

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

Nick@bamlawca.com

November 14, 2024

CA3403

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Wrench, Inc.
Certified Mail #9589071052701502088005
Incorp Services, Inc.
Steven Pickett
5716 Corsa Avenue, Suite 110
Westlake Village, California 91362

Re: Amended Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 246, 1351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2570.3 *et seq.*, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who worked for YourMechanic Services, Inc. and/or Wrench, Inc. (“Defendant”) in California, including any employees staffed with YourMechanic Services, Inc. and/or Wrench, Inc. by a third party, as a Mechanic/Technician and other similarly situated persons with similar job titles and who were classified as independent contractors during the time period of November 15, 2023 until a date as determined by the Court. Our offices represent Carlos Romero (“Plaintiff”), and other Aggrieved Employees in a lawsuit against YourMechanic Services, Inc. and/or Wrench, Inc. Plaintiff was employed by Defendant as a Mechanic/Technician in California from 2016 to July of 2024 and was classified as an independent contractor. However, the job duties of Plaintiff and other Aggrieved Employees did not entitle Defendant to claim any exemption from minimum wages, overtime wages, meal and rest periods and reimbursement of business expenses as to Plaintiff and other Aggrieved Employees. Plaintiff and Aggrieved Employees should have been classified by Defendant as non-exempt employees entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. As a result, Plaintiff and other Aggrieved Employees worked time for which they were unlawfully not paid the correct compensation. Further, Defendant unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for all of their time worked, including minimum and overtime wages, and for all of their missed meal and rest breaks. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished

less than half said employee's usual or scheduled day's work," Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the First Amended Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the First Amended Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Restations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

Nick@bamlawca.com

November 14, 2024

CA3403

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

YourMechanic Services, Inc.
Certified Mail #9589071052701502087992
National Registered Agents, Inc.
Amanda Garcia
330 N. Brand Blvd.
Glendale, California 91203

Re: Amended Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 246, 1351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2570.3 *et seq.*, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who worked for YourMechanic Services, Inc. and/or Wrench, Inc. (“Defendant”) in California, including any employees staffed with YourMechanic Services, Inc. and/or Wrench, Inc. by a third party, as a Mechanic/Technician and other similarly situated persons with similar job titles and who were classified as independent contractors during the time period of November 15, 2023 until a date as determined by the Court. Our offices represent Carlos Romero (“Plaintiff”), and other Aggrieved Employees in a lawsuit against YourMechanic Services, Inc. and/or Wrench, Inc. Plaintiff was employed by Defendant as a Mechanic/Technician in California from 2016 to July of 2024 and was classified as an independent contractor. However, the job duties of Plaintiff and other Aggrieved Employees did not entitle Defendant to claim any exemption from minimum wages, overtime wages, meal and rest periods and reimbursement of business expenses as to Plaintiff and other Aggrieved Employees. Plaintiff and Aggrieved Employees should have been classified by Defendant as non-exempt employees entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. As a result, Plaintiff and other Aggrieved Employees worked time for which they were unlawfully not paid the correct compensation. Further, Defendant unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for all of their time worked, including minimum and overtime wages, and for all of their missed meal and rest breaks. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished

less than half said employee's usual or scheduled day's work," Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the First Amended Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the First Amended Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Restations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL, NORDREHAUG & BHOWMIK LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

3 2255 Calle Clara

La Jolla, CA 92037

4 Telephone: (858)551-1223

Facsimile: (858) 551-1232

5 Website: www.bamlawca.com

6 Attorneys for Plaintiff

7
8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF LOS ANGELES**

11
12 CARLOS ROMERO, an individual, on
13 behalf of himself, on behalf of all persons
similarly situated,

14 Plaintiff,

15 vs.

16
17 YOURMECHANIC SERVICES, INC.; a
Corporation; WRENCH, INC., a
18 Corporation, and DOES 1 through 50,
inclusive,

19 Defendants.
20
21
22
23
24
25
26
27
28

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF,
CODE §§ 17200, *et seq.*;

2. FAILURE TO PAY MINIMUM
WAGES IN VIOLATION OF CAL. LAB.
CODE §§ 1194, 1197 & 1197.1;

3. FAILURE TO PAY OVERTIME
WAGES IN VIOLATION OF CAL. LAB.
CODE §§ 510, 1194 & 1198, *et seq.*;

4. FAILURE TO PROVIDE
ACCURATE ITEMIZED STATEMENTS
IN VIOLATION OF CAL. LAB. CODE §
226;

5. FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CAL. LAB. CODE § 2802; and,

6. FAILURE TO PROVIDE WAGES
WHEN DUE IN VIOLATION OF CAL.
LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 Plaintiff Carlos Romero ("PLAINTIFF"), an individual, on behalf of himself and all
2 other similarly situated current and former employees, alleges on information and belief, except
3 his own acts and knowledge, the following:

4
5 **INTRODUCTION**

6 1. YourMechanic Services, Inc. is a corporation that at all relevant times mentioned
7 herein conducted and continues to conduct substantial business in California.

8 2. Wrench, Inc. is a corporation that at all relevant times mentioned herein conducted
9 and continues to conduct substantial business in California.

10 3. YourMechanic Services, Inc. and Wrench, Inc. were the joint employers of
11 PLAINTIFF as evidenced by paycheck and by the company PLAINTIFF performed work for
12 respectively, and are therefore jointly responsible as employers for the conduct alleged herein,
13 and are therefore collectively referred to herein as ("DEFENDANT").

14 4. DEFENDANT provides mobile car repair and maintenance services in California.

15 5. In order to service customers hires workers to aid DEFENDANT in providing
16 mobile car repair and maintenance services to car owners at their locations. The cost, as
17 proscribed by law, of the personnel hired to work for DEFENDANT, includes not only the pay
18 of these employees but the cost of the employer's share of tax payments to the federal and state
19 governments for income taxes, social security taxes, medicare insurance, unemployment
20 insurance and payments for workers' compensation insurance ("Business Related Expenses").
21 To avoid the payment of these legally proscribed Business Related Expenses to the fullest extent
22 possible, DEFENDANT devised a scheme to place the responsibility for the payment of these
23 costs and expenses of DEFENDANT on the shoulders of PLAINTIFF and other
24 Mechanics/Technicians. As employer, DEFENDANT is legally responsible for the payment
25 of all these Business Related Expenses. This lawsuit is brought on behalf of these
26 Mechanics/Technicians who worked for DEFENDANT in California and were classified as
27 independent contractors, in order to collect the wages due them as employees of DEFENDANT,
28 the cost of the employer's share of payments to the federal and state governments for income

1 taxes, social security taxes, medicare insurance, unemployment insurance and payments for
2 workers' compensation insurance, plus penalties and interest.

3
4 **THE PARTIES**

5 6. DEFENDANT at all relevant times mentioned herein conducted and continues
6 to conduct substantial and regular business in the State of California.

7 7. DEFENDANT is a privately-held startup company based in Mountain View,
8 California. DEFENDANT provides mobile car repair and maintenance services to car owners
9 at their location (home or office). DEFENDANT's mechanic services are performed by certified
10 mechanics and technicians who DEFENDANT classifies as independent contractors.

