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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

Luis Franco, individually, on behalf of himself and all other similarly situated employees, Plaintiff, vs. The Goodyear Tire and Rubber Company, an Ohio corporation, and Does 1-5 Defendants.	CASE NO.: 22CV393403 Consolidated with: Esraelian Case No.: 21STCV44620; Esraelian Case No.: 22STCV03534; Rodas Case No.: 21STCV28702; and Rodas Case No.: 21STCV35255 **FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT FOR DAMAGES** 1. Failure to Pay All Wages, Including Minimum and Overtime Wages (Labor Code §§ 510, 1194); 2. Failure to Provide Rest Periods (Labor Code §§ 226.7, 512); 3. Failure to Provide Meal Periods (Labor Code §§ 226.7, 512); 4. Failure to Timely Pay Wages at Separation

ARIN ESRAELIAN, as an individual, and on behalf of all similarly situated employees,

Plaintiff,

v.

THE GOODYEAR TIRE & RUBBER COMPANY, and DOES 1-50, inclusive,

Defendants.

DANIEL RODAS, as an individual and on behalf of all others similarly situated,

Plaintiffs,

vs.

THE GOODYEAR TIRE & RUBBER COMPANY, an Ohio corporation; and DOES 1 through 50, inclusive,

Defendants

(Labor Code §§ 201, 202, 203);

5. Failure to Keep Accurate Payroll Records (Labor Code § 1174, 226 (A), (E));
6. Failure to Reimburse Employees for Necessary Business Expenditures (Labor Code § 2802(A));
7. Payment Via Bank Cards
8. Unfair Business Practices (Bus. Prof. Code §§ 17200 et. seq.); and
9. Failure to Pay Wages Under the Fair Labor Standards Act
10. Penalties Under PAGA Labor Code §2698, et seq.

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Plaintiffs LUIS FRANCO, ARIN ESRAELIAN, and DANIEL RODAS ("Plaintiffs") on behalf of themselves and all others similarly situated, complains and alleges on information and belief, as follows:

INTRODUCTION

1. This is a class action brought on behalf of Plaintiffs and the class they seek to represent ("Plaintiff Class") pursuant to California Code of Civil Procedure section 382. Plaintiff Class consists of all current and former non-exempt hourly individuals employed by The Goodyear Tire & Rubber Company in California at any time from August 4, 2017 until July 30, 2022. Plaintiffs reserve the right to amend this complaint to reflect a different "Class Period" or "Plaintiffs Class" as further discovery is conducted.

2. Plaintiffs individually and on behalf of the class they seek to represent, seeks relief against Defendant for Defendant's practices of violating the applicable wage orders, the applicable Code of Regulations, and California Labor Codes, including: (1) failure to pay all wages, including minimum wages and overtime wages at the correct regular rate; (2) failure to provide rest periods or payments for missed rest periods at the correct regular rate; (3) failure to provide meal periods or payment for missed meals at the correct regular rate; (4) failure to timely pay wages at separation; (5) failure to keep accurate payroll records; (6) failure to reimburse Plaintiffs and the class for out of pocket costs, including but not limited to pay card/bank card charges; and (7) unfair business practices as set forth more fully herein. These violations concern current and past employees of Defendant.

3. At all relevant times herein, Defendant has consistently maintained and enforced against Plaintiffs and the Plaintiffs Class the following unlawful policies and practices: (a) willfully refusing to pay Plaintiffs and Plaintiffs Class for all hours worked, including minimum wages; (b) willfully refusing to include non-discretionary bonus payments, and other incentive compensation, including commissions, in the regular rate calculation for overtime purposes; (c) willfully refusing to permit Plaintiffs and Plaintiffs Class from taking meal and/or rest periods; (d) willfully refusing to compensate Plaintiffs and certain members of the Plaintiffs Class all wages due and owing at the time Plaintiffs and Plaintiffs Class' employment with Defendant

ended; (e) willfully refusing to furnish to Plaintiffs and Plaintiffs Class with accurate itemized wage statements upon payment of wages; and (f) willfully refusing to reimburse Plaintiffs and Plaintiffs Class for necessary business expenditures.

4. Plaintiffs bring this lawsuit seeking injunctive, restitution, and monetary relief against Defendant, and each of them, on behalf of Plaintiffs, individually, and on behalf of all aggrieved and similarly-situated employees to recover, among other things, unpaid wages and benefits, interest, penalties, liquidated damages, attorney's fees, and costs pursuant to California Labor Code sections 201, 202, 203, 204, 210, 212, 213, 218.5, 218.6, 226, subdivision (a), 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, California Code of Civil Procedure 1021.5, and provisions of the applicable IWC Wage Order. Plaintiffs reserve the right to name additional representatives throughout the State of California.

JURISDICTION AND VENUE

5. Venue is proper in this judicial district and the County of Santa Clara, pursuant to Code of Civil Procedure section 395, because Defendant maintains its office location and transacts business in this county, the obligations and liability arise in this county, and work was performed by Plaintiffs and Plaintiffs Class made the subject of this action in the County of Santa Clara.

6. Defendant employed Plaintiffs and numerous Class Members within the State of California and the unlawful acts alleged herein have a direct effect on Plaintiffs and the Class Members.

7. The California Superior Court has jurisdiction in the matter because the individual claims are under the seventy-five thousand dollar ($75,000.00) individual jurisdictional threshold and the five million dollar ($5,000,000.00) aggregate jurisdictional threshold for federal court and, upon information and belief, Plaintiff and Defendant are residents of and/or domiciled in the State of California. Further, there is no federal question at issue as the issues herein is based solely on California Statutes and law including the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure, Rule of Court, and Business and Professions Code. Thus, the above-entitled court maintains appropriate jurisdiction to hear this matter.

ADMINISTRATIVE PREREQUISITE

8. On November 18, 2021, Plaintiff Esraelian gave written notice by electronically filing the notice with the Labor Workforce Development Agency ("LWDA") (LWDA Case No. LWDA-CM-852749-21), and by certified mail to Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code section 2699.3. A true and correct copy of Plaintiff's letter sent to the LWDA and Defendant, dated November 18, 2021, is attached hereto as Exhibit A. As of the filing of this complaint, the LWDA has not responded.

9. On January 17, 2022, Plaintiff Franco gave written notice by electronically filing the notice with the Labor Workforce Development Agency ("LWDA") (LWDA Case No. LWDA-CM-852749-21), and by certified mail to Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code section 2699.3. A true and correct copy of Plaintiff's letter sent to the LWDA and Defendant, dated January 17, 2021, is attached hereto as Exhibit B. As of the filing of this complaint, the LWDA has not responded.

10. On July 21, 2021, Plaintiff Rodas gave written notice by electronically filing the notice with the Labor Workforce Development Agency ("LWDA") (LWDA Case No. LWDA-CM-838843-21), and by certified mail to Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code section 2699.3. A true and correct copy of Plaintiff's letter sent to the LWDA and Defendant, dated July 21, 2021, is attached hereto as Exhibit C. As of the filing of this complaint, the LWDA has not responded.

11. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause of action under PAGA only after giving notice to the Labor Workforce Development Agency ("LWDA") and the employer of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice.

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THE PARTIES

Plaintiffs

12. Plaintiff Arin Esraelian was employed by the Defendant from in or around January 30, 2009, through in or around December 31, 2020. At all relevant times herein, Plaintiff Esraelian was employed by Defendant in a non-exempt hourly position, and was entitled to compensation for all hours worked, including but not limited to minimum wage and overtime wages, as well as the aforementioned penalties from Defendant.

13. Plaintiff Luis Franco was employed by Defendant as a service advisor from 2009 through October 2, 2021, at two service centers located at 486 N Winchester Blvd, San Jose, California and 3146 Stevens Creek Blvd, San Jose, California. At all relevant times herein, Plaintiff Franco was employed by Defendant in a non-exempt hourly position, and was entitled to compensation for all hours worked, including but not limited to minimum wage and overtime wages, as well as the aforementioned penalties from Defendant.

14. Plaintiff Daniel Rodas was employed by the Defendant as a Maintenance Technician and Customer Adviser from about January 2020 to about May 2021. At all relevant times herein, Plaintiff Rodas was employed by Defendant in a non-exempt hourly position, and was entitled to compensation for all hours worked, including but not limited to minimum wage and overtime wages, as well as the aforementioned penalties from Defendant.

Defendants

15. Plaintiffs are informed and believe, and based thereon allege, that Defendant manufactures and sells tires throughout the state of California. On information and belief, and based thereon, Plaintiff alleges that Defendant is conducting business in good standing in California, at all times herein mentioned, has regularly conducted business throughout the State of California.

16. On information and belief, Defendant is, and was, the employer for Plaintiffs and Plaintiffs Class.

17. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50,

inclusive, but on information and belief alleges that said Defendants are legally responsible for the payment of wages, and the payment of rest and meal period compensation, to Plaintiffs and Plaintiffs Class by virtue of their unlawful practices, and therefore sues these Defendants by such fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities of the DOE Defendants when ascertained.

18. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiffs and Plaintiffs Class.

19. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiffs also allege the acts of each Defendant are legally attributable to the other Defendants.

20. Plaintiffs is informed and believe, and based thereon allege, that each of the Defendants sued herein was, at all relevant times, the employer, owner, shareholder, principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing agent, joint employer and/or alter-ego of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent and knowledge, approval and/or ratification of the other Defendants. The above co-Defendants, managing agents, and supervisors aided, abetted, condoned, permitted, approved, authorized, and/or ratified the unlawful acts described herein.

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GENERAL ALLEGATIONS

21. Plaintiffs and the Plaintiffs Class are, and at all times relevant herein have been, non-exempt employees within the meaning of the California Labor Code and the implementing rules and regulations of IWC California Wage Orders.

22. Plaintiffs is informed and believe, and based thereon allege, that Defendant's policies and practices described herein are common across each of Defendant's job sites within the state of California.

23. Plaintiffs is informed and believe, and based thereon allege, that Defendant instituted a policy and practice against its employees wherein minimum wages and overtime wages due were not paid in compliance with California law. Specifically, Defendant failed to compensate Plaintiffs and Plaintiffs Class for time spent donning and doffing Defendant's required work uniform. Plaintiffs and Plaintiffs Class were required to be dressed in their uniform prior to clocking in for their shift, and were required to be dressed in their uniform at the time they clocked out for their shift. Thus, time spent donning and doffing Defendant's required work uniform was performed without compensation for their time and in violation of the Labor Code. Defendant instituted a practice of failing to record all hours that Plaintiffs and Plaintiffs Class worked for donning and doffing their uniform in an effort to cut costs and gain an unfair advantage over the similar businesses thus harming Plaintiffs and Plaintiffs Class.

24. In addition, Defendant failed to compensate Plaintiffs and certain members of the Plaintiffs Class for time painting Defendant's facilities in violation of the Labor Code.

25. Plaintiffs are informed and believe and based thereon allege that Defendant instituted a policy and practice against its employees wherein Defendant failed to include all remuneration paid to all hourly non-exempt employees when calculating Plaintiffs' and Plaintiffs Class' regular rate for purposes of overtime rate of pay. Specifically, Defendant paid hourly non-exempt employee's non-discretionary bonuses and incentive compensation and failed to include this compensation when calculating Plaintiffs' and Plaintiffs Class' regular rate for purposes of overtime rate of pay and meal and rest period premium pay.

