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on behalf of himself and others similarly situated

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

NICHOLAS WHITE, on behalf of himself
and others similarly situated,

Plaintiff,

vs.

LES SCHWAB TIRE CENTERS OF
CALIFORNIA, LLC, a California limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 24CV-0206508

CLASS ACTION

Assigned for All Purposes To:
Hon. Stephen H. Baker
Dept.: 64

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime
Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code §
226.7;
4. Rest-Break Liability Under Labor Code §
226.7;
5. Failure to Pay Vacation Wages;
6. Failure to Comply with Labor Code §§ 245 *et*
seq. and 246;
7. Reimbursement of Necessary Expenditures
Under Labor Code § 2802;
8. Violation of Labor Code § 226(a);
9. Failure to Keep Required Payroll
Records Under Labor Code §§ 1174 and
1174.5
10. Penalties Pursuant to Labor Code § 203; and
11. Violation of Business & Professions Code §
17200 *et seq.*
12. Penalties Pursuant to Labor Code § 2699, *et*
seq.

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff NICHOLAS WHITE, (hereinafter “Plaintiff”) on behalf of himself and all others
2 similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants LES SCHWAB
8 TIRE CENTERS OF CALIFORNIA, LLC, a California limited liability company; and DOES 1
9 through 50 (all defendants being collectively referred to herein as “Defendants”). Plaintiff alleges
10 that Defendants, and each of them, violated various provisions of the California Labor Code,
11 relevant orders of the Industrial Welfare Commission (IWC) and California Business &
12 Professions Code, and seeks redress therefore.

13 2. Plaintiff is a resident of California and during the time period relevant to this
14 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
15 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members
16 worked for Defendants in Shasta County and in other nonexempt positions throughout California
17 and consistently worked at Defendants’ behest without being paid all wages due. More
18 specifically, Plaintiff and the other similarly situated Class members were employed by
19 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
20 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff
21 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
22 subjected to the same policies and practices, and (3) endured similar violations at the hands of
23 Defendants as the other Employee Class members who served in similar and related positions.

24 3. Defendants failed to pay Plaintiff and Employee Class members the overtime
25 wages they were owed. Defendants failed to pay Plaintiff and the Class members for all hours
26 worked and provided them with inaccurate wage statements that prevented Plaintiff and the Class
27 from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the
28

1 Class with lawful meal and rest periods, as employees were not provided with the opportunity to
2 take timely, uninterrupted, and duty-free meal and rest periods as required by the Labor Code.

3 **THE PARTIES**

4 **A. The Plaintiff**

5 4. Plaintiff NICHOLAS WHITE has resided in California and during the time period
6 relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within
7 the State of California.

8 **B. The Defendants**

9 5. Defendant LES SCHWAB TIRE CENTERS OF CALIFORNIA, LLC is a
10 California limited liability company with its principle executive offices in Bend, Oregon and has
11 been listed as the employer on Plaintiff's paystubs and wage statements during the relevant time
12 period. LES SCHWAB TIRE CENTERS OF CALIFORNIA, LLC lists a mailing address in Bend,
13 Oregon with the California Secretary of State and employs Plaintiff and the Class members at
14 Defendants' offices and facilities in Burney, California, and throughout California and conducts
15 business throughout California.

16 6. The true names and capacities, whether individual, corporate, associate, or
17 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
18 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
19 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
20 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
21 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
22 this Complaint to reflect the true names and capacities of the Defendants designated herein as
23 Does 1 through 50 when their identities become known.

24 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
25 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
26 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
27 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
28 all respects as the employers or joint employers of Employees. Defendants, and each of them,

1 exercised control over the wages, hours or working conditions of Employees, or suffered or
2 permitted Employees to work, or engaged, thereby creating a common law employment
3 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
4 employed Employees.

5 **JURISDICTION AND VENUE**

6 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
7 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
8 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
9 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
10 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
11 obligations and liabilities giving rise to this lawsuit occurred at least in part in Shasta County and
12 Defendants maintain and operate company offices and facilities in Shasta County, and employ
13 Plaintiff and other Class members in Shasta County and throughout California.