11 8. PLAINTIFF worked for DEFENDANT as a Mechanic/Technician from 2016 to
12 July of 2024 and was classified by DEFENDANT as an independent contractor during his entire
13 employment with DEFENDANT.

14 9. California Labor Code Section 226.8 provides that "[i]t is unlawful for any person
15 or employer to engage in . . . [w]illful misclassification of an individual as an independent
16 contractor." The penalty for willful misclassification of employees is a "civil penalty of not less
17 than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
18 each violation, in addition to any other penalties or fines permitted by law." It is further
19 provided that, in the event that an employer is found to have engaged in "a pattern or practice
20 of these violations," the penalties increase to "not less than ten thousand dollars (\$10,000) and
21 not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
22 penalties or fines permitted by law." Cal. Labor Code § 226.8.

23 10. Here, DEFENDANT has willfully misclassified PLAINTIFF and other
24 Mechanics/Technicians as described in Cal. Labor Code § 226.8, and further, that
25 DEFENDANT has engaged in a "pattern or practice" of such violations as contemplated by the
26 California Labor Code.

27 11. Upon hire, the position of a Mechanic/Technician was represented by
28 DEFENDANT to PLAINTIFF and the other Mechanics/Technicians as an independent

1 contractor position capable of paying an hourly rate for the time they worked on a car at a
2 clients' location. PLAINTIFF and other Mechanics/Technicians were not compensated
3 overtime wages for any of their time spent working in excess of eight (8) hours in a workday,
4 twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFF and other
5 Mechanics/Technicians were paid the hourly rate to perform auto repair and maintenance
6 services on DEFENDANT's behalf. PLAINTIFF and other Mechanics/Technicians were not
7 compensated any other wages besides the hourly rate and they were not allowed to record their
8 time until they arrived at the location to repair the car. DEFENDANT did not pay PLAINTIFF
9 and other CALIFORNIA CLASS Members for the time spent driving between appointments,
10 arranging and preparing their tools for the day and all the other non-repair work tasks. The
11 finite set of tasks required to be performed by the Mechanics/Technicians is, when notified via
12 cell phone, travel to private homes, apartments and offices to provide mobile car repair services
13 for customers that requested DEFENDANT's services all in accordance with DEFENDANT's
14 business practices and policies.

15 12. To perform their job duties, PLAINTIFF and the other Mechanics/Technicians
16 performed work subject to the control of DEFENDANT in that DEFENDANT had the authority
17 to exercise complete control over the work performed and the manner and means in which the
18 work was performed. DEFENDANT provided the customers and DEFENDANT provided the
19 instructions as to how to perform the cleaning services.

20 13. California Labor Code § 3357 defines "employee" as "every person in the service
21 of an employer under any appointment or contact of hire or apprenticeship, express or implied,
22 oral or written, whether lawfully or unlawfully employed." In addition to the California Labor
23 Code's presumption that workers are employees, the California Supreme Court has determined
24 the most significant factor to be considered in distinguishing an independent contractor from
25 an employee is whether the *employer or principal has control or the right to control the work*
26 *both as to the work performed and the manner and means in which the work is performed.*
27 DEFENDANT heavily controlled both the work performed and the manner and means in which
28 the PLAINTIFF and the other Mechanics/Technicians performed their work in that:

1 (a) PLAINTIFF and other Mechanics/Technicians were not involved in a
2 distinct business, but instead were provided with instructions as to how to perform their work
3 and the manner and means in which the work was to be performed by means of DEFENDANT's
4 manuals and written instructions;

5 (b) PLAINTIFF and other Mechanics/Technicians were continuously provided
6 with training and supervision, including following DEFENDANT's company documents and
7 received training from DEFENDANT as to how and in what way to perform the mobile
8 mechanic services;

9 (c) DEFENDANT set the requirements as to what policies and procedures all
10 of the Mechanics/Technicians were to follow, including what tools to bring to the customer;

11 (d) PLAINTIFF and other Mechanics/Technicians had no opportunity for
12 profit or loss because DEFENDANT only paid these workers based on the time spent
13 performing repair and maintenance services performed for DEFENDANT's customers and
14 DEFENDANT controlled and assigned the Mechanics/Technicians which cars were to be
15 repaired and when;

16 (e) PLAINTIFF and other Mechanics/Technicians performed auto repair
17 services which is part of DEFENDANT's principal business and is closely integrated with and
18 essential to the employer's business of providing mobile auto repair services to their customers;

19 (f) PLAINTIFF and other Mechanics/Technicians performed the work
20 themselves and did not hire others to perform their work for them;

21 (g) PLAINTIFF and other Mechanics/Technicians did not have the authority
22 to make employment-related personnel decisions;

23 (h) PLAINTIFF and other Mechanics/Technicians performed their work in a
24 particular order and sequence in accordance with DEFENDANT's company policy; and,

25 (i) DEFENDANT had the "right" to control every critical aspect of
26 DEFENDANT's daily auto repair services operations in that DEFENDANT provided the
27 customer, assigned where the Mechanics/Technicians were to go, and step-by-step instructions
28 to PLAINTIFF and other Mechanics/Technicians as to the entire process of repairing cars at

1 their assigned locations. PLAINTIFF and other Mechanics/Technicians were required to wear
2 a hat and shirt with DEFENDANT's insignia on it and also were required to place a magnet on
3 their car with DEFENDANT's insignia on it, PLAINTIFF and other Mechanics/Technicians
4 provided auto repair services ONLY for DEFENDANT's customers, which DEFENDANT
5 controlled via the company's mobile application.

6 14. As a result, stripped of all the legal fictions and artificial barriers to an honest
7 classification of the relationship between PLAINTIFF and all the other Mechanics/Technicians
8 on the one hand, and DEFENDANT on the other hand, PLAINTIFF and all the other
9 Mechanics/Technicians are and were employees of DEFENDANT and not independent
10 contractors of DEFENDANT and should therefore be properly classified as non-exempt, hourly
11 employees. 1. PLAINTIFF brings this Class Action on behalf of himself and a California
12 class, defined as all individuals who worked for DEFENDANT in California as
13 Mechanics/Technicians and who were classified as independent contractors (the
14 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the
15 filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA
16 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA
17 CLASS Members is under five million dollars (\$5,000,000.00).

18 15. As a matter of company policy, practice and procedure, DEFENDANT has
19 unlawfully, unfairly and/or deceptively classified every CALIFORNIA CLASS Member as
20 "independent contractors" in order to unlawfully avoid compliance with all applicable federal
21 and state laws that require payment for all time worked, business expenses, and the employer's
22 share of payroll taxes and mandatory insurance. As a result of the scheme to defraud the federal
23 and state governments and the CALIFORNIA CLASS Members, PLAINTIFF and the
24 CALIFORNIA CLASS Members were underpaid throughout their employment with
25 DEFENDANT. The true names and capacities, whether individual, corporate, associate or
26 otherwise of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown
27 to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal.
28 Civ. Proc. Code § 474. PLAINTIFF is informed and believes, and based thereon, alleges that

1 each of the Defendants designated herein is legally responsible in some manner for the unlawful
2 acts referred to herein. PLAINTIFF will seek leave of Court to amend this Complaint to reflect
3 the true names and capacities of the Defendants when they have been ascertained and become
4 known.