26. As a matter of policy and/or practice, Defendant's compensation scheme failed to pay Plaintiffs and Plaintiffs Class their minimum and overtime wages due to the aforementioned off-the-clock work and failure to include all renumeration in their regular rate for purposes of calculating overtime pay and meal and rest period premium pay. The failure to pay Plaintiffs Class minimum and overtime wages for each hour worked violates, among others, Labor Code sections 1194, 1197, IWC Wage Order(s), and the UCL

27. Plaintiffs are informed and believe, and based thereon allege, that Defendant was required to provide Plaintiffs and Plaintiffs Class with a work-free, thirty (30) minute meal period within the first five (5) hours of a shift for workdays in excess of six (6) hours, and a second thirty (30) minute meal period within the tenth hour of a shift for workdays in excess of ten (10) hours, in compliance with Labor Code section 512. Defendant routinely denied Plaintiff and Plaintiffs Class a full, thirty (30) minute off-duty meal period when they worked in excess of six (6) hours within the first five (5) hours of their shifts. On information and belief, neither Plaintiffs nor Plaintiffs Class waived their lawful meal periods or received compensation from Defendant for their missed meal periods.

28. Additionally, Defendant was obligated to provide Plaintiffs and Plaintiffs Class with a ten (10) minute rest break for every four (4) hours, or major fraction thereof, worked each day. Defendant prevented Plaintiffs and Plaintiffs Class from taking rest breaks throughout their shifts in order to complete its jobs more quickly.

29. During the relevant class period, on many occasions when Plaintiff and Defendants' other non-exempt California employees were denied such opportunities, Defendants paid Plaintiffs and Defendants' other non-exempt California employees an amount designated as "CA Meal Premium" on their wage statements. The rate paid for "CA Meal Premium" was always Plaintiff's and Defendants' other non-exempt California employees' base hourly rate and not their "regular rate of pay" or "regular rate of compensation." The table below shows some instances when Defendants failed to include the non-discretionary SPIFF pay into Plaintiff Franco's regular rate of compensation for non-complaint meal periods:

Pay Period	# of Non-Compliant Meal Periods	Base Hourly Rate	Regular Rate of Pay	Meal Break Premiums Owed
8/02/2019 - 8/08/2019	1	$19	$19.38	$0.38
8/23/2019 - 8/29/2019	2	$19	$21.04	$4.08
10/04/2019-10/10/2019	1	$19	$20.62	$1.62
11/08/2019-11/14/2019	1	$19	$20.04	$1.04
12/27/2019-01/02/2020	1	$19	$21.84	$2.84
1/24/2020-01/30/2020	1	$19	$23.82	$4.82
2/28/2020-03/05/2020	1	$19	$20.88	$1.88

30. On the occasions when Defendants denied Plaintiffs and their other non-exempt employees the opportunity for meal and rest periods, and thus paid them CA Meal or Rest Premium amounts, they did so only at the employees' base hourly rate as opposed to the "regular rate of compensation" as required by Labor Code section 226.7.

31. During the relevant class period, as a matter of policy and practice, due to a staff shortage, Defendants failed to provide Plaintiffs and their other non-exempt employees with an opportunity to take a 10-minute off-duty rest period for each four hours of work or major fraction thereof. As a matter of policy and practice, Defendants neither permitted nor authorized Plaintiffs and their other non-exempt employees to take a full off-duty rest period due to a staff shortage, Plaintiffs and their other non-exempt employees could not be relieved of all duties for their 10-minute rest periods. Defendants failed to pay one additional hour of pay for instances when Plaintiffs and their other non-exempt employees could not take a 10-minute rest period for each four hours of work or major fraction thereof per shift.

32. During the relevant class period, the wage statements furnished by Defendants to their non-exempt California employees violated California Labor Code section 226(a) insofar as they failed to accurately show:

a. The gross wages earned (because CA Meal and Rest Premiums were not properly paid) in violation of Labor Code section 226(a)(1);

b. The net wages earned (because CA Meal and Rest Premiums were not properly paid) in violation of Labor Code section 226(a)(5); and

c. All applicable hourly rates of pay in effect during the pay period in violation of section 226(a)(9), the number of hours worked for all wages, and applicable pieces and rates of pay for wages earned on a piece-rate basis, in violation of Labor Code §§ 226(a)(3) and (a)(9). Wage statements issued to Plaintiff and Class Members routinely displayed a gross amount paid and "Details Not Displayed," rather than the hourly rates of pay and number of hours worked used.

For at least four years prior to the filing of this action and through to the present, Plaintiffs allege that Defendant consistently maintained and enforced the following unlawful practices and policies against its employees, in violation of California state wage and hour laws.

A. Defendant had a consistent policy of not paying Plaintiffs and Plaintiffs Class for all hours worked;

B. Defendant had a consistent policy of requiring Plaintiffs Class within the State of California, including Plaintiffs, to work at least five (5) hours without a lawful meal period, and failing to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the meal period was not provided, all in violation of, among others, Labor Code sections 201, 202, 226.7, 512, and applicable Industrial Welfare Commission Wage Orders, in one or more of the following manners;

i. employees were required to work through their daily meal period(s), or work an unlawful "on-duty meal period;"

ii. employees were restricted in their ability to take a meal period; and

iii. employees were not allowed to leave the workplace during the alleged meal periods.

C. Defendant had a consistent policy of failing to provide Plaintiffs Class within the State of California, including Plaintiffs, rest periods of at least (10) minutes per four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the rest period is not provided, as required by California state wage and hour laws, in one or more of the following manners:

i. employees were required to work without being provided a minimum ten-minute rest period for every four hours, or major fraction thereof, worked and were not compensated with one hour of pay at their regular rate of pay for each workday that a rest period was not provided; and

ii. employees were neither permitted nor authorized to take lawful rest periods or leave the premises for rest periods when allegedly authorized

D. With respect to the Plaintiffs Class who either were discharged, laid off, or resigned, Defendant failed to pay them in accordance with the requirements of Labor Code sections 201, 202, and 203;

E. Defendant failed to institute policies and procedures that ensured accurate recording of all hours Plaintiffs and Plaintiffs Class worked during the class period;

F. Defendant instituted policies and procedures that offset the necessary costs of doing business on its employees. Plaintiffs and Plaintiffs class were required to wash and maintain uniforms with Defendant's logo. Defendant failed to reimburse Plaintiffs and Plaintiffs' Class for the cost of washing and maintaining Defendant's required uniform, cost of using their personal vehicle and cell phone, as well as the costs associated with payments made on pay cards/ bank cards. Defendant required Plaintiffs and Plaintiffs class to take on the burden of these expenses without reimbursement in violation of Labor Code section 2802.

33. Plaintiffs are informed and believe, and based thereon allege, that Defendant maintained a policy where Defendant sometimes paid Plaintiff and similarly situated employees

with pre-paid bank cards and that Plaintiff and similarly situated employees were not provided at least one pay card transaction per pay period without fees and were not given the option of choosing to be paid in a different manner.

34. Plaintiffs are informed and believe, and based thereon allege, that Defendant willfully failed to pay Plaintiffs Class all wages earned, including minimum and overtime wage and compensation for missed meal and rest periods, in a timely manner upon or after termination of their employment with Defendant.

35. Plaintiffs are informed and believe, and based thereon alleges, that Defendant currently employs, and during the relevant liability period has employed hundreds of employees in the State of California in non-exempt positions.

36. At relevant times herein, Plaintiffs and the Plaintiffs Class were employed by Defendant in non-exempt hourly positions.

37. On information and belief, Plaintiffs allege that Defendant's actions as described throughout this complaint were willful.

38. On information and belief, Plaintiffs allege that Defendant willfully failed to pay the legal wages, including minimum and overtime wage, failed to provide legal rest and meal periods, and willfully failed to pay one hour's wages in lieu of rest and meal periods, when each such employee quit or was discharged.

39. Plaintiffs, on behalf of themselves and all other Plaintiffs Class, brings this action pursuant to Labor Code sections 201, 202, 203, 204, 212, 213, 218, 218.5, 218.6, 221, 226, 226.7, 510, 512, 1194, 1197, and 2802, California Business and Professions Code section 17200 et seq., and Code of Regulations, Title 8, section 11000 et seq., seeking unpaid wages, unpaid rest and meal period compensation, penalties, injunctive, and other equitable relief, and reasonable attorneys' fees and costs.

40. Defendant has made it difficult to account with precision for the unlawfully withheld wages for time spent donning and doffing their uniform and meal and rest period compensation owed to Defendant's non-exempt employees, including Plaintiffs, during the liability period, because it did not implement and preserve a record-keeping method as required

for non-exempt employees by California Labor Code sections 226, 1174(d), and section 7 of the California Wage Orders. Defendant has failed to comply with Labor Code section 226, subdivision (a) by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by Plaintiffs and the Plaintiffs Class. Plaintiffs and Plaintiffs Class are therefore entitled to penalties not to exceed four thousand dollars ($4,000.00) for each employee pursuant to Labor Code section 226, subdivision (b).

41. Defendant has failed to comply with section 7 of the California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code section 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Plaintiffs Class.

42. Plaintiffs, on behalf of themselves and Class Members, pursuant to Business and Professions Code sections 17200-17208, also seeks injunctive relief and restitution for the unfair, unlawful, or fraudulent practices alleged in this complaint.

CLASS ALLEGATIONS

43. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to section 382 of the California Code of Civil Procedure. Plaintiffs seek to represent Classes composed of and defined as follows:

> All current and former non-exempt hourly individuals employed by Goodyear in California at any time from August 4, 2017 through July 30, 2022.

44. Plaintiffs reserve the right under rule 3.764 of the California Rules of Court, to amend or modify the class descriptions with greater specificity or further division into subclasses or limitation to particular issues.

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

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A. Numerosity

46. The potential members of each Class defined herein are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Plaintiffs Class has not been determined at this time, Plaintiffs are informed and believe that Defendant currently employs, and during the relevant time period employed, at least 100 employees worked in hourly positions as Defendant's non-exempt employees in California, who are or have been affected by Defendant's unlawful practices as alleged herein.

47. Accounting for employee turnover during the relevant periods necessarily increases this number substantially. Upon information and belief, Plaintiffs allege Defendant's employment records would provide information as to the number and location of all employees within the Plaintiffs Class. Joinder of all members of the proposed Classes is not practicable.