14 **FACTUAL BACKGROUND**

15 9. The Employees who comprise the Class and Collective, including Plaintiff, are
16 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
17 Employees who work in nonexempt positions at the direction of Defendants in the State of
18 California. Plaintiff and the Class members were either not paid by Defendants for all hours
19 worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also
20 contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing,
21 failed to provide meal and rest breaks, and failed to furnish accurate wage statements, all in
22 violation of various provisions of the California Labor Code and applicable Wage Orders.

23 10. During the course of Plaintiff and the Class members' employment with
24 Defendants, they were not paid all wages they were owed, including for all work performed and
25 for all overtime hours worked and were forced to work during their meal and rest breaks.
26 Additionally, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive
27 pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
28 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or

1 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
2 the overtime wage rate. Therefore, during times when Plaintiff and Employees worked overtime
3 and received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
4 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

5 11. From at least four (4) years prior to the filing of this lawsuit and continuing to the
6 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
7 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
8 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
9 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
10 sick pay. Therefore, during times when Plaintiff and Employees worked overtime and received
11 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed
12 to pay all sick pay by paying a lower overtime rate than required.

13 12. From at least four (4) years prior to the filing of this lawsuit and continuing to the
14 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
15 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
16 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
17 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
18 calculating vacation pay. Therefore, during times when Plaintiff and Employees worked overtime
19 and received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
20 Defendants failed to pay all vacation pay by paying a lower overtime rate than required.

21 13. As a matter of uniform Company policy, Plaintiff and the Class members were
22 required to work during their meal and rest breaks which were not compensated by Defendants in
23 violation of the California Labor Code. Plaintiff and the Class members were also not paid
24 regular wages and overtime for the time they were required to comply with other requirements
25 imposed upon them, which they had to complete while working through their meal and rest
26 breaks and without compensation. As a result, Plaintiff and the Class members worked shifts over
27 eight (8) hours in a day and over forty (40) hours in a work week, but they were not paid at the
28 appropriate overtime rate for all such hours. As a result, Plaintiff and the Class members worked

1 substantial overtime hours during their employment with Defendants for which they were not
2 compensated, in violation of the California Labor Code, applicable IWC Wage Orders.

3 14. As a result of the above described daily work demands and pressures to work
4 through breaks and the other wage violations they endured at Defendants' hands, Plaintiff and the
5 Class members were not properly paid for all wages earned and for all wages owed to them by
6 Defendants, including when working more than eight (8) hours in any given day and/or more than
7 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,
8 Plaintiff and Class members incurred overtime hours worked for which they were not adequately
9 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and
10 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the
11 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular
12 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the
13 Labor Code, applicable IWC Wage Orders.

14 15. Therefore, from at least four (4) years prior to the filing of this lawsuit and
15 continuing to the present, Defendants had a consistent policy or practice of failing to pay
16 Employees for all hours worked and failing to pay minimum wage for all time worked as required
17 by California Law.

18 16. Additionally from at least four (4) years prior to the filing of this lawsuit and
19 continuing to the present, Defendants had a consistent policy or practice of failing to pay
20 Employees overtime compensation at premium overtime rates for all hours worked in excess of
21 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
22 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
23 sections of IWC Wage Orders.

24 17. Additionally from at least four (4) years prior to the filing of this lawsuit and
25 continuing to the present, Defendants have regularly required Employees to work shifts in excess
26 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
27 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal
28 periods of not less than thirty minutes; nor did Defendants pay Employees "premium pay," i.e. one

1 hour of wages at each Employee's effective regular rate of pay, for each meal period that
2 Defendants failed to provide or deficiently provided.

