint venture, partnership, or common enterprise.

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**CLASS ACTION ALLEGATIONS**

15. **Definition:** Pursuant to Code of Civil Procedure section 382, Plaintiff seeks class certification of the following classes: (i) all current and former non-exempt employees of Defendants in the State of California who have worked on-call shifts since June 21, 2020 (the “Unpaid Class”), (ii) all current and former non-exempt employees of Defendants in the State of California who have worked on-call shifts on either days exceeding 8.0 work hours or weeks exceeding 40.0 work hours since June 21, 2020 (the “Overtime Class”), (iii) all current and former non-exempt employees of Defendants in the State of California who have been paid sick pay wages in a workweek since June 21, 2020, in which they also earned non-base hourly wages or other non-hourly, non-discretionary remuneration (the “Sick Pay Class”), and (iv) all current and former non-exempt employees of Defendants in the State of California who since June 21, 2023, have either worked on-call shifts or been paid sick pay wages in a workweek in which they also earned non-base hourly wages or other non-hourly, non-discretionary remuneration (the “Wage Statement Class”). The Unpaid Class, Overtime Class, Sick Pay Class, and Wage Statement Class are collectively referred to as the “Class.”

16. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and believes that Defendants violated Sections 201-204, 226, 233, 248, 510, 1182.12, 1197, and 1198, and the UCL against Plaintiff and the Class by failing to pay all regular and overtime wages, failing to pay all sick pay wages, failing to timely pay all wages during employment or upon termination of employment, and failing to provide complete and accurate itemized wage statements.

17. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff’s attorneys are ready, willing, and fully and adequately able to represent Plaintiff and the Class. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-and-hour class actions currently pending in California state and federal courts.

18. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is

1 informed and believes that Defendants uniformly administer a corporate policy and practice of routinely  
2 failing to pay all regular and overtime wages, to pay all sick pay wages due, to timely pay all wages  
3 during employment or upon separation of employment, or provide complete and accurate itemized wage  
4 statements.

5       19.     **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class  
6 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class  
7 suffered. As with other members of the Class, Plaintiff was required to work on-call shifts. When  
8 Plaintiff worked more than 3.0 hours during on-call shifts, Plaintiff was paid for 3.0 hours only.  
9 Moreover, Plaintiff was paid on an hourly basis as a non-exempt employee and earned non-base hourly  
10 wages or other non-hourly, non-discretionary remuneration, including for example commissions,  
11 bonuses, and incentives. Plaintiff also accrued and actually used sick leave. When sick leave was used  
12 in workweeks that Plaintiff earned non-base hourly wages or other non-hourly, non-discretionary  
13 remuneration in addition to his base hourly wages, sick pay wages were paid at Plaintiff's base rate of  
14 pay rather than his regular rate of pay. Plaintiff was not timely paid all due wages during employment or  
15 upon separation of employment and also was not provided with accurate itemized wage statements.  
16 Plaintiff thus is a member of the Class and has suffered the alleged violations of the Labor Code.

17       20.     The Labor Code is broadly remedial in nature. Its laws serve an important public interest  
18 in establishing minimum working conditions and requirements in California. These labor standards  
19 protect employees from onerous terms and conditions of employment or exploitation by employers who  
20 have superior economic and bargaining power.

21       21.     The nature of this action and the format of laws available to Plaintiff and members of the  
22 Class make the class action format a particularly efficient and appropriate procedure to redress the  
23 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate  
24 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and  
25 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and  
26 legal resources. Requiring each member of the Class to pursue an individual remedy would also  
27 discourage the assertion of lawful claims by employees who would be disinclined to file an action  
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1 against their former or current employer for real and justifiable fear of retaliation and permanent  
2 damage to their careers at their current or subsequent employment.

3 22. The prosecution of separate actions by individual members of the Class, even if possible,  
4 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual  
5 members of the Class that would establish potentially incompatible standards of conduct for  
6 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a  
7 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests  
8 of other members of the Class not parties to the adjudications. Further, the claims of the individual  
9 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering  
10 the concomitant costs and expenses.

11 23. Defendants' pattern, practice, and uniform administration of corporate policy in violation  
12 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the  
13 rights of Plaintiff and the Class under Sections 201-204, 210, 218, 218.5, 218.6, 226, 233, 246, 510,  
14 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198, applicable IWC Wage Orders, the UCL, and  
15 Code of Civil Procedure section 1021.5 to recover damages and restitution, including unpaid wages and  
16 interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit.

17 24. This action is brought for the benefit of the Class, which is commonly entitled to a  
18 specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class  
19 is commonly entitled to restitution of those funds being improperly withheld by Defendant.