B. Commonality

48. Common questions of law and fact predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

a. Whether Plaintiffs and Plaintiffs Class are entitled to wages from Defendant under applicable IWC Wage Orders, regulations and statutes for hours worked but not paid;

b. Whether Defendant violated Labor Code sections 226.7 and 512, section 10 of the IWC Wage Orders, and Code of Regulations, Title 8, section 11000 et seq. by failing to provide a lawful meal period to non-exempt employees within the first five hours of their shifts on days they worked in excess of six (6) hours and by failing to compensate said employees one hour's wages in lieu of meal periods;

c. Whether Defendant violated Labor Code section 226.7, section 11 of the IWC Wage Orders, and Cal. Code Regs., Title 8, section 11000 et seq. by failing to provide daily rest periods to non-exempt employees for every four hours or major fraction thereof worked and by failing to compensate said employees one hour's wages in lieu of rest periods;

d. Defendants failed to comply with Industrial Welfare Commission ("IWC") Wage Order 9-2001 and Labor Code § 226(a) by failing to issue Plaintiffs and the Proposed Class accurate itemized wage statements that show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiffs and the Proposed Class are issued wage statements that do not include meal and rest premiums as a result of the claims alleged above and when they do include the premiums, they are not at the applicable rate. Further, Defendant's wage statements identified certain wages paid as "Details Not Displayed."

e. Whether Defendant violated sections 201, 202, and 203 of the Labor Code by failing to pay all earned wages and/or premium wages or return unlawfully deducted wages due and owing at the time that any person in the Plaintiffs Class employment with Defendant terminated, voluntarily or involuntarily;

f. Whether Defendant failed to keep accurate payroll records and provide accurate itemized paystubs in violation of Labor Code section 1174, 226 (A), (E);

g. Whether Defendant failed to Reimburse Employees for Necessary Business Expenditures in violation of Labor Code section 2802, subdivision (A);

h. Whether Defendant sometimes paid Plaintiff and similarly situated employees with pre-paid bank cards and Plaintiff and similarly situated employees were not provided at least one pay card transaction per pay period without fees and were not given the option of choosing to be paid in a different manner in violation of Labor Code sections 212(a) and 213(d).

i. Whether Defendant violated section 17200 et seq. of the Business and Professions Code, Labor Code sections 201, 202, 203, 351, 226.7, 512, 1194, 1199, 1174, and applicable IWC Wage Orders, which violation constitutes a violation of fundamental public policy; and

j. Whether Plaintiffs and Class Members are entitled to equitable relief pursuant to Business and Professions Code section 17200 et seq.

49. Plaintiffs' claims are typical of the claims of the Plaintiffs Class. Plaintiffs and the Plaintiffs Class sustained injuries and damages arising out of and caused by Defendant's common course of conduct in violation of California laws, regulations, and statutes as alleged herein.

D. Adequacy of Representation

50. Plaintiffs will fairly and adequately represent and protect the interests of the Plaintiffs Class. Counsel is competent and experienced in litigating employment class actions.

51. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all each person in the Plaintiffs Class is not practicable, and questions of law and fact common to each Class predominate over any questions affecting only individual members of the Class. Each member of the Plaintiffs Class has been damaged and is entitled to recovery by reason of Defendant's unlawful policies and practices alleged in the complaint.

Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

Failure to Pay All Wages

(Plaintiffs and Plaintiffs Class Against All Defendants)

52. Plaintiff incorporates all previous paragraphs of this complaint as though fully set forth herein.

53. Plaintiff alleges that, Defendant maintained, and has maintained throughout the Class Period, a consistent policy and practice of failing to pay wages, including overtime, and minimum wage due for hours actually worked.

54. Plaintiff alleges that Defendant maintained, and has maintained throughout the Class Period, a consistent policy of failing to pay its employees for all hours worked.

Specifically, Defendant maintained a policy of failing to record all hours Plaintiffs and Plaintiffs Class worked for time spent donning and doffing Defendant's uniform and painting Defendant's facilities.

55. Defendant failed to include all remuneration paid to hourly non-exempt employees for non-discretionary bonuses, and other types of incentive compensation, which are not statutory exclusions, when calculating Plaintiffs' and Plaintiffs Class' regular rate for purposes of overtime rate of pay as well as meal and rest period premium pay.

56. As a result of Defendant's unlawful acts, Plaintiffs and Plaintiffs Class have been deprived of regular wages, minimum wages, and compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code sections 1194 and 1199.

57. Defendant willfully violated the Labor Code with respect to meeting the requirements of paying all wages earned, including minimum wage, as alleged herein.

58. Plaintiffs seek to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendant's minimum wage violations including interest thereon, reasonable attorney's fees and costs of suit, penalties, and liquidated damages to the fullest extent permissible including those permitted pursuant to Labor Code sections 1194 and 1194.2 and Code of Civil Procedure section 1021.5 and/or any other statute.

59. WHEREFORE, Plaintiffs and Plaintiffs Class request relief as described herein and below.

SECOND CAUSE OF ACTION

Failure to Provide Rest Periods

(Plaintiffs and Plaintiffs Class Against All Defendants)

60. Plaintiff incorporates all previous paragraphs of this complaint as though fully set forth herein.

61. Labor Code section 226.7 provides that employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

62. Labor Code section 226.7, subdivision (b) provides that if an employer fails to provide and employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employees' regular rate of compensation for each workday that the rest period is not provided.

63. Plaintiffs allege that during the class period, Defendant did not permit or authorize Plaintiffs and Plaintiffs Class to take timely or compliant rest periods. Defendant failed to adequately staff employees to allow Plaintiffs and Class Members an opportunity to be provided timely, lawful duty-free rest periods for every four hours of their shift or major fraction thereof. Further, Plaintiffs and Plaintiffs Class were required to remain on Defendant's premises and not free to leave Defendant's premises during the rest periods.

64. At all times relevant hereto, Plaintiffs and Plaintiffs Class worked more than four (4) hours in a workday, and ten (10) hours in a workday at times.

65. Plaintiffs and Plaintiffs Class did not voluntarily or willfully waive rest periods.

66. Defendant further failed to implement a policy to pay Plaintiffs and Plaintiffs Class an additional hour of pay at their regular rate of pay for rest periods not authorized or permitted.

67. By failing to keep adequate records as required by sections 226 and 1174, subdivision (d) of the Labor Code, Defendant has injured Plaintiffs and Plaintiffs Class and made it difficult to calculate the unpaid rest period compensation (including wages, interest, and penalties thereon) due and owing to Plaintiffs and Plaintiffs Class.

68. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiffs and Plaintiffs Class, they have been deprived of compliant rest periods and/or premium wages in lieu thereof in amounts to be determined at trial and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys fees, costs, to the fullest extent permissible under the Labor Code 226.7, applicable IWC Wage Orders, Code of Civil Procedure section 1021.5.

69. WHEREFORE, Plaintiffs and Class Members request relief as described herein and below. Plaintiffs incorporates all previous paragraphs of this complaint as though fully set forth herein.

THIRD CAUSE OF ACTION

Failure to Provide Meal Periods

(Plaintiffs and Plaintiffs Class Against All Defendants)

70. Plaintiffs incorporate all previous paragraphs of this complaint as though fully set forth herein.

71. Labor Code sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second (2^{nd}) meal period of not less than thirty (30) minutes.

72. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section.

73. Defendant maintains, and has maintained throughout the Class Period, a policy and practice of failing to provide lawful work-free meal periods to Plaintiffs and Plaintiffs Class, for the days on which non-exempt employees work periods in excess of six (6) hours and a second meal period on days which non-exempt employees work periods in excess of ten (10) hours. Plaintiffs and Plaintiffs Class were routinely denied the opportunity to be completely relieved of all work duties for a 30-minute meal period as a result of Defendant's failure to provide adequate staffing. In fact, if Plaintiffs and Class members were provided the opportunity to take a meal period, their meal periods were interrupted because they had to attend to task such attending to customers, answering phones, amongst other things. Further, Plaintiffs and Plaintiffs Class were required to remain on Defendant's premises and not free to leave Defendant's premises during the meal periods. Defendant failed to provide Plaintiffs and Plaintiffs Class with compensation for their missed meal periods.

74. Plaintiffs and Plaintiffs Class did not voluntarily or willfully waive meal periods.

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75. At all times relevant hereto, the Defendant, failed to provide Plaintiffs and Plaintiffs Class similarly a compliant duty-free meal period as required by Labor Code sections 226.7 and 512.

76. By virtue of the Defendant's unlawful failure to provide meal periods to Plaintiff and Plaintiffs Class, Plaintiffs and the Plaintiffs Class have been deprived of compliant meal periods and/or premium wages in lieu thereof in amounts to be determined at trial and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys fees, costs, to the fullest extent permissible under the Labor Code sections 226.7 and 512, applicable IWC Wage Orders, Code of Civil Procedure section 1021.5, and/or any other statute.

77. WHEREFORE, Plaintiffs and Class Members request relief as described herein and below.

FOURTH CAUSE OF ACTION

Failure to Timely Pay Wages at Separation

(Plaintiffs and Plaintiffs Class Against All Defendants)

78. Plaintiffs incorporate all previous paragraphs of this complaint as though fully set forth herein.

79. During the relevant time period, Plaintiffs and formerly employed members of the Plaintiffs Class resigned or were terminated from their positions with Defendant. Defendant, however, willfully did not pay Plaintiffs and Plaintiffs Class all wages which were due them upon their separation of employment immediately upon termination or within seventy-two (72) hours of their resignation as required by Labor Code section 202, subdivision (a). Defendant failed to pay Plaintiffs and Plaintiffs Class all minimum wages due which were earned throughout their employment. Defendant also failed to pay premium wages for times Plaintiffs and Class Members were not provided meal and/or rest breaks.

80. Under Labor Code sections 201, 202, and 203, Plaintiffs and Plaintiffs Class are entitled to waiting time penalties for not having been paid all wages due them upon their separation from employment.

81. Plaintiffs and Plaintiffs Class who terminated employment within four years of the filing of the original Complaint until the date of entry of judgment, without being paid the proper payments are entitled to thirty (30) days of pay at their regular rate of pay as waiting time penalties.

82. WHEREFORE, Plaintiffs and the Plaintiffs Class request relief as described herein and below.

FIFTH CAUSE OF ACTION

Failure to Keep Accurate Payroll Records

(Plaintiffs and Plaintiffs Class Against All Defendants)

83. Plaintiffs incorporate by reference and realleges all previous paragraphs of this complaint as though fully set forth herein.

84. Labor Code section 1174, subdivision (d), requires an employer to keep at a central location in California or at the plant or establishment at which the employee is employed, payroll records showing the hours worked daily, and the wages paid to, each employee. Labor Code section 226, subdivision (a) requires an employer to provide employees—either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash—an accurate itemized wage statement in writing.

85. Labor Code section 226, subdivision (e) provides that if an employer knowingly and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned, the total hours worked by the employee and the applicable hourly overtime rates, causing the employee injury, then the employee is entitled to recover the greater of all actual damages or fifty dollars ($50.00) for the initial violation and one hundred dollars ($100.00) for each subsequent violation, up to four thousand dollars ($4,000.00). Plaintiffs are informed and believe that Defendant willfully failed to make or keep accurate records for Plaintiffs and Plaintiffs Class.

86. IWC Wage Orders require that every employer shall keep accurate information with respect to each employee, including time records showing when each employee begins and ends each work periods, the total daily hours worked by each employee and the total hours worked in each payroll period, and applicable rates of pay. Plaintiffs allege that Defendant

willfully and intentionally failed to make and/or keep records which accurately reflect the hours worked by Plaintiffs and Plaintiffs Class. Specifically, Plaintiffs believe that Defendant's records do not accurately reflect where Plaintiffs and Plaintiffs Class worked during their meal and/or rest breaks. Furthermore, Defendant's records do not reflect all hours worked, specifically the hours Plaintiffs and Plaintiffs Class were required to work off the clock for maintaining and donning and doffing Defendant's uniform.