3 18. From at least four (4) years prior to the filing of this lawsuit and continuing to the
4 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
5 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
6 Defendants pay Employees premium pay for each day on which requisite rest breaks were not
7 provided or were deficiently provided at one hour of wages at each Employee's effective regular
8 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

9 19. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
10 continuing to the present, Defendants have consistently failed to provide Employees with timely,
11 accurate, and itemized wage statements as required by California wage-and-hour laws.
12 Specifically, the wage statements given to Employees by Defendants failed to accurately account
13 for wages, overtime, and premium pay for deficient meal periods and rest breaks all of which
14 Defendants knew or reasonably should have known were owed to Employees, as alleged
15 hereinabove. The wage statements provided to Employees were confusing and required
16 Employees to engage in discovery and refer to outside sources to verify whether their pay was
17 correct, potentially resulting in a miscalculation by the Employees.

18 20. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
19 continuing to the present, Defendants have consistently failed to provide Employees with timely,
20 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

21 21. From at least four (4) years prior to the filing of this lawsuit and continuing to the
22 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
23 performance of their job duties for Defendants, including but not limited to the cost of personal
24 cellphone usage, which was necessary to perform their duties under Defendants' employ in
25 violation of Labor Code § 2802.

26 22. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
27 continuing to the present, Defendants have consistently failed to keep accurate time and wage
28 records as required by California wage-and-hour laws.

23. Additionally, from at least four (4) years prior to filing this lawsuit and continuing to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to Employees at the time of their termination or within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.

24. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1199, 2698, 2699, *et seq.*, and 2802.

25. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code.

CLASS ALLEGATIONS

26. Plaintiff brings this class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows: all individuals employed by Defendants within the State of California at any time within four (4) years of the filing of this lawsuit.

27. Further, Plaintiff seeks to represent the following Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Meal Period Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction

thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

e. Subclass 5. Vacation Wages Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their vacation wages.

f. Subclass 6. Sick Pay Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their sick pay wages.

g. Subclass 7. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

h. Subclass 8. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

i. Subclass 9. Failure to Reimburse for Necessary Business Expenditures. All Class members who were subject to Defendants' failure to reimburse for expenses necessarily incurred in the performance of Employees job duties for Defendants.

j. Subclass 10. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

k. Subclass 11. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

28. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or further division into subclasses or limitation to particular issues.

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

A. Numerosity

30. The potential members of the class as defined are so numerous that joinder of all

1 the member of the class is impracticable. While the precise number of class members has not been
2 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
3 time period relevant to this lawsuit, employed more than 100 individuals within the State of
4 California.

5 31. Accounting for employee turnover during the relevant time period increases this
6 number substantially. Plaintiff alleges that Defendants' employment records will provide
7 information as to the number and location of all class members.

8 **B. Commonality**

9 32. There are questions of law and fact common to the class that predominate over any
10 questions affecting only individual class members. These common questions of law and fact
11 include:

- 12 a. Whether Defendants failed to pay Employees minimum wages;
- 13 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 14 c. Whether Defendants failed to pay Employees overtime as required under Labor
15 Code § 510;
- 16 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
17 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
18 premium pay in lieu thereof;
- 19 e. Whether Defendants violated Labor Code § 226.7, and the applicable IWC Wage
20 Orders, by failing to provide Employees with requisite rest breaks or premium pay
21 in lieu thereof;
- 22 f. Whether Defendants failed to pay Employees vacation wages as required under
23 Labor Code § 227.3;
- 24 g. Whether Defendants failed to pay Employees sick pay as required under Labor
25 Code § 245;
- 26 h. Whether Defendants violated Labor Code § 226(a);
- 27 i. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 28 j. Whether Defendants failed to reimburse Employees for necessary business

1 expenses;

2 k. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
3 wages and compensation due and owing at the time of termination of employment;

4 l. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*;

5 m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

6 n. Whether Employees are entitled to equitable relief pursuant to Business and
7 Professions Code § 17200 *et seq.*

8 **C. Typicality**

9 33. The claims of the named plaintiff are typical of those of the other Employees.