5 16. The agents, servants and/or employees of the Defendants and each of them
6 acting on behalf of the Defendants acted within the course and scope of his, her or its authority
7 as the agent, servant and/or employee of the Defendants, and personally participated in the
8 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
9 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
10 all Defendants are jointly and severally liable to the PLAINTIFF and the other members of the
11 CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents,
12 servants and/or employees.

13 14 **THE CONDUCT**

15 17. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA
16 CLASS Members as defined by DEFENDANT was executed by them through the performance
17 of non-exempt labor.

18 18. Although PLAINTIFF and the other CALIFORNIA CLASS Members performed
19 non-exempt labor subject to DEFENDANT's complete control over the manner and means of
20 performance, DEFENDANT instituted a blanket classification policy, practice and procedure
21 by which all of these CALIFORNIA CLASS Members were classified as "independent
22 contractors" exempt from compensation for overtime worked, meal breaks and rest breaks, and
23 reimbursement for business related expenses. By reason of this uniform misclassification, the
24 CALIFORNIA CLASS Members were also required to pay DEFENDANT 's share of payroll
25 taxes and mandatory insurance premiums. As a result of this uniform misclassification practice,
26 policy and procedure applicable to PLAINTIFF and the other CALIFORNIA CLASS Members
27 who performed this work for DEFENDANT, DEFENDANT committed acts of unfair
28 competition in violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§

1 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy, practice and procedure
2 which uniformly failed to properly classify PLAINTIFF and the other CALIFORNIA CLASS
3 Members as employees and thereby failed to pay them wages for all time worked,
4 reimbursement of business related expenses, failed to provide them with meal and rest breaks,
5 and failed to reimburse these employees for the employer's share of payroll taxes and mandatory
6 insurance. The proper classification of these employees is DEFENDANT's burden. As a result
7 of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
8 violated the California Labor Code and regulations promulgated thereunder as herein alleged.
9 DEFENDANT did not have in place a policy, practice or procedure that provided meal and/or
10 rest breaks to PLAINTIFF and CALIFORNIA CLASS Members as evidenced by
11 DEFENDANT's business records which contain no record of these breaks.

12 19. DEFENDANT, as a matter of law, has the burden of proving that employees are
13 properly classified and that DEFENDANT otherwise complies with applicable laws.
14 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
15 CALIFORNIA CLASS Members as independent contractors.

16 20. PLAINTIFF and all the CALIFORNIA CLASS Members are and were uniformly
17 classified and treated by DEFENDANT as independent contractors at the time of hire and
18 thereafter, DEFENDANT failed to take proper steps to determine whether the PLAINTIFF and
19 the CLASS Members are properly classified under the applicable Industrial Welfare
20 Commission Wage Order and Cal. Lab. Code §§ 510, *et seq.* as exempt from applicable labor
21 laws. Since DEFENDANT affirmatively and willfully misclassified PLAINTIFF and
22 CALIFORNIA CLASS Members in compliance with California labor laws, DEFENDANT's
23 practices violated and continue to violate California law. In addition, DEFENDANT acted
24 deceptively by falsely and fraudulently classifying PLAINTIFF and each CALIFORNIA
25 CLASS Member as independent contractors when DEFENDANT knew or should have known
26 that this classification was false and not based on known facts. DEFENDANT also acted
27 deceptively by violating the California labor laws, and as a result of this policy and practice,
28 DEFENDANT also violated the UCL. In doing so, DEFENDANT cheated the competition by

1 paying the CALIFORNIA CLASS less than the amount competitors paid who complied with
2 the law and cheated the CALIFORNIA CLASS by not paying them in accordance with
3 California law.

4 21. DEFENDANT as a matter of corporate policy, practice and procedure,
5 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and
6 the other CALIFORNIA CLASS Members for required business expenses incurred by
7 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
8 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
9 are required to indemnify employees for all expenses incurred in the course and scope of their
10 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
11 her employee for all necessary expenditures or losses incurred by the employee in direct
12 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
13 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
14 believed them to be unlawful."

15 22. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
16 Members as a business expense, were required by DEFENDANT to use personal cellular
17 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but
18 were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of
19 the personal cellular phones for DEFENDANT's benefit. In order to work as a
20 Mechanic/Technician for DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS
21 Members were required to use DEFENDANT's mobile application and as such it is mandatory
22 to have a cell phone that is compatible with DEFENDANT's mobile application. As a result,
23 in the course of their employment with DEFENDANT PLAINTIFF and other members of the
24 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
25 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
26 benefit of DEFENDANT. Further, PLAINTIFF and other CALIFORNIA CLASS Members
27 were also not reimbursed or indemnified by DEFENDANT for the cost associated with using
28 their personal vehicles while performing for DEFENDANT. As a result, in the course of their

1 employment with DEFENDANT PLAINTIFF and other members of the CALIFORNIA CLASS
2 incurred unreimbursed business expenses which included, but were not limited to, costs related
3 to travel all on behalf of and for the benefit of DEFENDANT. Additionally, PLAINTIFF and
4 other CALIFORNIA CLASS Members were also not reimbursed or indemnified by
5 DEFENDANT for the cost associated with using their personal tools that were necessary to
6 perform their work tasks for DEFENDANT. As a result, in the course of their employment with
7 DEFENDANT PLAINTIFF and other members of the CALIFORNIA CLASS incurred
8 unreimbursed business expenses which included, but were not limited to, costs related to
9 personal tools on behalf of and for the benefit of DEFENDANT.

10 23. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
11 other members of the CALIFORNIA CLASS with complete and accurate wage statements
12 which failed to show, among other things, the correct amount of time worked, including, work
13 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.
14 Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees
15 with an accurate itemized wage statement in writing showing, among other things, gross wages
16 earned and all applicable hourly rates in effect during the pay period and the corresponding
17 amount of time worked at each hourly rate. As a result, DEFENDANT provided PLAINTIFF
18 and the other members of the CALIFORNIA CLASS with wage statements which violated Cal.
19 Lab. Code § 226.

20 24. By reason of this uniform conduct applicable to PLAINTIFF and all the
21 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
22 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
23 (the "UCL"), by engaging in a company-wide policy, practice and procedure which failed to
24 correctly classify PLAINTIFF and the CALIFORNIA CLASS Members as employees. The
25 proper classification of these employees is DEFENDANT's burden. As a result of
26 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
27 failed to pay all required wages for work performed by PLAINTIFF and other CALIFORNIA
28 CLASS Members and violated the California Labor Code and regulations promulgated

1 thereunder as herein alleged.