87. Plaintiffs are informed and believe that Defendant's failure to keep accurate payroll records, as described above, violated Labor Code sections 1174, subdivision (d) and 226, subdivision (a), and the applicable wage order.

88. Plaintiffs are informed and believe that Defendant's failure to keep and maintain accurate records and information, as described above, was willful, and Plaintiffs and the Plaintiffs Class are entitled to statutory penalties pursuant to Labor Code sections 226 and 1174.5.

89. WHEREFORE, Plaintiffs and Plaintiffs Class request relief as described herein and below.

<u>SIXTH CAUSE OF ACTION</u>

Failure to Reimburse Employees for Necessary Business Expenditures

(Plaintiffs and Plaintiffs Class Against All Defendants)

90. Plaintiffs reallege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

91. Under California Labor Code section 2802, subdivision (a), an employer is legally to reimburse its employees for necessary business expenditures incurred as a result of performing their work.

92. California Labor Code section 2802 states, "An employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties…"

93. Plaintiffs and Plaintiffs Class has incurred out-of-pocket losses because of Defendant's failure to reimburse Plaintiffs and Plaintiffs Class appropriately for all necessary uniform purchase and cleaning, use of personal vehicles, and personal cell phone expenses.

Further, Plaintiff and the class were sometimes paid with a pre-paid bank card that also incurred expense in obtaining the funds on the card. Plaintiff and the class were not reimbursed for such charges to their payroll amounts. To date, Defendant has failed to indemnify Plaintiffs and Plaintiffs Class for all these out-of-pocket losses.

94. Defendant knowingly, willingly and intentionally attempted to offset the cost of doing business on the Plaintiffs and Plaintiffs Class.

95. Defendant has and or had a practice and policy of requiring Plaintiffs and Plaintiffs Class to shoulder the burden of Defendant's cost of doing business by failing to reimburse Plaintiffs and Plaintiffs Class for necessary business expenditures, specifically the cost to wash and maintain their work uniforms which contains Defendant's logo at their own expense. Plaintiffs and the class had to wash their uniforms separate from their personal clothing because of their uniforms were heavily soiled as a result of carrying out their job duties. Defendant failed to reimburse Plaintiffs and Plaintiffs Class for the cost of washing and maintaining Defendant's uniform which is required in their employment. Defendant failed to reimbursement Plaintiffs and the class for these expenditures incurred in carrying out their job duties by Plaintiffs and the class under Defendant's policy.

96. Further, Defendant has and or had a practice and policy of requiring Plaintiffs and Plaintiffs Class to shoulder the burden of Defendant's cost of doing business by failing to reimburse Plaintiffs and Plaintiffs Class for using their personal vehicles to transport supplies between Defendant's locations. In addition, Defendant failed to reimburse personal cell phone expenses that Plaintiffs and Plaintiffs Class incurred while performing work for Defendant.

97. Further, Plaintiff and the class were sometimes paid with a pre-paid bank card that also incurred expense in obtaining the funds on the card. Plaintiff and the class were not reimbursed for such charges to their payroll amounts.

98. Accordingly, Plaintiffs and Plaintiffs Class are entitled to an award of "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's fees and interest.

99. WHEREFORE, Plaintiffs and the Plaintiffs Class request relief as described herein and below.

SEVENTH CAUSE OF ACTION

Payment Via Bank Cards

(Plaintiffs and Plaintiffs Class Against All Defendants)

100. Plaintiffs incorporates all previous paragraphs of this complaint as though fully set forth herein.

101. Labor Code section 212(a) provides "No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

> (a) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

102. Labor Code section 213(d) prohibits:

> an employer from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, or credit union of the employee's choice with a place of business located in this state, provided that the employee has voluntarily authorized that deposit. If an employer discharges an employee or the employee quits, the employer may pay the wages earned and unpaid at the time the employee is discharged or quits by making a deposit authorized pursuant to this subdivision, provided that the employer complies with the provisions of this article relating to the payment of wages upon termination or quitting of employment.

103. Plaintiffs and Plaintiffs Class allege that Defendant sometimes including at time of final pay, paid the putative class their wages on pre-paid bank cards. This policy and practice did not allow the putative class to have at least one pay card transaction per pay period without fees and did not give the putative class the option of choosing to be paid in a different manner in violation of Labor Code sections 212(a) and 213(d).

104. As a result, Plaintiffs seeks, on behalf of themselves and similarly situated employees, the applicable statutory and civil penalties, and attorneys' fees and costs, in an amount to be proven at trial.

EIGHTH CAUSE OF ACTION

Unfair Business Practices

(Plaintiffs and Plaintiffs Class Against All Defendants)

105. Plaintiffs incorporates all previous paragraphs of this complaint as though fully set forth herein.

106. On information and belief, Plaintiffs allege that Defendant engaged in conduct and maintained policies and practices that constitute false, fraudulent, unlawful, unfair, and deceptive business practices in violation of Business and Professions Code section 17200 et seq. (hereinafter the "Unfair Competition Law"). Plaintiff allege that each of the following policies and practices of Defendant violate the Unfair Competition Law:

a. requiring employees to work in excess of six (6) hours per day without being provided a lawful meal period, and failing to compensate such employees with one hour of pay at their regular rate of compensation for each workday that a meal period was not provided;

b. requiring employees to work in excess of ten (10) hours per day without being provided a lawful second meal period, and failing to compensate such employees with one hour of pay at their regular rate of compensation for each workday that a meal period was not provided;

c. requiring employees to work without being provided a minimum ten-minute rest period for every four (4) hours or major fraction thereof worked, and failing to compensate such employees with one hour of pay at their regular rate of compensation for each workday that a rest period was not provided;

d. requiring employees to work without being provided a thirty-minute (30) duty free lunch period with for every five (5) hours worked;

e. for failing to institute policies and procedure that ensure accurate timekeeping and accurate itemized paystubs to Plaintiff and Plaintiff Class;

f. failing to pay all earned wages, including minimum and overtime wages, to Plaintiffs and Plaintiffs Class;

g. failing to provide Plaintiffs and Plaintiffs class with at least one pay card transaction per pay period without fees and not providing Plaintiffs and Plaintiffs class the option of choosing to be paid in a different manner in violation of Labor Code sections 212(a) and 213(d); and

h. failing to reimburse Plaintiffs and Plaintiffs Class for necessary business expenses.

107. The actions of Defendant as alleged within this Complaint constitute false, fraudulent, unlawful, unfair, and deceptive business practices, within the meaning of Business and Professions Code section 17200 et seq.

108. Plaintiffs and the Plaintiffs Class are entitled to other equitable relief against such unlawful practices in order to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits.

109. As a result of its unlawful acts, Defendant has reaped and continue to reap unfair benefits and unlawful profits at the expense of Plaintiffs and Plaintiffs Class. Defendant should be required to restore to Plaintiffs and Class Members the wrongfully withheld wages pursuant to Business and Professions Code section 17203. Plaintiffs are informed and believe, and thereon alleges, that Defendant has been unjustly enriched through Defendant's unlawful, unfair, and fraudulent business practices as alleged throughout this Complaint. Plaintiffs are informed and believe, and based thereon allege, that Plaintiffs and Plaintiffs Class are prejudiced by Defendant's unfair trade practices.

110. As a direct and proximate result of Defendant's unfair business practices, Plaintiffs, and Plaintiffs Class are entitled to equitable including full restitution of all wages which have been unlawfully withheld from Plaintiffs and Plaintiffs Class as a result of the business acts and practices described herein.

111. WHEREFORE, Plaintiffs and Plaintiffs Class request relief as described herein and below and as deemed just.

NINTH CAUSE OF ACTION

UNPAID WAGES AND OVERTIME WAGES UNDER THE FLSA

29 U.S.C. §§206, 207(a)

(Collective Action for Unpaid Wages by All Plaintiffs Against All Defendants)

112. Plaintiffs re-allege and incorporate by reference herein the allegations of all preceding paragraphs as though fully set forth herein.

113. Plaintiffs bring this action on behalf of themselves and other members of the proposed FLSA Class as a collective action pursuant to 29 U.S.C. § 216(b), under the FLSA, 29 U.S.C. § 201 et seq.

1114. At all relevant times, each Defendant has been, and continues to be, an "employer" engaged in interstate "commerce" within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, Defendants have employed all members of the proposed FLSA Class as "employees" within the meaning of the FLSA, 29 U.S.C. § 203. Plaintiffs are informed and believe, and thereon allege, at all relevant times, each Defendant has had gross operating revenues in excess of $500,000.

115. 29 C.F.R. §778.500(a) states: "Since the regular rate is defined to include all remuneration for employment…the overtime provisions of the Act cannot be avoided by setting an artificially low hourly rate upon which overtime pay is to be based and making up the additional compensation due to employees by other means. The established hourly rate is the 'regular rate' to an hourly employee only if the hourly earnings are the sole source of his compensation. Payment for overtime on the basis of an artificial 'regular rate' will not result in compliance with the overtime provisions of the Act." Subsection (b) of 29 C.F.R. §778.500 states: "the hourly rate paid for the identical work during the hours in excess of the applicable maximum hours standard cannot be lower than the rate paid for the non-overtime hours nor can the hourly rate vary from week to week inversely with the length of the workweek."

116. 29 C.F.R. §778.315 states: "Overtime compensation, at a rate of not less than one

and one-half times the regular rate of pay must be paid for each hour worked in the workweek in excess of the applicable maximum hours standard. *This extra compensation for the excess hours of overtime work under the Act cannot be said to have been paid to an employee unless all straight time compensation due him for the nonovertime hours under his contract (express or implied) or under any applicable statute has been paid.*"

117. The defendants are liable for engaging in a subterfuge or an artifice designed to evade the overtime laws. That is the class members allege and will prove that they are entitled to payment based on the proper and legal regular rate which will include all damages that flow from this calculation.

118. At all relevant times, Defendants willfully, regularly and repeatedly failed to make, keep and preserve accurate records required by the FLSA with respect to Plaintiffs and the other FLSA Class Members', including records sufficient to accurately determine the wages and hours of employment pertaining to Plaintiffs and the other FLSA Class Members.

119. Pursuant to 29 U.S.C. § 216(b), to become members of this FLSA collective action, the putative class members of the FLSA Class are required to opt in to this action by filing their consents with the Court. This process is also satisfied when individuals subject to a Rule 23 class action file a claim form in connection with a settlement of the action. (*Murillo v. Pacific Gas & Electric Co.,* (E.D.Cal.2010) 266 F.R.D. 468, 472-473).

120. Pursuant to 29 U.S.C. §§ 206, 207(a) and 216(b), Plaintiffs and the other members of the FLSA are entitled to damages in the amount of their respective unpaid wages, including unpaid minimum wages, unpaid overtime compensation, and liquidated damages as provided by the FLSA, attorney's fees and costs of action, injunctive relief requiring Defendants to cease and desist from their violations of the FLSA described herein and to comply with the FLSA, and such other legal and equitable relief as the Court deems just and proper.