10 Employees all sustained injuries and damages arising out of and caused by Defendants' common
11 course of conduct in violation of statutes, as well as regulations that have the force and effect of
12 law, as alleged herein.

13 **D. Adequacy of Representation**

14 34. Plaintiff will fairly and adequately represent and protect the interest of Employees.
15 Counsel who represents Employees are experienced and competent in litigating employment class
16 actions.

17 **E. Superiority of Class Action**

18 35. A class action is superior to other available means for the fair and efficient
19 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
20 questions of law and fact common to all Employees predominate over any questions affecting only
21 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
22 Defendants' illegal policies or practices of failing to compensate Employees properly.

23 36. Class action treatment will allow those persons similarly situated to litigate their
24 claims in the manner that is most efficient and economical for the parties and the judicial system.
25 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

26 ///

27 ///

28 ///

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

37. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

38. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of misstating Employees time records and failing to pay Employees for all hours worked. Employees would work hours and not receive wages. Defendants had a consistent policy of failing to pay Employees for hours worked during alleged meal periods for which Employees were consistently denied, as addressed herein. Moreover, Defendants did not pay Plaintiff and Employees at the applicable minimum wage for all hours worked. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

39. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

40. The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are therefore entitled to double the minimum wage during the relevant period.

41. The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to California Labor Code § 1194(a) which states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit.

1 42. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
2 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

3 43. California Labor Code § 1194.2 also provides for the following remedies:

4 In any action under Section 1194 . . . to recover wages because of
5 the payment of a wage less than the minimum wages fixed by an
6 order of the commission, an employee shall be entitled to recover
 liquidated damages in an amount equal to the wages unlawfully
 unpaid and interest thereon.

7 44. Defendants have the ability to pay minimum wages for all time worked and have
8 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
9 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

10 45. Wherefore, Employees are entitled to recover the unpaid minimum wages
11 (including double minimum wages), liquidated damages in an amount equal to the minimum
12 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
13 to California Labor Code § 1194(a).

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

16 **(Against All Defendants)**

17 46. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
18 full herein.

19 47. By their conduct, as set forth herein, Defendants violated California Labor Code §
20 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
21 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
22 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
23 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
24 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
25 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
26 paying Employees wages for all hours worked including time spent working during meal breaks.
27 Employees regularly worked over 8 hours on a given day or over 40 hours in a given week
28 without receiving overtime compensation.

1 48. Furthermore, on information and belief, Defendants did not pay Plaintiff and
2 Employees the correct overtime rate for the recorded overtime hours that they generated. In
3 addition to an hourly wage, Defendants paid Plaintiff and Employees nondiscretionary
4 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and
5 belief, Defendants failed to incorporate all remunerations, including nondiscretionary
6 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular
7 rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when
8 Plaintiff and Employees worked overtime and received nondiscretionary commissions, incentive
9 pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a
10 lower overtime rate than required.

11 49. Defendants' failure to pay compensation in a timely fashion also constituted a
12 violation of California Labor Code § 204, which requires that all wages shall be paid
13 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
14 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
15 and overtime compensation earned by Employees. Each such failure to make a timely payment of
16 compensation to Employees constitutes a separate violation of California Labor Code § 204.

17 50. Employees have been damaged by these violations of California Labor Code §§
18 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

19 51. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
20 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
21 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
22 reasonable attorneys' fees and costs.

23 **THIRD CAUSE OF ACTION**

24 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

25 **(Against All Defendants)**

26 52. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.

28 53. Employees regularly worked shifts greater than five (5) hours and greater than ten

1 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
2 more than five (5) hours without providing him or her with a meal period of not less than thirty
3 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
4 meal period of not less than thirty (30) minutes.

5 54. Defendants failed to provide Employees with meal periods as required under the
6 Labor Code. Employees were consistently required to work through their meal periods which they
7 were consistently denied. Employees were also required to take meal periods after working well
8 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more
9 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal
10 period as required by law.