2 25. Specifically as to PLAINTIFF, he worked for DEFENDANT in California as a
3 Mechanic/Technician and was classified by DEFENDANT as an independent contractor from
4 February of 2016 to May of 2017. Upon hire, the position of a Mechanic/Technician was
5 represented by DEFENDANT to PLAINTIFF as an independent contractor position capable of
6 paying an hourly rate for time worked for DEFENDANT. PLAINTIFF as a
7 Mechanic/Technician, was classified by DEFENDANT as an independent contractor and thus
8 did not receive pay for all time worked, including overtime worked. During the CALIFORNIA
9 CLASS PERIOD, PLAINTIFF was also required to perform work as ordered by DEFENDANT
10 for more than five (5) hours during a shift without receiving a meal or rest break as evidenced
11 by daily time reports for PLAINTIFF. PLAINTIFF therefore forfeited meal and rest breaks
12 without additional compensation and in accordance with DEFENDANT's strict corporate policy
13 and practice which did not provide for mandatory meal and rest breaks. To date, DEFENDANT
14 has not fully paid PLAINTIFF all wages still owed to him or any penalty wages owed to him
15 under California Labor Code § 203. The amount in controversy for PLAINTIFF individually
16 does not exceed the sum or value of \$75,000.

17
18 **THE CALIFORNIA CLASS**

19 26. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
20 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
21 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
22 individuals who worked for DEFENDANT in California as Mechanics/Technicians and who
23 were classified as independent contractors (the "CALIFORNIA CLASS") at any time during
24 the period beginning four (4) years prior to the filing of this Complaint and ending on the date
25 as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
26 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
27 dollars (\$5,000,000.00).

28 27. To the extent equitable tolling operates to toll claims by the CALIFORNIA

1 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
2 accordingly.

3 28. All CALIFORNIA CLASS Members who performed and continue to perform this
4 work for DEFENDANT during the CALIFORNIA CLASS PERIOD are similarly situated in
5 that they are subject to DEFENDANT's uniform policy and systematic practice that required
6 them to perform work without compensation as required by law.

7 29. DEFENDANT, as a matter of corporate, policy, practice and procedure, and in
8 violation of the applicable California Labor Code, Industrial Welfare Commission ("IWC")
9 Wage Order requirements, and the applicable provisions of California law, intentionally,
10 knowingly and willfully engaged in a practice whereby DEFENDANT unfairly, unlawfully and
11 deceptively instituted a practice to ensure that all individuals employed as independent
12 contractors were not properly classified as non-exempt employees from the requirements of
13 California Labor Code §§ 510, *et seq.*

14 30. During the CALIFORNIA CLASS PERIOD, DEFENDANT uniformly violated
15 the rights of the PLAINTIFF and the CALIFORNIA CLASS Members under California law,
16 without limitation, in the following manners:

17 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
18 §§ 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as
19 employer, devised and implemented a scheme whereby PLAINTIFF and
20 the CALIFORNIA CLASS Members are forced to unlawfully, unfairly
21 and deceptively shoulder the cost of DEFENDANT's wages for all unpaid
22 wages, business related expenses, and DEFENDANT's share of
23 employment taxes, social security taxes, unemployment insurance and
24 workers' compensation insurance;

25 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
26 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
27 having in place company policies, practices and procedures that uniformly
28 misclassified PLAINTIFF and the CALIFORNIA CLASS Members as

independent contractors;

- (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively failing to have in place a company policy, practice and procedure that accurately determined the amount of working time spent by PLAINTIFF and the CALIFORNIA CLASS Members performing non-exempt employee labor;
- (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required meal and rest breaks;
- (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and,
- (f) Committing an act of unfair competition in violation of the UCL, by violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to PLAINTIFF and the members of the CALIFORNIA CLASS who were improperly classified as exempt, and retaining the unpaid overtime to the benefit of DEFENDANT.

31. As a result of DEFENDANT's uniform policies, practices and procedures, there are numerous questions of law and fact common to all CALIFORNIA CLASS Members who worked for during the CALIFORNIA CLASS PERIOD. These questions include, but are not limited, to the following:

- (a) Whether PLAINTIFF and other CALIFORNIA CLASS Members were misclassified as independent contractors by DEFENDANT;
- (b) Whether the PLAINTIFF and the CALIFORNIA CLASS Members all afforded all the protections of the California Labor Code that apply when

properly classified as non-exempt employees;

(c) Whether DEFENDANT's policies, practices and pattern of conduct described in this Complaint was and is unlawful;

(d) Whether DEFENDANT unlawfully failed to pay their share of state and federal employment taxes as required by state and federal tax laws;

(e) Whether DEFENDANT's policy, practice and procedure of classifying the CALIFORNIA CLASS Members as independent contractors exempt from hourly wages laws for all time worked and failing to pay the CALIFORNIA CLASS Members all amounts due violates applicable provisions of California State law;

(f) Whether DEFENDANT unlawfully failed to keep and furnish the CALIFORNIA CLASS Members with accurate records of all time worked;

(g) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct; and,

(h) Whether DEFENDANT's conduct was willful.

32. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

(a) The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

(b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS and will apply uniformly to every CALIFORNIA CLASS Member;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS Members, was classified as an independent contractor upon hiring based on the defined corporate policies and practices and labors under DEFENDANT's systematic procedure that

1 failed to properly classify the PLAINTIFF and the CALIFORNIA CLASS Members.
2 PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices.
3 PLAINTIFF and the CALIFORNIA CLASS Members were and are similarly or identically
4 harmed by the same unlawful, unfair, deceptive and persuasive pattern of misconduct engaged
5 in by DEFENDANT by deceptively telling all the CALIFORNIA CLASS Members that they
6 were not entitled to minimum wages, the employer's share of payment of payroll taxes and
7 mandatory insurance, and reimbursement for business expenses based on the defined corporate
8 policies and practices, and unfairly failed to pay these employees who were improperly
9 classified as independent contractors; and,

10 (d) The representative PLAINTIFF will fairly and adequately represent and
11 protect the interest of the CALIFORNIA CLASS, and has retained counsel who is competent
12 and experienced in Class Action litigation. There are no material conflicts between the claims
13 of the representative PLAINTIFF and the CALIFORNIA CLASS Members that would make
14 class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert
15 the claims of all employees in the CALIFORNIA CLASS.

16 33. In addition to meeting the statutory prerequisites to a Class Action, this Action
17 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

18 (a) Without class certification and determination of declaratory, injunctive,
19 statutory and other legal questions within the class format, prosecution of separate actions by
20 individual members of the CALIFORNIA CLASS will create the risk of:

21 (i) Inconsistent or varying adjudications with respect to individual
22 members of the CALIFORNIA CLASS which would establish incompatible standards of
23 conduct for the parties opposing the CALIFORNIA CLASS; and/or,

24 (ii) Adjudication with respect to individual members of the
25 CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the
26 other members not party to the adjudication or substantially impair or impeded their ability to
27 protect their interests.

28 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds

1 generally applicable to the CALIFORNIA CLASS making appropriate class-wide relief with
2 respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and
3 treated the CALIFORNIA CLASS Members as independent contractors and, thereafter,
4 uniformly failed to take proper steps to determine whether the CALIFORNIA CLASS Members
5 were properly classified as independent contractors, and thereby denied these employees wages
6 and payments for business expenses and the employer's share of payroll taxes and mandatory
7 insurance as required by law.