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TENTH CAUSE OF ACTION

CIVIL PENALTIES UNDER LABOR CODE §§ 2698-2699

121. Plaintiffs re-allege and incorporate each and every one of the allegations of all preceding paragraphs contained in paragraphs, inclusive of this Complaint, as if fully set forth herein.

122. Labor Code §§2698 - 2699, the Labor Code Private Attorney General Act of 2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code, may be recovered through a civil action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all other current or former employees.

123. Whenever the LWDA, or any of its departments, divisions, commissions, boards agencies or employees, has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions to assess a civil penalty.

124. Plaintiffs, and all hourly non-exempt employees of Defendants are "aggrieved employees" as defined by Labor Code §2699, in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them

125. Prior to filing this First Amended Consolidated Complaint, Plaintiffs all gave written notice to the LWDA, via mandatory online filing through the State of California LWDA/ Department of Industrial Relations website with a copy to the employer via certified mail, of the specific provisions of this code alleged to have been violated, including listing some facts and some theories to support the alleged violations as required by Labor Code §2699.3; A true and correct copy of the letters filed prior to filing are collectively attached hereto as **Exhibit 1**. Plaintiffs allege that they have exhausted all administrative remedies and filed the herein complaint 65 days after mailing said notice. At the date of filing this Complaint, the LWDA has

not responded with any intention to investigate. As such, Plaintiffs have exhausted their administrative requirements pursuant to LC §2699.3(a)(1) and (2) (A-C).

126. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

127. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the aggrieved employees are entitled to recover civil penalties for each of the Defendant's violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, and 1194, 1197, and 1198 during the applicable limitations period in the following amounts:

a. For violations of California Labor Code § 204, one hundred dollars ($100.00) for each aggrieved employee for each initial violation and two hundred dollars ($200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

b. For violations of California Labor Code § 226(a), two hundred fifty dollars ($250.00) per employee for initial violation and one thousand dollars ($1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

c. For violations of California Labor Code § 512, fifty dollars ($50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one hundred dollars ($100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

d. For violations of California Labor Code § 1197, one hundred dollars ($100.00) for each aggrieved employee for each initial and intentional violation per pay period (regardless of whether the initial violations were intentionally committed) and two hundred fifty dollars ($250.00) for each aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages, liquidated damages pursuant to California Labor Code § 1194.2, and applicable penalties imposed pursuant to California Labor Code § 203.

e. For violations of California Labor Code §§ 201, 202, 203, and 226.7, one hundred dollars ($100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars ($200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

f. Penalties under Code of Regulations, Title 8 §11070 or other applicable Code of Regulations in the amount of $50 for each aggrieved employee per pay period for the initial violation, and $100 for each aggrieved employee per pay period for each subsequent violation;

g. Penalties under Labor Code §210, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of $100 for each aggrieved employee per pay period for each violation, and $200 for each aggrieved employee per pay period for each subsequent violation, plus 25% of the wage wrongly withheld;

h. Penalties under Labor Code §256, in addition to and entirely independent and apart from other penalty provided in the Labor Code, including Labor Code §2699, et seq., for any aggrieved employee who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days;

i. Penalties under Labor Code §558, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of $50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid, and $100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid pursuant to Labor Code §558 provided to the affected employees;

j. Penalties under Labor Code §226.3, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of $250 for each aggrieved employee per pay period for each violation, and $1,000 for each aggrieved employee per pay period for each subsequent violation;

k. Any and all additional penalties and sums as provided by the Cal. Labor Code and/or other statutes.

l. Penalties under Labor Code section 210 for the weekly pay violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and Class Members pray for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. That Plaintiffs be appointed the representatives of each proposed Class, as appropriate;
3. That the attorneys of record for Plaintiffs whose names appear in this complaint be appointed class counsel;
4. For compensatory damages in an amount according to proof with interest thereon;
5. For economic and/or special damages in an amount according to proof with interest thereon;
6. That Defendant be found to have engaged in unfair competition in violation of Business and Professions Code section 17200 *et seq.*;
7. That Defendant be ordered to make restitution to each Class due to its unfair competition, pursuant to Business and Professions Code sections 17203 and 17204;

8. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial Welfare Commission, including, but not limited to, waiting time penalties under Labor Code section 203, and penalties under Labor Code sections 226, subdivision (e), 226.3, 210, 226.7, and 1174.5;

9. For compensatory damages in an amount according to the proof representing the amount of unpaid compensation owed thereto; For interest on any compensation due from the day such amounts were due; For reasonable attorney's fees and costs pursuant to 29 U.S.C. 216(b); and for liquidated damages and penalties.

10. For attorneys' fees, interest, and costs of suit under Labor Code sections 218.5, 1194 and other applicable provisions of law outside the Labor Code;

11. For such other and further relief as the Court deems just and proper.

12. On behalf of all current and former employees, for all civil penalties authorized by Labor Code Private Attorney General Act of 2004 as specified in California Labor Code §558 plus Labor Code §1197.1 for former or current employees who are due wage payments;

13. For civil penalties per Labor Code §226.3 in the amount of $250 for each aggrieved employee per pay period for each violation, and $1,000 for each aggrieved employee per pay period for each subsequent violation;

14. For civil penalties per Labor Code §256 in the amount of one day of pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination, until payment was/is made, up to a maximum of thirty (30) days;

15. For civil penalties, pursuant to Labor Code § 558 as follows:

(1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid;

(2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid;

16. For civil penalties under Labor Code §210, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of $100 for each

aggrieved employee per pay period for each violation, and $200 for each aggrieved employee per pay period for each subsequent violation, plus 25% of the wage wrongly withheld;

17. For civil penalties under Labor Code §2699(f), in addition to and entirely independent and apart from other penalty provided in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of $100 for each aggrieved employee per pay period for each violation, and $200 for each aggrieved employee per pay period for each subsequent violation.

Dated: September __, 2022 KUCHINSKY LAW OFFICE, P.C.

By ______________________

Alexei Kuchinsky
Attorney for Plaintiff and Proposed Class

Dated: September __, 2022 JANELLE CARNEY – ATTORNEY AT LAW, APC
MAHONEY LAW GROUP, APC

By: ______________________________

Janelle Carney, Esq.
Kevin Mahoney, Esq.
John A. Young, Esq.
Attorneys for Plaintiff ARIN ESRAELIAN and on behalf of all employees similarly situated

Dated: September __, 2022 DIVERSITY LAW GROUP, P.C.

By: ___________________________

Larry W. Lee
Max W. Gavron
Attorneys for Plaintiff, Daniel Rodas and the Class

Exhibit A

MAHONEY
LAW GROUP, APC

John Young, Esq.
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562.590.8400 facsimile
jyoung@mahoney-law.net

November 18, 2021

VIA ONLINE SUBMISSION
LABOR AND WORKFORCE DEVELOPMENT AGENCY
Attn: PAGA Administrator
https://dir.tfaforms.net/207

VIA CERTIFIED MAIL # *7019 0700 0001 7488 9005*
Return Receipt Requested
The Goodyear Tire & Rubber Company
200 Innovation Way
Akron, OH 44316

Re: Arin Esraelian v. The Goodyear Tire & Rubber Company

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION SECTIONS 2698 *et seq.*

To: California Labor and Workforce Development Agency, The Goodyear Tire & Rubber Company

From: Arin Esraelian on behalf of himself and aggrieved employees who were subject to The Goodyear Tire & Rubber Company's unlawful wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. Arin Esraelian ("Employee" or "Mr. Esraelian") as a representative for all other aggrieved employees, who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* ("PAGA").

Please be advised that this letter constitutes written notice required by Labor Code sections 2699.3, subdivision (a)(l) and 2699.3, subdivision (c)(l) and may lead to action against The Goodyear Tire & Rubber Company ("Employer") in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer, and any and all related, parent, and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

Theories of Labor Code Violations and Remedies

Employer manufactures and sells tires throughout California. Employee worked for Employer as a non-exempt employee within the past year.

Employee alleges that Employer violated various sections of the Labor Code, including sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, by failing to provide Employee and all other aggrieved employees all wages for all hours worked, including minimum and overtime wages, failed to provide meal and rest periods or compensation in lieu thereof, failing to provide accurate wage statements, failing to maintain accurate records of hours worked, failing to pay all compensation due upon separation of employment, and failing to reimburse Employee and all other aggrieved employees for work related expenses. Employee and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer as non-exempt employees during the PAGA Period defined as one year prior to the submission of this letter to the Labor Workforce and Development Agency ("LWDA") and certified mailing to Employer until resolution of these claims.

Employee and other aggrieved employees were regularly not compensated for all hours worked, including minimum wages as well as overtime wages, which is in violation of Labor Code sections 510, 1194, 1182.12, 1197 and is actionable under Labor Code section 2699.5. Employer's failed to pay Employee and other aggrieved employees the legally mandated wage rates for all hours Employee and other aggrieved employees worked. Employer failed to compensate Employee and other aggrieved employees during time which they were subject to the control of Employer, or suffered or permitted to work for Employer. Specifically, Employer failed to compensate Employee and other aggrieved employees for time spent donning and doffing Employer's required work uniform. Employee and other aggrieved employees were required to be dressed in their uniform prior to clocking in for their shift, and were required to be dressed in their uniform at the time they clocked out for their shift. Further, Employee required Employee and other aggrieved employees were required to paint Employer's facilities while off-the-clock. Accordingly, time spent donning and doffing Employer's uniform and painting Employer's facilities were performed without compensation for their time and in violation of Labor Code sections 510, 1194, 1182.12, 1197 and is actionable under Labor Code section 2699.5

Employee will further allege that Employer failed to include all remuneration when calculating his and other aggrieved employees' regular rate for purposes of compensating Employee and other aggrieved employees for her overtime under Labor Code Labor Code section 510. Specifically, Employer paid hourly non-exempt employees non-discretionary bonuses and incentive compensation and failed to include this compensation when calculating Employee's and other aggrieved employees' regular rate for purposes of overtime rate of pay. Employee will also allege that Employer violated Labor Code section 201 and 202, et seq., due to its uniform policy, practice and procedure of willfully failing to pay the earned and unpaid wages to all such former employees.

Employer also failed to provide Employee and other aggrieved employees with timely uninterrupted meal and rest periods. Employer had a practice of failing to adequately staff employees to allow Employee and other aggrieved employees to be completely relieved of all of their work responsibilities while on their legally mandated meal or rest break. Further, Employer ordered that Employee and other aggrieved employees to attend to customers, amongst other regardless of whether an employee was on their break. Further, Employer failed to provide Employee and other aggrieved employees a second meal period for shifts worked in excess of ten hours. As a result of Employer's policy and practices, Employee and other aggrieved employees did not receive timely uninterrupted meal and rest periods and were not compensated with premium wages for non-compliant meal and/or rest periods. Employer's conduct is in violation of Labor Code sections 226.7 and 512, is also actionable under PAGA.

As a result of Employer's failure to pay all wages owed as described herein, Employer violated Labor Code sections 201, 202, 203, 204, 206, and 210 due to their uniform policy, practice, and procedure of failing to timely pay all of the above-mentioned wages earned during and after Employee and the aggrieved employees' employment with Employer.