## 20 **FIRST CAUSE OF ACTION**

### 21 **Unpaid Wages (Lab. Code §§ 1182.12 and 1197)**

#### 22 **(By Plaintiff and the Unpaid Wage Class Against All Defendants)**

23 25. The preceding paragraphs are re-alleged and incorporated by this reference.

24 26. Sections 1182.12 and 1197 provide a minimum wage to be paid to employees and make  
25 unlawful the payment of a lesser wage. The applicable IWC Wage Order defines compensable time as  
26 "the time during which an employee is subject to the control of an employer, and includes all the time  
27 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8,  
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§ 11040(2)(K) (defining “Hours Worked”). California law thus generally requires that employers pay employees for all hours worked and pay at least the minimum wage for all hours worked.

27. As a matter of policy and practice, Defendants fail to pay at least minimum wage and fail to pay any wage at all for all hours worked by Plaintiff and the Unpaid Wage Class. Specifically, Plaintiff and the Unpaid Wage Class are required to work on-call shifts. When Plaintiff and the Unpaid Wage Class are required to work more than 3.0 hours during on-call shifts, they are paid for 3.0 hours only. As such, Plaintiff and the Unpaid Wage Class are owed unpaid regular and minimum wages.

28. Moreover, Section 204 provides that wages are generally due and payable no later than seven days after the end of a pay period or at least twice during each calendar month, on days designated in advance as the regular paydays. Section 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the employee has given seventy-two (72) hours previous 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. 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, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days.

29. Based on Defendants’ failure to pay all regular and minimum wages to Plaintiff and the Unpaid Wage Class, and as a matter of policy and practice, Defendants fail to timely pay all due wages during employment and fail to timely pay all due wages upon separation of employment. On information and belief, Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff’s allegations. Because Defendants willfully fail to timely pay Plaintiff and the Unpaid Wage Class all wages due, Defendants are subject to applicable penalties pursuant to Sections 203 and 210, among other Labor Code provisions.

30. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Unpaid Wage Class to recover unpaid wages, including interest thereon, liquidated damages, applicable penalties, attorneys’ fees, and costs of suit.

1 **SECOND CAUSE OF ACTION**

2 **Unpaid Overtime (Lab. Code §§ 510, 1198)**

3 **(By Plaintiff and the Overtime Class Against All Defendants)**

4 31. The preceding paragraphs are re-alleged and incorporated by this reference.

5 32. Section 510 and the applicable IWC Wage Order provide that “[a]ny work in excess of  
6 eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight  
7 hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no  
8 less than one and one-half times the regular rate of pay for an employee” and that “[a]ny work in excess  
9 of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for  
10 an employee.” Section 1198 makes unlawful conditions of labor that are prohibited by the applicable  
11 IWC Wage Order.

12 33. Plaintiff and the Overtime Class regularly work more than 8.0 hours in a day or 40.0  
13 hours in a workweek. As a matter of policy and practice, when Plaintiff and the Overtime Class work  
14 hours entitled to overtime wages, Defendants fail to pay overtime wages for all hours exceeding eight in  
15 a day or 40 in a workweek. Specifically, Plaintiff and the Overtime Class are required to work on-call  
16 shifts. When Plaintiff and the Overtime Class work hours entitled to overtime wages and are required to  
17 work more than 3.0 hours during on-call shifts, they are paid for 3.0 hours only. As such, Plaintiff and  
18 the Overtime Class are owed overtime wages.

19 34. Moreover, Section 204 provides that wages are generally due and payable no later than  
20 seven days after the end of a pay period or at least twice during each calendar month, on days  
21 designated in advance as the regular paydays. Section 201 provides that if an employer discharges an  
22 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.  
23 Section 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours  
24 after an employee quits his or her employment, unless the employee has given seventy-two (72) hours  
25 previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages  
26 at the time of quitting. Section 203 provides that if an employer willfully fails to pay wages owed in  
27 accordance with Sections 201 and 202, then the wages of the employee shall continue as a penalty from  
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1 the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30)  
2 days.

3 35. Based on Defendants' failure to pay overtime wages to Plaintiff and the Overtime Class,  
4 as a matter of policy and practice, Defendants fail to timely pay Plaintiff and the Overtime Class all due  
5 wages during employment and fail to timely pay all due wages upon separation of employment. On  
6 information and belief, Defendants were advised by skilled lawyers and knew, or should have known,  
7 of the mandates of the Labor Code as it relates to Plaintiff's allegations. Because Defendants willfully  
8 fail to timely pay Plaintiff and the Overtime Class all wages due, Defendants are subject to applicable  
9 penalties pursuant to Sections 203 and 210, among other Labor Code provisions.