8 (i) With respect to the First Cause of Action, the final relief on behalf
9 of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through
10 this claim the PLAINTIFF seeks declaratory relief holding that DEFENDANT's policies and
11 practices constitute unfair competition, along with incidental equitable relief as may be
12 necessary to remedy the conduct declared to constitute unfair competition.

13 (c) Common questions of law and fact exist as to members of the
14 CALIFORNIA CLASS with respect to the practices and violations of California and federal law
15 as listed above, and predominate over any question affecting only individual members, and a
16 Class Action is superior to other available methods for the fair and efficient adjudication of the
17 controversy, including consideration of:

18 (i) The interest of the CALIFORNIA CLASS Members in individually
19 controlling the prosecution or defense of separate actions;

20 (ii) The extent and nature of any litigation concerning the controversy
21 already commenced by or against members of the CALIFORNIA CLASS;

22 (iii) In the context of wage litigation because as a practical matter a
23 substantial number of individual CALIFORNIA CLASS members will avoid asserting their
24 legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an
25 individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only
26 means to assert their claims through a representative;

27 (iv) The desirability or undesirability of concentration the litigation of
28 the claims in the particular forum;

1 (v) The difficulties likely to be encountered in the management of a
2 Class Action; and,

3 (vi) The basis of DEFENDANT's policies and practices uniformly
4 applied to all the CALIFORNIA CLASS Members.

5 34. The Court should permit this Action to be maintained as a Class Action pursuant
6 to Cal. Code of Civ. Proc. § 382 because:

7 (a) The questions of law and fact common to the CALIFORNIA CLASS
8 predominate over any question affecting only individual members;

9 (b) A Class Action is superior to any other available method for the fair and
10 efficient adjudication of the claims of the members of the CALIFORNIA CLASS;

11 (c) The CALIFORNIA CLASS Members are so numerous that it is impractical
12 to bring all CALIFORNIA CLASS Members before the Court;

13 (d) PLAINTIFF, and the CALIFORNIA CLASS Members, will not be able
14 to obtain effective and economic legal redress unless the action is maintained as a Class Action;

15 (e) There is a community of interest in obtaining appropriate legal and
16 equitable relief for the acts of unfair competition, statutory violations and other improprieties,
17 and in obtaining adequate compensation for the damages and injuries which DEFENDANT's
18 actions have inflicted upon the CALIFORNIA CLASS;

19 (f) There is a community of interest in ensuring that the combined assets and
20 available insurance of DEFENDANT are sufficient to adequately compensate the
21 CALIFORNIA CLASS Members for any injuries sustained;

22 (g) DEFENDANT has acted or has refused to act on grounds generally
23 applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
24 with respect to the CLASS as a whole;

25 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
26 the business records of DEFENDANT. The CALIFORNIA CLASS consists of all
27 DEFENDANT's Mechanics/Technicians in California classified as independent contractors
28 during the CALIFORNIA CLASS PERIOD and subjected to DEFENDANT's policies, practices

1 and procedures as herein alleged; and,

2 (i) Class treatment provides manageable judicial treatment calculated to bring
3 an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out
4 of DEFENDANT's conduct as to the CALIFORNIA CLASS Members.

5 35. DEFENDANT maintains records from which the Court can ascertain and identify
6 by name and job title, each of DEFENDANT's employees who have been systematically,
7 intentionally and uniformly subjected to DEFENDANT's corporate policies, practices and
8 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include
9 any additional job titles of similarly situated employees when they have been identified.

10
11 **THE CALIFORNIA LABOR SUB-CLASS**

12 36. PLAINTIFF further brings the Second, Third, Fourth, Fifth and Sixth Causes of
13 Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
14 CLASS who are or previously were employed by DEFENDANT in California as
15 Mechanics/Technicians and who were classified as Independent Contractors (the
16 "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to
17 the filing of the Complaint and ending on the date as determined by the Court (the
18 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
19 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
20 Members is under five million dollars (\$5,000,000.00).

21 37. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
22 violation of the applicable California Labor Code ("Labor Code"), and Industrial Welfare
23 Commission ("IWC") Wage Order requirements intentionally, knowingly, and wilfully, on the
24 basis of job title alone and without regard to the actual overall requirements of the job,
25 systematically classified PLAINTIFF and the other members of the CALIFORNIA LABOR
26 SUB-CLASS as independent contractors in order to avoid the payment of all wages, and in
27 order to avoid the obligations under the applicable California Labor Code provisions. To the
28 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS

1 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
2 accordingly.

3 38. DEFENDANT maintains records from which the Court can ascertain and identify
4 by job title each of DEFENDANT's employees who as CALIFORNIA LABOR SUB-CLASS
5 Members have been systematically, intentionally and uniformly misclassified as independent
6 contractors as a matter of DEFENDANT's corporate policy, practices and procedures.
7 PLAINTIFF will seek leave to amend the complaint to include these additional job titles when
8 they have been identified.

9 39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
10 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

11 40. DEFENDANT, as a matter of corporate policy, practice and procedure,
12 erroneously classified all Mechanics/Technicians as independent contractors making these
13 employees exempt from California labor laws. All Mechanics/Technicians, including
14 PLAINTIFF, performed the same finite set of tasks and were paid by DEFENDANT according
15 to uniform and systematic company procedures, which, as alleged herein above, failed to
16 correctly pay minimum wage compensation. This business practice was uniformly applied to
17 each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the
18 propriety of this conduct can be adjudicated on a class-wide basis.

19 41. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
20 under California law by:

- 21 (a) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by
22 misclassifying and thereby failing to pay PLAINTIFF and the members of
23 the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for
24 which DEFENDANT is liable;
- 25 (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby
26 failing to pay PLAINTIFF and the members of the CALIFORNIA
27 LABOR SUB-CLASS the correct overtime pay for a workday longer than
28 eight (8) hours and/or a workweek longer than forty (40) hours for which

1 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

2 (c) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
3 members of the CALIFORNIA LABOR SUB-CLASS who were
4 improperly classified as independent contractors with an accurate itemized
5 statement in writing showing the gross wages earned, the net wages
6 earned, all applicable hourly rates in effect during the pay period and the
7 corresponding amount of time worked at each hourly rate by the
8 employee;

9 (d) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
10 the CALIFORNIA CLASS members with necessary expenses incurred in
11 the discharge of their job duties; and,

12 (d) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
13 when an employee is discharged or quits from employment, the employer
14 must pay the employee all wages due without abatement, by failing to
15 tender full payment and/or restitution of wages owed or in the manner
16 required by California law to the members of the CALIFORNIA LABOR
17 SUB-CLASS who have terminated their employment.