Further, Employer required Employee and other aggrieved employees to wash and maintain their work uniforms which contains Employer's logo at their own expense. Employee alleges that he and his coworkers had to wash their uniforms separate form their personal clothing because of their uniforms were heavily soiled as a result of carrying out their job duties. Employer failed to reimburse Employee and other aggrieved employees for the cost of washing and maintaining Employer's uniform which is required as part of their employment. Employer failure to reimburse Employee and other aggrieved employees for the cost of washing and maintaining Employer's uniform is in violation of Labor Code section 2802 and therefore is actionable under PAGA. In addition, Employee and other aggrieved employees were also required to use their personal cellular phones to view their schedules, receive work-related text messages, calls, and/or emails, rely on their phone's GPS system for navigation while driving between Employer's locations for Employer. Employer did not reimburse them for a reasonable percentage of their cellular phone bills, in violation of PAGA. Lastly, Employer required Employee and other aggrieved employees to use their personal vehicle to drive to trainings and between Employer's locations to pick-up and deliver supplies. Employer did not reimburse Employee and other aggrieved employees for the aforementioned use of their personal vehicle, in violation of PAGA

In addition, Employer failed to maintain accurate payroll records and failed to provide Employee and other aggrieved employees with complete and accurate wage statements showing premium wages earned per pay period, among other things. This conduct is in violation of Labor Code sections 226, 226.3, 1174, and 1174.5 and is actionable under PAGA.

249 East Ocean Boulevard • Suite 814 • Long Beach, CA 90802 Phone: 562-590-5550 Fax: 562-590-8400

Employee will bring his lawsuit on behalf of himself and all other aggrieved employees who were employed by Employer. Please advise if the LWDA has any objection to my client including PAGA claims in his complaint. We look forward to your response, and please feel free to contact our office if you have any questions, comments or concerns.

Sincerely,

John Young, Esq.
MAHONEY LAW GROUP, APC

Exhibit B

KUCHINSKY LAW OFFICE P.C.

220 Montgomery Street, Suite 2100
San Francisco, CA 94104
Tel: (628) 200 – 0902
Fax: (628) 200 -0907
Email: ak@kuchinskylawoffice.com
www.kuchinskylawoffice.com

January 17, 2022

Via e-Filing System (https://dir.tfaforms.net) to the LWDA and Via Certified U.S. Mail to Goodyear Company

Attn. PAGA Administrator
Natalie Palugyai
California Labor and Workforce Development Agency
1515 Clay Street, Suite. 801
Oakland, CA 94612

NOTICE OF LABOR CODE VIOLATIONS
PURSUANT TO LABOR CODE SECTION 2699.3

TO: The California Labor and Workforce Development Agency, The Goodyear Tire and Rubber Company.

FROM: Luis Franco

Dear Ms. Palugyai,

This office represents Luis Franco ("Franco" or "Claimant") regarding his wage-and-hour claims related to his employment with The Goodyear Tire and Rubber Company ("Goodyear Company"):

- Goodyear Company failed to pay Mr. Franco and Other Aggrieved Employees one hour of pay at the employees' *regular rate of compensation* for each workday that the meal period was not provided. Specifically, Goodyear Company failed to include into meal break premium payments the hourly value of any nondiscretionary earnings (such as nondiscretionary bonuses). Meal break premiums cannot be paid at an employee's base hourly rate. Goodyear Company have had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

- Goodyear Company failed to pay Mr. Franco and Other Aggrieved Employees one hour of pay at the employees' *regular rate of compensation* for each workday that the rest period was not provided. Specifically, Goodyear Company failed to include into rest break premium payments the hourly value of any nondiscretionary earnings (such as nondiscretionary bonuses). Rest break premiums cannot be paid at an employee's base hourly rate. Goodyear Company have had a consistent policy of paying rest period premiums at the base rate and not the blended rate in Violation of Labor Code §§ 226.7 and 512.

- Goodyear Company failed to apprise Mr. Franco and Other Aggrieved Employees of their rights associated with rest periods and failed to provide compliant rest periods. Goodyear Company maintained a consistent policy of failing to provide Mr. Franco and Other Aggrieved Employees rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof. Mr. Franco and Other Aggrieved Employees were required to work four hours or more without being provided all legally required ten (10) minute rest periods.

- Goodyear Company failed to comply with Industrial Welfare Commission ("IWC") Wage Order 9-2001 and Labor Code § 226(a) by failing to issue Mr. Franco and Other Aggrieved Employees accurate itemized wage statements that show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Mr. Franco and Other Aggrieved Employees are issued wage statements that do not include meal and rest premiums as a result of the claims alleged above and when they do include the premiums, they are not at the applicable rate.

- Goodyear Company has failed to pay all wages due at the time of termination or resignation to Mr. Franco and Other Aggrieved Employees.

Pursuant to California Labor Code Section 2698. *et. seq.,* Mr. Franco, as an aggrieved employee, intends to bring on behalf of himself and other current or former employees of Goodyear Company a representative action to recover all available civil penalties as provided by California Labor Code sections 558 and 2699 for violations committed during the employment period commencing one year prior to filing of this notice to the present.

I. FACTUAL STATEMENT

Goodyear Company is in business of providing automotive and tire services to the general public in California. It operates a network of service centers in California. Goodyear Company employed Franco Franco as a service advisor from 2009 through October 2, 2021 at two service centers located at 486 N Winchester Blvd, San Jose, California and 3146 Stevens Creek Blvd, San Jose, California. For services provided, Goodyear Company paid Franco hourly compensation ranging from $16 to $19 plus nondiscretionary bonus, known as SPIFF.

At all relevant times, as hourly non-exempt employees, Franco and Other Aggrieved Employees were entitled to the benefits and protections of California Labor Code and California Industrial Welfare Commission Occupational Wage Order No. 9-2001 (Title 8 California Code of Regulations §11090 or other applicable Wage Order(s). As such, they were entitled to meal and rest periods as required by California law, as well as to meal/rest period premiums at their "*regular rate of compensation*" when the opportunity for meal and rest periods was not provided.

During the relevant class period, Franco and Other Aggrieved Employees were eligible for and at times received non-discretionary bonuses, commissions, variable rates, and other items of compensation. For example, Franco and Other Aggrieved Employees were eligible for and received a nondiscretionary bonus SPIFF.

During the relevant class period, Franco and Other Aggrieved Employees were also frequently denied the opportunity to take off-duty, timely, and uninterrupted meal and rest periods in accordance with, and as required by, California law.

During the relevant class period, on many occasions when Franco and Other Aggrieved Employees were denied such opportunities, Goodyear Company paid Franco and Other Aggrieved Employees an amount designated as "CA Meal Premium" on their wage statements. The rate paid for "CA Meal Premium" was always a base hourly rate and not their "regular rate of pay" or "regular rate of compensation." The table below shows some instances when Goodyear Company failed to include the non-discretionary SPIFF pay into Franco's regular rate of compensation for non-complaint meal periods:

Pay Period	**# of Non-Compliant Meal Periods**	**Base Hourly Rate**	**Regular Rate of Pay**	**Meal Break Premiums Owed**
8/02/2019 - 8/08/2019	1	$19	$19.38	$0.38
8/23/2019 - 8/29/2019	2	$19	$21.04	$4.08
10/04/2019-10/10/2019	1	$19	$20.62	$1.62
11/08/2019-11/14/2019	1	$19	$20.04	$1.04
12/27/2019-01/02/2020	1	$19	$21.84	$2.84
1/24/2020-01/30/2020	1	$19	$23.82	$4.82
2/28/2020-03/05/2020	1	$19	$20.88	$1.88

On the occasions when Goodyear Company denied Franco and their other non-exempt employees the opportunity for meal and rest periods, and thus paid them CA Meal or Rest Premium amounts, they did so only at the employees' base hourly rate as opposed to the "regular rate of compensation" as required by Labor Code section 226.7.[1]

During the relevant class period, as a matter of policy and practice, due to a staff shortage, Goodyear Company failed to provide Franco and their other non-exempt employees with an opportunity to take a 10-minute off-duty rest period for each four hours of work or major fraction thereof. As a matter of policy and practice, Goodyear Company neither permitted nor authorized Franco and their other non-exempt employees to take a full off-duty rest period due

[1] *Ferra v. Loews Hollywood Hotel*, LLC (2021) –P.3d—2021 WL 2965438; *Studley v. Alliance Healthcare Svcs., Inc*. (C.D. Cal. 2012) 2012 WL 12286522 * 4; *Ibarra v. Wells Fargo Bank, N.A*. (C.D. Cal. 2018) 2018 WL 2146380 *4-5.

to a staff shortage, Franco and their other non-exempt employees could not be relieved off all duties for 10-minute rest periods. Goodyear Company failed to pay one additional hour of pay for instances when Franco and their other non-exempt employees could not take a 10-minute rest period for each four hours of work or major fraction thereof per shift.

During the relevant class period, the wage statements furnished by Goodyear Company to their non-exempt California employees violated California Labor Code section 226(a) insofar as they failed to accurately show:

- The gross wages earned (because CA Meal and Rest Premiums were not properly paid) in violation of Labor Code section 226(a)(1);

- The net wages earned (because CA Meal and Rest Premiums were not properly paid) in violation of Labor Code section 226(a)(5); and

- All applicable hourly rates in effect during the pay period in violation of section 226(a)(9).

Goodyear Company were, at all times relevant herein, aware of the requirements of California Labor Code section 226.

Plaintiff's employment with Goodyear Company ended on approximately October 2, 2021. At the time Franco's employment ended, Goodyear Company owed him outstanding earned wages including undisputed wages for the last pay period and underpaid meal and rest period premiums. Those wages remain outstanding.

As a result of the failure to properly calculate meal and rest period premiums, Goodyear Company failed to pay Franco and its other current and former employees whose employment has ended all wages due and owing at the time of separation within the time parameters mandated by Labor Code sections 201 and 202.

II. THEORIES OF LABOR CODE VIOLATIONS AND REMEDIES

A. Failure to Pay Proper Premiums For Non-Compliant Meal and Rest Periods

Labor Code Section 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Similarly, IWC Wage Order No. 9-2001 prohibits an employer from "employ [ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. Sectionn 12 of IWC Wagr Order No. 9-2001 similarly required an employer to authorize and permit all employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

IWC Wage Order No. 9-2001 further obligates employers to provide an employee to "pay the employee one (1) hour of pay at the employee's regular *rate of compensation* for each workday that the meal period is not provided. Accordingly, for each day that Plaintiff, the Class Members did not receive compliant meal or rest periods, they were entitled to receive meal period premiums pursuant to Labor Code § 226.7 and Wage Order No. 9-2001.

During the relevant class period, Goodyear Company had a common policy and practice of failing to include compensation associated with non-discretionary bonuses to determine Franco's and Other Aggrieved Employees' regular rate of pay for purposes of paying the California meal and rest break premiums for non-complaint breaks. Instead of paying meal/rest period premiums at employees' regular rates, Goodyear Company improperly paid the California meal and rest break premiums at the employee's hourly base rate instead of at their regular rate. Defendant often referred to such premiums by pay codes, including, but not limited to, "CA Meal Premium" on the itemized wage statements. Goodyear Company's policies and practices as alleged above violated *Labor Code § 226.7*.