11 55. Moreover, Defendants failed to compensate Employees for each meal period not
12 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
13 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
14 employee a meal period in accordance with this section, the employer shall pay the employee one
15 hour of pay at the employee's regular rate of compensation for each workday that the meal period
16 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
17 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
18 and 20 of the applicable IWC Wage Order. Additionally, as detailed above, when Defendants did
19 pay meal period premiums, they did so at the normal regular rate of pay without factoring in all
20 forms or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

21 56. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
22 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal
23 period not provided or deficiently provided, a sum to be proven at trial.

24 **FOURTH CAUSE OF ACTION**

25 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

26 **(Against All Defendants)**

27 57. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

1 58. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
2 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
3 not less than ten (10) minutes for each consecutive four (4) hour shift.

4 59. Defendants failed to provide Employees with timely rest breaks of not less than ten
5 (10) minutes for each consecutive four (4) hour shift.

6 60. Moreover, Defendants failed to compensate Employees for each rest period not
7 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
8 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
9 accordance with this section, the employer shall pay the employee one hour of pay at the
10 employee's regular rate of compensation for each workday that the rest period is not provided.
11 Defendants failed to compensate the Employees in the Class for each rest period not provided or
12 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
13 Order. Additionally, as detailed above, when Defendants did pay rest period premiums, they did
14 so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
15 or by otherwise incorrectly calculating the regular rate.

16 61. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
17 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
18 worked without the required rest breaks, a sum to be proven at trial.

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PAY VACATION WAGES**

21 **(Against All Defendants)**

22 62. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
23 full herein.

24 63. Pursuant to California Labor Code § 227.3, whenever a contract of employment or
25 employment policy provides for paid vacation and an employee is terminated without having
26 taken off her vested vacation time, all vested vacation shall be paid to her as wages at her final rate
27 in accordance with said contract of employment or policy respecting eligibility or time served.

28 64. Defendants paid nondiscretionary commissions, incentive pay, and/or

1 nondiscretionary bonuses to Employees but Defendants failed to include these forms of
2 remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

3 65. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
4 Code § 227.3.

5 **SIXTH CAUSE OF ACTION**

6 **FAILURE TO COMPLY WITH LABOR CODE §§ 245 *ET SEQ.* AND 246**

7 **(Against All Defendants)**

8 66. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
9 full herein.

10 67. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time
11 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At
12 times relevant, Defendants have failed compute the amount due for paid sick time in conformance
13 with the pay calculation under California Labor Code § 246(1).

14 68. Defendants paid nondiscretionary commissions, incentive pay, and/or
15 nondiscretionary bonuses to Employees but Defendants failed to include these forms of
16 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than
17 calculating the amount of paid sick time due when sick time is used according to the requirements
18 set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower
19 rate, in violation of the law.

20 69. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
21 Code §§ 245 *et seq.* and 246.

22 **SEVENTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

24 **IN VIOLATION OF LABOR CODE § 2802**

25 **(Against All Defendants)**

26 70. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.

28 71. Under Labor Code § 2802(a), an employer must indemnify its employees for all

1 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
2 of his or her duties, or of his or her obedience to the directions of the employer.

3 72. Employees incurred necessary expenditures in the performance of their job duties
4 for Defendants, including the cost of cell phone usage, which was necessary to perform their
5 duties under Defendants' employ. From four (4) years prior to the original filing of this lawsuit
6 and continuing to the present, Defendants consistently failed to reimburse Employees for these
7 necessarily incurred business expenses.

8 73. As a result of the unlawful acts of Defendants, Employees have been deprived of
9 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
10 plus interest and penalties thereon, attorneys' fees, and costs.

11 **EIGHTH CAUSE OF ACTION**
12 **VIOLATION OF LABOR CODE § 226(a)**
13 **(Against All Defendants)**

14 74. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
15 full herein.

16 75. California Labor Code § 226(a) requires an employer to furnish each of his or her
17 employees with an accurate, itemized statement in writing showing the gross and net earnings,
18 total hours worked, and the corresponding number of hours worked at each hourly rate; these
19 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
20 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
21 statements may be given to the employee separately from the payment of wages; in either case the
22 employer must give the employee these statements twice a month or each time wages are paid.