18 42. This Class Action meets the statutory prerequisites for the maintenance of a Class
19 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

20 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
21 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
22 Members is impracticable and the disposition of their claims as a class will
23 benefit the parties and the Court;

24 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
25 that are raised in this Complaint are common to the CALIFORNIA
26 LABOR SUB-CLASS and will apply uniformly to every member of the
27 CALIFORNIA LABOR SUB-CLASS;

28 (c) The claims of the representative PLAINTIFF are typical of the claims of

1 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
2 like all other members of the CALIFORNIA LABOR SUB-CLASS was
3 improperly classified as an independent contractor and was thus denied
4 minimum wage pay and meal and rest breaks, among other things, as a
5 result of DEFENDANT's systematic classification practices. PLAINTIFF
6 and all other members of the CALIFORNIA LABOR SUB-CLASS
7 sustained economic injuries arising from DEFENDANT's violations of the
8 laws of California; and,

9 (d) The representative PLAINTIFF will fairly and adequately represent and
10 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
11 retained counsel who are competent and experienced in Class Action
12 litigation. There are no material conflicts between the claims of the
13 representative PLAINTIFF and the members of the CALIFORNIA
14 LABOR SUB-CLASS that would make class certification inappropriate.
15 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
16 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

17 43. In addition to meeting the statutory prerequisites to a Class Action, this action is
18 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

19 (a) Without class certification and determination of declaratory, injunctive,
20 statutory and other legal questions within the class format, prosecution of
21 separate actions by individual members of the CALIFORNIA LABOR
22 SUB-CLASS will create the risk of:

23 1) Inconsistent or varying adjudications with respect to individual
24 members of the CALIFORNIA LABOR SUB-CLASS which
25 would establish incompatible standards of conduct for the parties
26 opposing the CALIFORNIA LABOR SUB-CLASS; or,

27 2) Adjudication with respect to individual members of the
28 CALIFORNIA LABOR SUB-CLASS which would as a practical

1 matter be dispositive of interests of the other members not party to
2 the adjudication or substantially impair or impede their ability to
3 protect their interests.

4 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
5 or refused to act on grounds generally applicable to the CALIFORNIA
6 LABOR SUB-CLASS, making appropriate class-wide relief with respect
7 to the CALIFORNIA LABOR SUB-CLASS as a whole in that the
8 DEFENDANT uniformly classified and treated the members of the
9 CALIFORNIA LABOR SUB-CLASS as independent contractors and,
10 thereafter, uniformly failed to take proper steps to determine whether the
11 CALIFORNIA LABOR SUB-CLASS Members were properly classified
12 as independent contractors, and thereby denied these employees the
13 protections afforded to them under the California Labor Code;

14 (c) Common questions of law and fact predominate as to the members of the
15 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
16 violations of California law as listed above, and predominate over any
17 question affecting only individual CALIFORNIA LABOR SUB-CLASS
18 Members, and a Class Action is superior to other available methods for the
19 fair and efficient adjudication of the controversy, including consideration
20 of:

- 21 1) The interests of the members of the CALIFORNIA LABOR SUB-
22 CLASS in individually controlling the prosecution or defense of
23 separate actions in that the substantial expense of individual actions
24 will be avoided to recover the relatively small amount of economic
25 losses sustained by the individual CALIFORNIA LABOR SUB-
26 CLASS Members when compared to the substantial expense and
27 burden of individual prosecution of this litigation;
- 28 2) Class certification will obviate the need for unduly duplicative

litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

44. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

(a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;

(b) A Class Action is superior to any other available method for the fair and

1 efficient adjudication of the claims of the members of the CALIFORNIA
2 LABOR SUB-CLASS because in the context of employment litigation a
3 substantial number of individual CALIFORNIA LABOR SUB-CLASS
4 Members will avoid asserting their rights individually out of fear of
5 retaliation or adverse impact on their employment;

6 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
7 numerous that it is impractical to bring all members of the CALIFORNIA
8 LABOR SUB-CLASS before the Court;

9 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
10 Members, will not be able to obtain effective and economic legal redress
11 unless the action is maintained as a Class Action;

12 (e) There is a community of interest in obtaining appropriate legal and
13 equitable relief for the acts of unfair competition, statutory violations and
14 other improprieties, and in obtaining adequate compensation for the
15 damages and injuries which DEFENDANT's actions have inflicted upon
16 the CALIFORNIA LABOR SUB-CLASS;

17 (f) There is a community of interest in ensuring that the combined assets of
18 DEFENDANT are sufficient to adequately compensate the members of the
19 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

20 (g) DEFENDANT has acted or refused to act on grounds generally applicable
21 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
22 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
23 CLASS as a whole;

24 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
25 ascertainable from the business records of DEFENDANT. The
26 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
27 CLASS Members who are or previously were employed by DEFENDANT
28 in California as Mechanics/Technicians and classified as independent

1 contractors during the CALIFORNIA LABOR SUB-CLASS PERIOD;
2 and,

- 3 (i) Class treatment provides manageable judicial treatment calculated to bring
4 a efficient and rapid conclusion to all litigation of all wage and hour
5 related claims arising out of the conduct of DEFENDANT.

6
7 **JURISDICTION AND VENUE**

8 45. This Court has jurisdiction over this Action pursuant to California Code of Civil
9 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
10 Action is brought as a Class Action on behalf PLAINTIFF and on behalf of similarly situated
11 employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. Section 382.

12 46. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and
13 395.5, because PLAINTIFF resides in this County and DEFENDANT (i) currently maintains
14 and at all relevant times maintained its principal offices and facilities in this County and/or
15 conducts substantial business in this County, and (ii) committed the wrongful conduct herein
16 alleged in this County against members of the CALIFORNIA CLASS and CALIFORNIA
17 LABOR SUB-CLASS.

18
19 **FIRST CAUSE OF ACTION**

20 **For Unlawful, Unfair and Deceptive Business Practices**

21 **[Cal. Bus. & Prof. Code §§ 17200, *et seq.*]**

22 **(By PLAINTIFF and the CLASS and Against All Defendants)**

23 47. PLAINTIFF and the CALIFORNIA CLASS Members reallege and incorporate
24 by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

25 48. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code
26 § 17021.

27 49. Section 17200 of the California Business & Professions Code defines unfair
28 competition as any unlawful, unfair or fraudulent business act or practice. Section 17200

1 applies to violations of labor laws in the employment context. Section 17203 authorizes
2 injunctive, declaratory and/or other equitable relief with respect to unfair competition as
3 follows:

4 Any person who engages, has engaged, or proposes to engage in unfair
5 competition may be enjoined in any court of competent jurisdiction. The court
6 may take such orders or judgments, including the appointment of a receiver, as
7 may be necessary to prevent the use or employment by any person of any practice
which constitutes unfair competition, as defined in this chapter, or as may be
necessary to restore to any person in interest any money or property, real or
personal, which may have been acquired by means of such unfair competition.

8 California Business & Professions Code § 17203.

9 50. By the conduct alleged herein, DEFENDANT has engaged and continues to
10 engage in a business practice which violates California law, including but not limited to the
11 applicable Industrial Wage Orders, the California Labor Code including Sections 204, 221,
12 226.7, 510, 512, 1194, 1198, & 2802, and California Code of Regulations § 11090, for which
13 this Court should issue declaratory, injunctive, and other equitable relief, pursuant to Cal. Bus.
14 & Prof § 17203, as may be necessary to prevent and remedy the conduct held to constitute
15 unfair competition, including restitution of wages wrongfully withheld, business expenses
16 wrongfully withheld and for the payment of the employer's share of income taxes, social
17 security taxes, unemployment insurance and workers' compensation insurance.