B. Failure to Provide Rest Periods or Compensation in Lieu Thereof

California Industrial Welfare Commission Wage Order 9-2001 also provides that every employer shall authorize and permit all employees to take off-duty uninterrupted rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

Labor Code section 226.7 and the applicable Wage Orders of the Industrial Welfare Commission provide that if an employer fails to provide an employee a rest period in accordance with the Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

During the relevant class period, Franco's and Other Aggrieved Employees regularly worked for at least four (4) hours per workday.

During the Class Period, Goodyear Company failed to provide Franco's and Other Aggrieved Employees with adequate and compliant rest periods as required by California law and failed to compensate Franco and Other Aggrieved Employees one additional hour of pay and for each workday that adequate and complaint rest periods with one additional hour of pay (rest break premiums). For example, Franco regularly could not take rest periods because he had to serve Goodyear Company's customer and no other service advisor could relieve him so that he could take an off-duty rest period. If there were any rest periods, such rest periods were less than 10 minutes or often interrupted. Franco observed how other employees also could not take rest breaks due to a staff shortage.

By failing to regularly provide timely, uninterrupted, complete, and unrestricted rest periods, during which Franco's and Other Aggrieved Employees were required to be relieved of all duty, Goodyear Company violated California Labor Code sections 226.7 and Wage Order No. 9-2001 or other applicable Wage Orders of the Industrial Welfare Commission.

C. Failure to Provide Accurate Itemized Wage Statements

Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

As set forth above, Goodyear Company failed to provide such adequate statements willingly and with full knowledge of their obligations under section 226.

D. Failure to Pay All Wages Due at Separation

Labor Code section 201 provides that an employer is required to provide an employee who is terminated all accrued wages and compensation at the time of termination. Labor Code section 202 similarly requires Goodyear Company to pay their employees all wages due not later than 72 hours after employee's quit notice, unless the employee has given 72 hours previous notice of his intention to quit. Under Labor Code section 203, if an employer willfully fails to pay such wages, for every day that final wages or any part of the final wages remain unpaid, the employer is liable for a penalty equivalent to the employee's daily wage, for a maximum of 30 days.

As set forth above, Franco's and Other Aggrieved Employees were not properly paid meal and rest period premium wages at the regular rate of compensation. As a result, Franco's and Other Aggrieved Employees whose employment with Goodyear Company have ended necessarily had outstanding wages due and owing at the time they separated; those wages remain outstanding.

Since the date of Franco's and Other Aggrieved Employees' separation to this date, Franco's and Other Aggrieved Employees have been available and ready to receive the wages due and owing to them. Franco's and Other Aggrieved Employees have not refused to receive any payment from Defendants.

This letter is intended to comply with the requirements of California Labor Code section 2699.3(a). Pursuant to Labor Code section 2699.3(a)(1), as aggrieved employees, the Claimants on behalf of themselves and other current and former employees of Goodyear Company hereby notifies the California Labor and Workforce Development Agency and Goodyear Company of the various Labor Code violations committed by Goodyear Company.

We would appreciate hearing from the LWDA at your earliest convenience.

Respectfully Submitted,

Alexei Kuchinsky, Esq.

<u>VIA CERTIFIED U.S. MAIL TO</u>

Cert. Mail (7018 3090 0000 8319 6913)
The Goodyear Tire and Rubber Company.
C/O Sarah Ross
Littler Mendelson P.C.
2049 Century Park East, 5th Floor,
Los Angeles, CA 90067-3107

Exhibit C

DANIEL RODAS
c/o DIVERSITY LAW GROUP, P.C.
515 S. FIGUEROA STREET, SUITE 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

July 21, 2021

VIA ONLINE FILING

California Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: *Rodas v. The Goodyear Tire & Rubber Co.*

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code § 2699.3 of claims against The Goodyear Tire & Rubber Co. (the "Company"). I allege that the Company:

1. Violated Labor Code §§ 201-204, 510, 558, 1194, 1197, 1197.1 by not paying proper overtime wages to me and other similarly situated aggrieved employees by failing to pay overtime at the correct rate of pay. Throughout our employment with the Company, non-exempt employees and I earned non-discretionary remuneration, including, but not limited to incentives and SPIFFS. As these items are non-discretionary forms of remuneration, they should have been included in the regular rate of pay for purposes of paying me and other employees our overtime wages. However, whenever the Company paid me and other employees our overtime wages during work weeks in which we earned this non-discretionary remuneration, the overtime wages were not paid at 1.5 time the regular rate of pay as such renumeration were not factored into the regular rate of pay. Further as a result of such violations, the Company violated Labor Code §§ 201-203 by not paying employees all of their wages upon separation of employment due to the underpaid wages and Labor Code § 226(a) as the net/gross wages earned and hours worked shown on the wage statements were inaccurate due to the wage violations set forth above.

2. As a separate violation, the Company further violated Labor Code § 226(a) by failing to provide accurate, itemized wage statements to me and other similarly situated aggrieved employees as the wage statements failed to identify the applicable rate of pay and hours worked, as well as the applicable pieces and piece rates of pay for wages earned on a piece rate basis. Specifically, the Company routinely issued wage statements that identified wages being paid as "Details Not Displayed" and thus did not identify the hourly rates of pay and hours worked used to calculate such wages. Rather, it simply displayed the gross amount for such wages. Second, as some of the incentives/SPIFFS were earned on a piece rate basis, when such wages were paid, the wage statements did not reflect the applicable piece rate and pieces used to calculate such wages.

The address for the Company is:

The Goodyear Tire & Rubber Co.
200 Innovation Way
Akron, OH 44316

Please contact my attorney, Larry W. Lee, if you have any questions regarding this matter.

Sincerely,

DocuSigned by:
Rodas
7B4C8250B55345C...
Daniel Rodas

cc: The Goodyear Tire & Rubber Co. (by certified mail)

Exhibit 1

MAHONEY
LAW GROUP, APC

John Young, Esq.
562.590.5550 phone
562.590.8400 facsimile
jyoung@mahoney-law.net

November 18, 2021

VIA ONLINE SUBMISSION
LABOR AND WORKFORCE DEVELOPMENT AGENCY
Attn: PAGA Administrator
https://dir.tfaforms.net/207

VIA CERTIFIED MAIL *# 7019 0700 0001 7488 9005*
Return Receipt Requested
The Goodyear Tire & Rubber Company
200 Innovation Way
Akron, OH 44316

Re: *Arin Esraelian v. The Goodyear Tire & Rubber Company*

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION SECTIONS 2698 *et seq.*

To: California Labor and Workforce Development Agency, The Goodyear Tire & Rubber Company

From: Arin Esraelian on behalf of himself and aggrieved employees who were subject to The Goodyear Tire & Rubber Company's unlawful wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. Arin Esraelian ("Employee" or "Mr. Esraelian") as a representative for all other aggrieved employees, who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* ("PAGA").

Please be advised that this letter constitutes written notice required by Labor Code sections 2699.3, subdivision (a)(l) and 2699.3, subdivision (c)(l) and may lead to action against The Goodyear Tire & Rubber Company ("Employer") in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer, and any and all related, parent, and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

Theories of Labor Code Violations and Remedies

Employer manufactures and sells tires throughout California. Employee worked for Employer as a non-exempt employee within the past year.

Employee alleges that Employer violated various sections of the Labor Code, including sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, by failing to provide Employee and all other aggrieved employees all wages for all hours worked, including minimum and overtime wages, failed to provide meal and rest periods or compensation in lieu thereof, failing to provide accurate wage statements, failing to maintain accurate records of hours worked, failing to pay all compensation due upon separation of employment, and failing to reimburse Employee and all other aggrieved employees for work related expenses. Employee and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer as non-exempt employees during the PAGA Period defined as one year prior to the submission of this letter to the Labor Workforce and Development Agency ("LWDA") and certified mailing to Employer until resolution of these claims.

Employee and other aggrieved employees were regularly not compensated for all hours worked, including minimum wages as well as overtime wages, which is in violation of Labor Code sections 510, 1194, 1182.12, 1197 and is actionable under Labor Code section 2699.5. Employer's failed to pay Employee and other aggrieved employees the legally mandated wage rates for all hours Employee and other aggrieved employees worked. Employer failed to compensate Employee and other aggrieved employees during time which they were subject to the control of Employer, or suffered or permitted to work for Employer. Specifically, Employer failed to compensate Employee and other aggrieved employees for time spent donning and doffing Employer's required work uniform. Employee and other aggrieved employees were required to be dressed in their uniform prior to clocking in for their shift, and were required to be dressed in their uniform at the time they clocked out for their shift. Further, Employee required Employee and other aggrieved employees were required to paint Employer's facilities while off-the-clock. Accordingly, time spent donning and doffing Employer's uniform and painting Employer's facilities were performed without compensation for their time and in violation of Labor Code sections 510, 1194, 1182.12, 1197 and is actionable under Labor Code section 2699.5

Employee will further allege that Employer failed to include all remuneration when calculating his and other aggrieved employees' regular rate for purposes of compensating Employee and other aggrieved employees for her overtime under Labor Code Labor Code section 510. Specifically, Employer paid hourly non-exempt employees non-discretionary bonuses and incentive compensation and failed to include this compensation when calculating Employee's and other aggrieved employees' regular rate for purposes of overtime rate of pay. Employee will also allege that Employer violated Labor Code section 201 and 202, et seq., due to its uniform policy, practice and procedure of willfully failing to pay the earned and unpaid wages to all such former employees.

Employer also failed to provide Employee and other aggrieved employees with timely uninterrupted meal and rest periods. Employer had a practice of failing to adequately staff employees to allow Employee and other aggrieved employees to be completely relieved of all of their work responsibilities while on their legally mandated meal or rest break. Further, Employer ordered that Employee and other aggrieved employees to attend to customers, amongst other regardless of whether an employee was on their break. Further, Employer failed to provide Employee and other aggrieved employees a second meal period for shifts worked in excess of ten hours. As a result of Employer's policy and practices, Employee and other aggrieved employees did not receive timely uninterrupted meal and rest periods and were not compensated with premium wages for non-compliant meal and/or rest periods. Employer's conduct is in violation of Labor Code sections 226.7 and 512, is also actionable under PAGA.

As a result of Employer's failure to pay all wages owed as described herein, Employer violated Labor Code sections 201, 202, 203, 204, 206, and 210 due to their uniform policy, practice, and procedure of failing to timely pay all of the above-mentioned wages earned during and after Employee and the aggrieved employees' employment with Employer.

Further, Employer required Employee and other aggrieved employees to wash and maintain their work uniforms which contains Employer's logo at their own expense. Employee alleges that he and his coworkers had to wash their uniforms separate form their personal clothing because of their uniforms were heavily soiled as a result of carrying out their job duties. Employer failed to reimburse Employee and other aggrieved employees for the cost of washing and maintaining Employer's uniform which is required as part of their employment. Employer failure to reimburse Employee and other aggrieved employees for the cost of washing and maintaining Employer's uniform is in violation of Labor Code section 2802 and therefore is actionable under PAGA. In addition, Employee and other aggrieved employees were also required to use their personal cellular phones to view their schedules, receive work-related text messages, calls, and/or emails, rely on their phone's GPS system for navigation while driving between Employer's locations for Employer. Employer did not reimburse them for a reasonable percentage of their cellular phone bills, in violation of PAGA. Lastly, Employer required Employee and other aggrieved employees to use their personal vehicle to drive to trainings and between Employer's locations to pick-up and deliver supplies. Employer did not reimburse Employee and other aggrieved employees for the aforementioned use of their personal vehicle, in violation of PAGA

In addition, Employer failed to maintain accurate payroll records and failed to provide Employee and other aggrieved employees with complete and accurate wage statements showing premium wages earned per pay period, among other things. This conduct is in violation of Labor Code sections 226, 226.3, 1174, and 1174.5 and is actionable under PAGA.