10 36. Such a pattern, practice, and uniform administration of corporate policy is unlawful and  
11 entitles Plaintiff and the Overtime Class to recover unpaid overtime and interest thereon, applicable  
12 penalties, attorneys' fees, and costs of suit.

### 13 **THIRD CAUSE OF ACTION**

#### 14 **Unpaid Sick Pay Wages (Lab. Code §§ 201-204, 233, 246)**

#### 15 **(By Plaintiff and the Sick Pay Class Against All Defendants)**

16 37. The preceding paragraphs are re-alleged and incorporated by this reference.

17 38. Section 233 provides that an employer must permit an employee to use accrued sick leave  
18 in accordance with Section 246.5 at the employee's then current rate of entitlement. Section 246  
19 provides that an employee is entitled to sick pay wages for use of accrued sick leave pursuant to Section  
20 246.5. Specifically, once accrued sick leave is used as paid sick time, an employee has a vested right to  
21 sick pay wages, which an employer must calculate and compensate based on one of two calculations: (i)  
22 "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of  
23 pay for the workweek in which the employee uses paid sick time, whether or not the employee actually  
24 works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated  
25 by dividing the employee's total wages, not including overtime premium pay, by the employee's total  
26 hours worked in the full pay periods of the prior 90 days of employment." Under Sections 204, 218, and  
27 233, employees may sue to recover underpaid sick pay wages as damages.

1           39. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiff and the  
2 Sick Pay Class at the incorrect rate of pay. Plaintiff and the Sick Pay Class regularly use accrued sick  
3 leave in workweeks in which they also earn non-base hourly wages or other non-hourly, non-  
4 discretionary remuneration, including for commissions, bonuses, and incentives. As a matter of policy  
5 and practice, Defendants pay sick pay wages to Plaintiff and the Sick Pay Class at the base hourly rate of  
6 pay, as opposed to the regular rate of pay, which would consider all non-discretionary remuneration in  
7 addition to base hourly wages, or the rate resulting from dividing the employee's total wages, not  
8 including overtime premium pay, by the employee's total hours worked in the full pay periods of the  
9 prior 90 days of employment. As a result, Defendants underpay sick pay wages to Plaintiff and the Sick  
10 Pay Class.

11           40. Section 204 provides that wages generally are due and payable twice during each  
12 calendar month and are to be paid no later than the payday for the next regular payroll period. Consistent  
13 with Section 204, Section 246 specifically requires that, upon use of accrued sick leave, vested sick pay  
14 wages are due and to be paid no later than the payday for the next regular payroll period after accrued  
15 sick leave is used as paid sick time. Similarly, Section 201 provides that if an employer discharges an  
16 employee, wages earned and unpaid at the time of discharge are due and payable immediately. Section  
17 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an  
18 employee quits his or her employment, unless the employee has given 72-hour notice of his or her  
19 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. The  
20 Labor Code penalizes untimely payments. For example, Section 203 provides that if an employer  
21 willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of the  
22 employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages  
23 shall not continue for more than thirty (30) days. Likewise, Section 210 provides penalties for violations  
24 of Section 204 and untimely payments during employment. Under Sections 203, 210, and 218,  
25 employees may sue to recover applicable penalties.

26           41. As alleged herein and as a matter of policy and practice, Defendants routinely underpay  
27 sick pay wages and thus do not timely pay Plaintiff and the Sick Pay Class all owing and underpaid sick  
28 pay wages. As a result, Defendants violate Sections 201-204, 210, 233, and 246, among other Labor

Code provisions. Plaintiff is informed and believe that Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations, especially since the California Supreme Court has explained that "[c]ourts have recognized that 'wages' also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007) (emphasis added). Because Defendants willfully fail to timely pay Plaintiff and the Sick Pay Class all sick pay wages due, Defendants are subject to applicable penalties.

42. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Sick Pay Class to recover underpaid sick pay wages, including interest thereon, applicable penalties, attorneys' fees, and costs of suit.

#### **FOURTH CAUSE OF ACTION**

##### **Inaccurate Itemized Wage Statements (Lab. Code § 226(a))**

##### **(By Plaintiff and the Wage Statement Class Against All Defendants)**

43. The preceding paragraphs are re-alleged and incorporated by this reference.

44. Section 226(a) requires an employer to furnish to its employees itemized wage statements that show accurate information, including without limitation, the total hours worked, all applicable hourly rates in effect during the pay period, gross wages earned, and net wages earned.

45. Defendants fail to provide accurate itemized wage statements to Plaintiff and the Wage Statement Class. Because of the above violations and as a matter of policy and practice, Defendants fail to furnish Plaintiff and the Wage Statement Class with wage statements that accurately show the total hours worked, all applicable hourly rates in effect during the pay period, gross wages earned, and net wages earned.

46. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Wage Statement Class to recover applicable penalties, attorneys' fees, and costs of suit.

1 **FIFTH CAUSE OF ACTION**

2 **Unfair or Unlawful Business Practices (Bus. & Prof. Code §§ 17200 et seq.)**

3 **(By Plaintiff and the Class Against All Defendants)**

4 47. The preceding paragraphs are re-alleged and incorporated by this reference.

5 48. Plaintiff is informed and believes that at Defendants have engaged and continue to  
6 engage in unfair and unlawful business practices in California by utilizing the employment policies and  
7 practices alleged herein, including the failure to pay all regular and overtime wages, and the failure to  
8 pay all sick pay wages.

9 49. Defendants' utilization of such unfair and unlawful business practices constitutes unfair  
10 and unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed  
11 by the UCL. Defendants have deprived Plaintiff, the Unpaid Class, the Overtime Class, and the Sick  
12 Pay Class the minimum working condition standards and conditions due to them under the Labor Code  
13 and applicable IWC Wage Orders.

14 50. Such a pattern, practice, and uniform administration of corporate policy is unlawful and  
15 entitles Plaintiff, the Unpaid Class, the Overtime Class, and the Sick Pay Class to full restitution of all  
16 monies withheld, acquired, or converted by means of the unfair practices complained of herein,  
17 including interest thereon, attorneys' fees, and costs of suit.

18 **SIXTH CAUSE OF ACTION**

19 **Violations of California Labor Code (Lab. Code §§ 2698 et seq.)**

20 **(By Plaintiff as a Proxy for the State Against All Defendants)**

21 51. The preceding paragraphs are re-alleged and incorporated by this reference.

22 52. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698  
23 et seq. ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of California. In this  
24 capacity, Plaintiff would seek penalties for Defendants' violations of Sections 201-204, 226, 233, 246,  
25 510, 1182.12, 1197, and 1198 committed since June 21, 2023, against all aggrieved employees. As  
26 stated herein, Defendants fail to (i) pay all regular and overtime wages, (ii) pay all sick pay wages, (iii)  
27 timely pay all wages during employment or upon termination of employment, and (iv) provide complete  
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1 and accurate itemized wage statements. Under Section 2699(c), Plaintiff is an “aggrieved employee,” as  
2 one or more of the alleged violations was committed against Plaintiff as an employee of Defendants.

3 53. On or about June 21, 2024, Plaintiff sent written notice to the Labor & Workforce  
4 Development Agency (“LWDA”) of specific facts and theories for Defendants’ above violations.  
5 Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing  
6 of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the  
7 allegations in the written notice.

8 54. As such, pursuant to Section 2699(a), (f), and (g), Plaintiff seeks recovery of all  
9 applicable penalties pursuant to Section 2699(a), (f), and (g) for Defendants’ violations against all  
10 aggrieved employees for the period described above.

#### 11 **PRAYER FOR RELIEF**

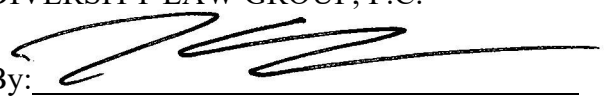
12 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit  
13 is brought against Defendants, jointly and severally, as follows:

- 14 1. For an order certifying the proposed Classes;
- 15 2. For an order appointing Plaintiff as the representative of the Classes;
- 16 3. For an order appointing Counsel for Plaintiff as Class Counsel;
- 17 4. Upon the First Cause of Action for damages, including unpaid wages and interest  
18 thereon, penalties, and attorneys’ fees and costs;
- 19 5. Upon the Second Cause of Action for damages, including unpaid wages and interest  
20 thereon, penalties, and attorneys’ fees and costs;
- 21 6. Upon the Third Cause of Action for damages, including unpaid wages and interest  
22 thereon, penalties, and attorneys’ fees and costs;
- 23 7. Upon the Fourth Cause of Action for penalties, actual damages, and attorneys’ fees and  
24 costs;
- 25 8. Upon the Fifth Cause of Action for restitution of all funds unlawfully acquired by  
26 Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon,  
27 and for attorneys’ fees and costs;
- 28

- 1           9.       Upon the Sixth Cause of Action for penalties pursuant to Section 2699(a), (f), and (g),  
2 and for attorneys' fees and costs;
- 3           10.      Upon each cause of action for attorneys' fees and costs as provided by the Labor Code,  
4 UCL, and Code of Civil Procedure section 1021.5; and
- 5           11.      For such other and further relief that the Court may deem just and proper.

6 DATED: August 30, 2024

DIVERSITY LAW GROUP, P.C.

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8 By: 

Larry W. Lee

Simon L. Yang

9 Attorneys for Plaintiff  
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