18 51. By the conduct alleged herein DEFENDANT has obtained valuable property,
19 money, and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS,
20 and has deprived them of valuable rights and benefits guaranteed by law, all to their detriment
21 and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete.
22 Declaratory and injunctive relief is necessary to prevent and remedy this unfair competition, and
23 pecuniary compensation alone would not afford adequate and complete relief.

24 52. All the acts described herein as violations of, among other things, the California
25 Labor Code, California Code of Regulations and the Industrial Welfare Commission Wage
26 Orders, were unlawful, were in violation of public policy, were immoral, unethical, oppressive,
27 and unscrupulous, and were likely to deceive employees, and thereby constitute deceptive,
28 unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code §§ 17200, *et seq.*

1 53. By the conduct alleged herein, DEFENDANT's practices were deceptive and
2 fraudulent in that DEFENDANT's uniform policy and practice was to represent to the
3 CALIFORNIA CLASS Members that they were not entitled to overtime and minimum wages,
4 payment for payroll taxes or mandatory insurance and other benefits as required by California
5 law, when in fact these representations were false and likely to deceive and for which this
6 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
7 including restitution of wages wrongfully withheld.

8 54. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
9 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
10 other members of the CALIFORNIA CLASS to be underpaid during their employment with
11 DEFENDANT.

12 55. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
13 and do, seek such relief as may be necessary to restore to them the money and property which
14 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
15 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
16 unfair business practices, including earned but unpaid wages for all time worked.

17 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
18 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair
19 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
20 engaging in any unlawful and unfair business practices in the future.

21 57. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
22 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed
23 to provide all legally required meal and rest breaks to PLAINTIFF and the other members of
24 the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

25 58. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
26 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll
27 taxes and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty
28 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay

1 for each workday in which a second off-duty meal period was not timely provided for each ten
2 (10) hours of work.

3 59. PLAINTIFF further demands on behalf of himself and each member of the
4 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which a rest
5 period was not timely provided as required by law.

6 60. By and through the unlawful and unfair business practices described herein,
7 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
8 other members of the CALIFORNIA CLASS, including earned wages for all time worked and
9 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
10 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
11 to unfairly compete against competitors who comply with the law.

12 61. All the acts described herein as violations of, among other things, the Industrial
13 Welfare Commission Wage Orders, the California Code of Regulations, and the California
14 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive
15 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business
16 practices in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*

17 62. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
18 and do, seek such relief as may be necessary to restore to them the money and property which
19 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
20 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
21 unfair business practices.

22 63. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
23 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
24 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
25 engaging in any unlawful and unfair business practices in the future.

26 64. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
28 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.

1 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
2 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
3 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
4 engage in these unlawful and unfair business practices.

5 ///

6 ///

7 ///

8 ///

9 ///

10 ///

11
12 **SECOND CAUSE OF ACTION**

13 **For Failure To Pay Minimum Wages**

14 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

16 **and Against All Defendants)**

17 65. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
18 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
19 paragraphs of this Complaint.

20 66. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
21 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
22 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
23 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
24 Members.

25 67. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
26 public policy, an employer must timely pay its employees for all hours worked.

27 68. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
28 commission is the minimum wage to be paid to employees, and the payment of a less wage than

1 the minimum so fixed in unlawful.

2 69. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
3 including minimum wage compensation and interest thereon, together with the costs of suit.

4 70. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
5 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
6 amount of time they worked. As set forth herein, DEFENDANT's uniform policy and practice
7 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
8 other members of the CALIFORNIA LABOR SUB-CLASS.

9 71. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
10 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
11 result of implementing a uniform policy and practice that denied accurate compensation to
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
13 minimum wage pay.

14 72. In committing these violations of the California Labor Code, DEFENDANT
15 inaccurately calculates the correct time worked and consequently underpays the actual time
16 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
17 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
18 benefits in violation of the California Labor Code, the Industrial Welfare Commission
19 requirements and other applicable laws and regulations.

20 73. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
21 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive
22 the correct minimum wage compensation for their time worked for DEFENDANT.

23 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
24 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
25 they were entitled to, constituting a failure to pay all earned wages.

26 75. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
27 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
28 CLASS for the true time they worked, PLAINTIFF and the other members of the

1 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
2 injury in amounts which are presently unknown to them and which will be ascertained according
3 to proof at trial.

4 76. DEFENDANT knew or should have known that PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time
6 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
7 nonfeasance, to not pay PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
8 for their labor as a matter of uniform company policy, practice and procedure, and
9 DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their
11 time worked.

12 77. In performing the acts and practices herein alleged in violation of California labor
13 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
14 all time worked and provide them with the requisite compensation, DEFENDANT acted and
15 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
16 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard
17 for their legal rights, or the consequences to them, and with the despicable intent of depriving
18 them of their property and legal rights, and otherwise causing them injury in order to increase
19 company profits at the expense of these employees.

20 78. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
21 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
22 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
23 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
24 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
25 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
26 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
27 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
28 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein

1 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
2 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

3
4 **THIRD CAUSE OF ACTION**

5 **For Failure To Pay Overtime Wages**

6 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

7 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
8 **Defendants)**

9 79. PLAINTIFF and the CALIFORNIA CLASS Members reallege and incorporate
10 by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

11 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed
12 to pay PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members overtime wages
13 for the time they worked in excess of the maximum hours permissible by law as required by Cal.
14 Lab. Code §§ 510 & 1198, even though PLAINTIFF and the CALIFORNIA LABOR SUB-
15 CLASS Members were regularly required to work, and did in fact work, overtime that
16 DEFENDANT never recorded as evidenced by DEFENDANT's business records and witnessed
17 by DEFENDANT's employees.

18 81. By virtue of DEFENDANT's unlawful failure to pay compensation to
19 PLAINTIFF and the CALIFORNIA CLASS Members for all overtime worked by these
20 employees, PLAINTIFF and CALIFORNIA CLASS Members have suffered, and will continue
21 to suffer, an economic in amounts which are presently unknown to them and which can be
22 ascertained according to proof at trial.

23 82. DEFENDANT knew or should have known that PLAINTIFF and the
24 CALIFORNIA CLASS Members were misclassified as independent contractors and
25 DEFENDANT's systematically elected, either through intentional malfeasance or gross
26 nonfeasance, not to pay them for their labor as a matter of uniform corporate policy, practice
27 and procedure.

28 83. PLAINTIFF and the CALIFORNIA CLASS Members therefore request recovery

1 of all compensation according to proof, interest, costs, as well as the assessment of any statutory
2 penalties against DEFENDANT in a sum as provided by the California Labor Code and/or other
3 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
4 CLASS Members who have terminated their employment, these employees would also be
5 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein.
6 Further, PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members are entitled to
7 seek and recover statutory costs.

8 84. In performing the acts and practices herein alleged in violation of California labor
9 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
10 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
11 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
12 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
13 disregard for their legal rights, or the consequences to them, and with the despicable intent of
14 depriving them of their property and legal rights, and otherwise causing them injury in order to
15 increase corporate profits at the expense of these employees.