23 76. Defendants failed to provide Employees with accurate itemized wage statements in
24 writing, as required by the Labor Code. Specifically, the wage statements given to Employees, by
25 Defendants, failed to accurately account for wages, overtime, and premium pay for deficient meal
26 periods and rest breaks, all of which Defendants knew or reasonably should have known were
27 owed to Employees, as alleged hereinabove. Defendants failed in their affirmative obligation to
28 keep accurate records of the correct overtime wages based on proper regular rate calculations that

1 included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned,
2 and the total amount of compensation of Employees. Additionally, the wage statements given to
3 Employees, by Defendants, failed to include the requirements enumerated above. Employees'
4 wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2)
5 and failed to accurately set forth all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each such rate in violation of Labor Code § 226 (a)(9).
7 The wage statements provided to Employees were confusing and required Employees to engage in
8 discovery and refer to outside sources to verify whether their pay was correct, potentially resulting
9 in a miscalculation by the Employees.

10 77. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
11 Employees suffered injuries, including among other things confusion over whether they received
12 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
13 forcing them to make mathematical computations to analyze whether the wages paid in fact
14 compensated them correctly for all hours worked.

15 78. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
16 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
17 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
18 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
19 award of costs and reasonable attorneys' fees.

20 79. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
21 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
22 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
23 employee for each pay period.

24 80. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
25 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
26 shown according to proof.

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NINTH CAUSE OF ACTION
FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174
AND 1174.5
(Against All Defendants)

81. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

82. California Labor Code § 1174 requires that all employers shall keep accurate time and wage records for all employees. California Labor Code § 1174.5 further requires that any employee suffering injury due to a willful violation of the aforementioned obligations may seek damages, including civil penalties, from the employer.

83. During the course of Plaintiff's and Employees' employment, Defendants consistently failed to maintain accurate time and wage records for Plaintiff and Employees as required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages, overtime, and premium pay as discussed above.

84. Accordingly, Defendants are liable for civil penalties pursuant to the California Labor Code § 1174.5. for the three (3) years prior to the filing of this Complaint.

TENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

85. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

86. Numerous Employees are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

87. Defendants failed to pay these Employees all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

88. The wages withheld from these Employees by Defendants remained due and owing for more than thirty (30) days from the date of separation of employment.

89. Defendants' failure to pay wages, as alleged above, was willful in that Defendants

1 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
2 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
3 to thirty (30) days from the date they were due.

4 **ELEVENTH CAUSE OF ACTION**

5 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

6 **(Against All Defendants)**

7 90. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
8 full herein.

9 91. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim
10 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in
11 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
12 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
13 meaning of Code of Civil Procedure § 1021.5.

14 92. Plaintiff is a "person" within the meaning of Business & Professions Code
15 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
16 relief, restitution, and other appropriate equitable relief.

17 93. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
18 business practices.

19 94. Wage-and-hour laws express fundamental public policies. Paying employees their
20 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
21 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
22 to enforce minimum labor standards, to ensure that employees are not required or permitted to
23 work under substandard and unlawful conditions, and to protect law-abiding employers and their
24 employees from competitors who lower costs to themselves by failing to comply with minimum
25 labor standards.

26 95. Defendants have violated statutes and public policies. Through the conduct alleged
27 in this Complaint, Defendants have acted contrary to these public policies, have violated specific
28 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in

1 violation of Business & Professions Code § 17200 *et seq.* Defendants' conduct has deprived
2 Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and
3 privileges guaranteed to all employees under the law.

4 96. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
5 violation of the Business & Professions Code § 17200 *et seq.*

6 97. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
7 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable
8 care should have known that their conduct was unlawful; therefore their conduct violates the
9 Business & Professions Code § 17200 *et seq.*

10 98. As a proximate result of the above-mentioned acts of Defendants, Employees have
11 been damaged, in a sum to be proven at trial.