17 **FOURTH CAUSE OF ACTION**

18 **For Failure to Provide Accurate Itemized Statements**

19 **[Cal. Lab. Code § 226]**

20 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
21 **Defendants)**

22 85. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
23 reallege and incorporate by this reference, as though fully set forth herein, the prior of this
24 Complaint.

25 86. Cal. Labor Code § 226 provides that an employer must furnish employees with
26 an “accurate itemized statement in writing showing:

27 (1) gross wages earned,

28 (2) total hours worked by the employee, except for any employee whose compensation

1 is solely based on a salary and who is exempt from payment of overtime under
2 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
3 Commission,

4 (3) the number of piecerate units earned and any applicable piece rate if the employee
5 is paid on a piece-rate basis,

6 (4) all deductions, provided that all deductions made on written orders of the employee
7 may be aggregated and shown as one item,

8 (5) net wages earned,

9 (6) the inclusive dates of the period for which the employee is paid,

10 (7) the name of the employee and his or her social security number, except that by
11 January 1, 2008, only the last four digits of his or her social security number or an
12 employee identification number other than a social security number may be shown on
13 the itemized statement,

14 (8) the name and address of the legal entity that is the employer, and

15 (9) all applicable hourly rates in effect during the pay period and the corresponding
16 number of hours worked at each hourly rate by the employee.”

17 87. From time to time, DEFENDANT violated Labor Code § 226, in that
18 DEFENDANT failed and continues to fail to properly and accurately itemize the amount of time
19 worked by PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS
20 at the effective rates of pay. DEFENDANT also violated Labor Code Section 226 in that
21 DEFENDANT failed to properly and accurately itemize the amount of penalties paid to
22 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members when they missed their
23 meal and rest breaks.

24 88. DEFENDANT knowingly and intentionally failed to comply with Labor Code §
25 226, causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR
26 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the
27 true amount of time worked and the amount of employment taxes which were not properly paid
28 to state and federal tax authorities. These damages are difficult to estimate. Therefore,

1 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS elect to
2 recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred,
3 and \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an
4 amount according to proof at the time of trial (but in no event more than \$4,000.00 for
5 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

6
7 **FIFTH CAUSE OF ACTION**

8 **For Failure to Reimburse Employees for Required Expenses**

9 **[Cal. Lab. Code § 2802]**

10 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
11 **Defendants)**

12 89. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members
13 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through
14 79 of this Complaint.

15 90. Cal. Lab. Code § 2802 provides, in relevant part, that:

16 An employer shall indemnify his or her employee for all necessary expenditures
17 or losses incurred by the employee in direct consequence of the discharge of his
18 or her duties, or of his or her obedience to the directions of the employer, even
19 though unlawful, unless the employee, at the time of obeying the directions,
20 believed them to be unlawful.

21 91. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
22 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
23 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
24 benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA
25 LABOR SUB-CLASS members for expenses which included, but were not limited to, the cost
26 associated with the use of their personal cellular phones for DEFENDANT's benefit. In order
27 to work as a Mechanic/Technician for DEFENDANT, PLAINTIFF and other CALIFORNIA
28 CLASS Members were required to use DEFENDANT's mobile application and as such it is
mandatory to have a cell phone that is compatible with DEFENDANT's mobile application.
As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other

1 members of the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses
2 which included, but were not limited to, the costs related to the use of their personal cellular
3 phones all on behalf of and for the benefit of DEFENDANT. Further, PLAINTIFF and other
4 CALIFORNIA LABOR SUB-CLASS Members are also not reimbursed or indemnified by
5 DEFENDANT for the cost associated with using their personal vehicles while making deliveries
6 for DEFENDANT. As a result, in the course of their employment with DEFENDANT
7 PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed business
8 expenses which included, but were not limited to, costs related to travel all on behalf of and for
9 the benefit of DEFENDANT. Additionally, PLAINTIFF and other CALIFORNIA CLASS
10 Members were also not reimbursed or indemnified by DEFENDANT for the cost associated
11 with using their personal tools that were necessary to perform their work tasks for
12 DEFENDANT. As a result, in the course of their employment with DEFENDANT PLAINTIFF
13 and other members of the CALIFORNIA CLASS incurred unreimbursed business expenses
14 which included, but were not limited to, costs related to personal tools on behalf of and for the
15 benefit of DEFENDANT. These expenses are necessary to complete their principal job duties.
16 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation.
17 Although these expenses are necessary expenses incurred by PLAINTIFF and the
18 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and
19 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
20 expenses as an employer is required to do under the laws and regulations of California.

21 92. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
22 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
23 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest
24 at the statutory rate and costs under Cal. Lab. Code § 2802.

25
26 **SIXTH CAUSE OF ACTION**

27 **For Failure to Pay Wages When Due**

28 **[Cal. Lab. Code §§ 201, 202 and 203]**

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

3
4
5

6

7

8

90

- 1
- 2
- 3

1

6
7
8
9
20

21
22

23

24
25
26

28

1 DEFENDANT did not timely tender payment of all wages owed as required by law.

2 100. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
3 members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated,
4 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of
5 termination for all individuals in the CALIFORNIA LABOR SUB-CLASS who terminated
6 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and
7 statutory costs as allowed.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
11 severally, as follows:

12 1. On behalf of the CALIFORNIA CLASS:

- 13 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
14 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
15 B) An order temporarily, preliminarily and permanently enjoining and restraining
16 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
17 C) An order requiring DEFENDANT to pay minimum wages and all sums unlawfully
18 withheld from compensation due to PLAINTIFF and the other members of the
19 CALIFORNIA CLASS; and,
20 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
21 for restitution of the sums incidental to DEFENDANT's violations due to
22 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

23 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 24 A) That the Court certify the Second, Third, Fourth, Fifth and Sixth Causes of Action
25 asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant
26 to Cal. Code of Civ. Proc. § 382;
27 B) Compensatory damages, according to proof at trial, including compensation due
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,

1 during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus
2 interest thereon at the statutory rate;

3 C) The wages of all terminated individuals in the CALIFORNIA LABOR
4 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
5 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;

6 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
7 in which a violation occurs and one hundred dollars (\$100) per each member of
8 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
9 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
10 an award of costs for violation of Cal. Lab. Code § 226; and,

11 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
12 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
13 costs of suit.

14 3. On all claims:

15 A) An award of interest, including prejudgment interest at the legal rate;

16 B) Such other and further relief as the Court deems just and equitable; and,

17 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
18 law, including, but not limited to, pursuant to Labor Code §218.5, §226 and/or
19 §1194.

20
21 Dated: November 14, 2024

BLUMENTHAL, NORDREHAUG & BHOWMIK
LLP

22
23
24 By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: November 14, 2024

BLUMENTHAL, NORDREHAUG & BHOWMIK
LLP

By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff

K:\NBB Dropbox\NBB NBB\Pending Litigation\Yourmechanic - Romero - CA3403\p-complaint-Draft.wpd