12 99. Unless restrained by this Court, Defendants will continue to engage in such
13 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
14 should make such orders or judgments, including the appointment of a receiver, as may be
15 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
16 deceptive practice prohibited by the Business & Professions Code, including but not limited to the
17 disgorgement of such profits as may be necessary to restore Employees to the money Defendants
18 have unlawfully failed to pay.

19 **TWELFTH CAUSE OF ACTION**

20 **PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.***

21 **(Against All Defendants)**

22 100. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
23 full herein.

24 101. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
25 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
26 alleged violators, Defendants.

27 102. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
28 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the

1 penalty provisions, without limitation, based on the following California Labor Code sections:
2 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174,
3 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1199, 2698, 2699, *et seq.*, and 2802.

4 103. The penalties shall be allocated as follows: 65% to the Labor and Workforce
5 Development Agency (LWDA) and 35% to the affected employee.

6 104. Employees also seek any and all penalties and remedies set forth in Labor Code §
7 558, which states:

8 105. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
9 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
10 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
11 for each violation in a subsequent citation, for which the employer fails to provide the employee a
12 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the
13 extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

14 106. Plaintiff has exhausted her administrative remedy by sending a certified letter to the
15 LWDA and Defendants postmarked November 21, 2024. The LWDA has not provided notice of
16 its intent to investigate the alleged violations withing 65 calendar days of the postmark date of the
17 letters.

18 **RELIEF REQUESTED**

19 WHEREFORE, Plaintiff prays for the following relief:

- 20 1. For an order certifying this action as a class action;
- 21 2. For compensatory damages in the amount of the unpaid minimum wages for work
22 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
23 the filing of this action, as may be proven;
- 24 3. For liquidated damages in the amount equal to the unpaid minimum wage and
25 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 26 4. For compensatory damages in the amount of the hourly wage made by Employees
27 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
28 years prior to the filing of this action, as may be proven;

1 5. For compensatory damages in the amount of the hourly wage made by Employees
2 for each day requisite rest breaks were not provided or were deficiently provided and where no
3 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
4 be proven;

5 6. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

6 7. For penalties pursuant to Labor Code § 226.3, as may be proven;

7 8. For penalties pursuant to Labor Code § 227.3, as may be proven;

8 9. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;

9 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
10 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

11 11. For penalties pursuant to Labor Code § 1174.5, as may be proven;

12 12. For restitution for unfair competition pursuant to Business & Professions Code
13 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

14 13. For compensatory damages in the amount of all previously unreimbursed business
15 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
16 from four (4) years prior to the original filing of this action, as may be proven;

17 14. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

18 15. For an order enjoining Defendants and their agents, servants, and employees, and
19 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
20 duties adumbrated in this Complaint;

21 16. For all general, special, and incidental damages as may be proven;

22 17. For an award of pre-judgment and post-judgment interest;

23 18. For an award providing for the payment of the costs of this suit;

24 19. For an award of attorneys' fees; and

25 20. For such other and further relief as this Court may deem proper and just.

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1 DATED: January 27, 2025

D.LAW, INC.

2
3 By



David Yerejian
Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
NICHOLAS WHITE
and the putative class

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: January 27, 2025

D.LAW, INC.

By



David Yerman
Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
NICHOLAS WHITE
and the putative class

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 450 N Brand Blvd., Suite 840, Glendale, CA 91203.

LES SCHWAB TIRE CENTERS OF CALIFORNIA, LLC
Koy Saechao, Agent for Service
2710 Gateway Oaks Dr., Suite 150
Sacramento, CA 95833

[] (ONLY BY ELECTRONIC TRANSMISSION) I electronically served the foregoing document in PDF format. I caused a true copy of the foregoing document(s) listed above to be served by electronic email transmission at the time shown on each transmission, to each interested party at the email address(es) shown above. Each transmission was reported as complete and without error.

Executed on January 27, 2025, at Glendale, California.


Kathryn Perez