Employee will bring his lawsuit on behalf of himself and all other aggrieved employees who were employed by Employer. Please advise if the LWDA has any objection to my client including PAGA claims in his complaint. We look forward to your response, and please feel free to contact our office if you have any questions, comments or concerns.

Sincerely,

John Young, Esq.
MAHONEY LAW GROUP, APC

KUCHINSKY LAW OFFICE P.C.

220 Montgomery Street, Suite 2100
San Francisco, CA 94104
Tel: (628) 200 – 0902
Fax: (628) 200 -0907
Email: ak@kuchinskylawoffice.com
www.kuchinskylawoffice.com

January 17, 2022

Via e-Filing System (https://dir.tfaforms.net) to the LWDA and Via Certified U.S. Mail to Goodyear Company

Attn. PAGA Administrator
Natalie Palugyai
California Labor and Workforce Development Agency
1515 Clay Street, Suite. 801
Oakland, CA 94612

NOTICE OF LABOR CODE VIOLATIONS
PURSUANT TO LABOR CODE SECTION 2699.3

TO: The California Labor and Workforce Development Agency, The Goodyear Tire and Rubber Company.

FROM: Luis Franco

Dear Ms. Palugyai,

This office represents Luis Franco ("Franco" or "Claimant") regarding his wage-and-hour claims related to his employment with The Goodyear Tire and Rubber Company ("Goodyear Company"):

- Goodyear Company failed to pay Mr. Franco and Other Aggrieved Employees one hour of pay at the employees' *regular rate of compensation* for each workday that the meal period was not provided. Specifically, Goodyear Company failed to include into meal break premium payments the hourly value of any nondiscretionary earnings (such as nondiscretionary bonuses). Meal break premiums cannot be paid at an employee's base hourly rate. Goodyear Company have had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

- Goodyear Company failed to pay Mr. Franco and Other Aggrieved Employees one hour of pay at the employees' *regular rate of compensation* for each workday that the rest period was not provided. Specifically, Goodyear Company failed to include into rest break premium payments the hourly value of any nondiscretionary earnings (such as nondiscretionary bonuses). Rest break premiums cannot be paid at an employee's base hourly rate. Goodyear Company have had a consistent policy of paying rest period premiums at the base rate and not the blended rate in Violation of Labor Code §§ 226.7 and 512.

- Goodyear Company failed to apprise Mr. Franco and Other Aggrieved Employees of their rights associated with rest periods and failed to provide compliant rest periods. Goodyear Company maintained a consistent policy of failing to provide Mr. Franco and Other Aggrieved Employees rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof. Mr. Franco and Other Aggrieved Employees were required to work four hours or more without being provided all legally required ten (10) minute rest periods.

- Goodyear Company failed to comply with Industrial Welfare Commission ("IWC") Wage Order 9-2001 and Labor Code § 226(a) by failing to issue Mr. Franco and Other Aggrieved Employees accurate itemized wage statements that show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Mr. Franco and Other Aggrieved Employees are issued wage statements that do not include meal and rest premiums as a result of the claims alleged above and when they do include the premiums, they are not at the applicable rate.

- Goodyear Company has failed to pay all wages due at the time of termination or resignation to Mr. Franco and Other Aggrieved Employees.

Pursuant to California Labor Code Section 2698. *et. seq.,* Mr. Franco, as an aggrieved employee, intends to bring on behalf of himself and other current or former employees of Goodyear Company a representative action to recover all available civil penalties as provided by California Labor Code sections 558 and 2699 for violations committed during the employment period commencing one year prior to filing of this notice to the present.

I. FACTUAL STATEMENT

Goodyear Company is in business of providing automotive and tire services to the general public in California. It operates a network of service centers in California. Goodyear Company employed Franco Franco as a service advisor from 2009 through October 2, 2021 at two service centers located at 486 N Winchester Blvd, San Jose, California and 3146 Stevens Creek Blvd, San Jose, California. For services provided, Goodyear Company paid Franco hourly compensation ranging from $16 to $19 plus nondiscretionary bonus, known as SPIFF.

At all relevant times, as hourly non-exempt employees, Franco and Other Aggrieved Employees were entitled to the benefits and protections of California Labor Code and California Industrial Welfare Commission Occupational Wage Order No. 9-2001 (Title 8 California Code of Regulations §11090 or other applicable Wage Order(s). As such, they were entitled to meal and rest periods as required by California law, as well as to meal/rest period premiums at their "*regular rate of compensation*" when the opportunity for meal and rest periods was not provided.

During the relevant class period, Franco and Other Aggrieved Employees were eligible for and at times received non-discretionary bonuses, commissions, variable rates, and other items of compensation. For example, Franco and Other Aggrieved Employees were eligible for and received a nondiscretionary bonus SPIFF.

During the relevant class period, Franco and Other Aggrieved Employees were also frequently denied the opportunity to take off-duty, timely, and uninterrupted meal and rest periods in accordance with, and as required by, California law.

During the relevant class period, on many occasions when Franco and Other Aggrieved Employees were denied such opportunities, Goodyear Company paid Franco and Other Aggrieved Employees an amount designated as "CA Meal Premium" on their wage statements. The rate paid for "CA Meal Premium" was always a base hourly rate and not their "regular rate of pay" or "regular rate of compensation." The table below shows some instances when Goodyear Company failed to include the non-discretionary SPIFF pay into Franco's regular rate of compensation for non-complaint meal periods:

Pay Period	**# of Non-Compliant Meal Periods**	**Base Hourly Rate**	**Regular Rate of Pay**	**Meal Break Premiums Owed**
8/02/2019 - 8/08/2019	1	$19	$19.38	$0.38
8/23/2019 - 8/29/2019	2	$19	$21.04	$4.08
10/04/2019-10/10/2019	1	$19	$20.62	$1.62
11/08/2019-11/14/2019	1	$19	$20.04	$1.04
12/27/2019-01/02/2020	1	$19	$21.84	$2.84
1/24/2020-01/30/2020	1	$19	$23.82	$4.82
2/28/2020-03/05/2020	1	$19	$20.88	$1.88

On the occasions when Goodyear Company denied Franco and their other non-exempt employees the opportunity for meal and rest periods, and thus paid them CA Meal or Rest Premium amounts, they did so only at the employees' base hourly rate as opposed to the "regular rate of compensation" as required by Labor Code section 226.7.[1]

During the relevant class period, as a matter of policy and practice, due to a staff shortage, Goodyear Company failed to provide Franco and their other non-exempt employees with an opportunity to take a 10-minute off-duty rest period for each four hours of work or major fraction thereof. As a matter of policy and practice, Goodyear Company neither permitted nor authorized Franco and their other non-exempt employees to take a full off-duty rest period due

[1] *Ferra v. Loews Hollywood Hotel*, LLC (2021) –P.3d—2021 WL 2965438; *Studley v. Alliance Healthcare Svcs., Inc.* (C.D. Cal. 2012) 2012 WL 12286522 * 4; *Ibarra v. Wells Fargo Bank, N.A.* (C.D. Cal. 2018) 2018 WL 2146380 *4-5.

to a staff shortage, Franco and their other non-exempt employees could not be relieved off all duties for 10-minute rest periods. Goodyear Company failed to pay one additional hour of pay for instances when Franco and their other non-exempt employees could not take a 10-minute rest period for each four hours of work or major fraction thereof per shift.

During the relevant class period, the wage statements furnished by Goodyear Company to their non-exempt California employees violated California Labor Code section 226(a) insofar as they failed to accurately show:

- The gross wages earned (because CA Meal and Rest Premiums were not properly paid) in violation of Labor Code section 226(a)(1);
- The net wages earned (because CA Meal and Rest Premiums were not properly paid) in violation of Labor Code section 226(a)(5); and
- All applicable hourly rates in effect during the pay period in violation of section 226(a)(9).

Goodyear Company were, at all times relevant herein, aware of the requirements of California Labor Code section 226.

Plaintiff's employment with Goodyear Company ended on approximately October 2, 2021. At the time Franco's employment ended, Goodyear Company owed him outstanding earned wages including undisputed wages for the last pay period and underpaid meal and rest period premiums. Those wages remain outstanding.

As a result of the failure to properly calculate meal and rest period premiums, Goodyear Company failed to pay Franco and its other current and former employees whose employment has ended all wages due and owing at the time of separation within the time parameters mandated by Labor Code sections 201 and 202.

II. THEORIES OF LABOR CODE VIOLATIONS AND REMEDIES

A. Failure to Pay Proper Premiums For Non-Compliant Meal and Rest Periods

Labor Code Section 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Similarly, IWC Wage Order No. 9-2001 prohibits an employer from "employ [ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. Sectionn 12 of IWC Wagr Order No. 9-2001 similarly required an employer to authorize and permit all employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

IWC Wage Order No. 9-2001 further obligates employers to provide an employee to "pay the employee one (1) hour of pay at the employee's regular *rate of compensation* for each workday that the meal period is not provided. Accordingly, for each day that Plaintiff, the Class Members did not receive compliant meal or rest periods, they were entitled to receive meal period premiums pursuant to Labor Code § 226.7 and Wage Order No. 9-2001.

During the relevant class period, Goodyear Company had a common policy and practice of failing to include compensation associated with non-discretionary bonuses to determine Franco's and Other Aggrieved Employees' regular rate of pay for purposes of paying the California meal and rest break premiums for non-complaint breaks. Instead of paying meal/rest period premiums at employees' regular rates, Goodyear Company improperly paid the California meal and rest break premiums at the employee's hourly base rate instead of at their regular rate. Defendant often referred to such premiums by pay codes, including, but not limited to, "CA Meal Premium" on the itemized wage statements. Goodyear Company's policies and practices as alleged above violated *Labor Code § 226.7*.

B. Failure to Provide Rest Periods or Compensation in Lieu Thereof

California Industrial Welfare Commission Wage Order 9-2001 also provides that every employer shall authorize and permit all employees to take off-duty uninterrupted rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

Labor Code section 226.7 and the applicable Wage Orders of the Industrial Welfare Commission provide that if an employer fails to provide an employee a rest period in accordance with the Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

During the relevant class period, Franco's and Other Aggrieved Employees regularly worked for at least four (4) hours per workday.

During the Class Period, Goodyear Company failed to provide Franco's and Other Aggrieved Employees with adequate and compliant rest periods as required by California law and failed to compensate Franco and Other Aggrieved Employees one additional hour of pay and for each workday that adequate and complaint rest periods with one additional hour of pay (rest break premiums). For example, Franco regularly could not take rest periods because he had to serve Goodyear Company's customer and no other service advisor could relieve him so that he could take an off-duty rest period. If there were any rest periods, such rest periods were less than 10 minutes or often interrupted. Franco observed how other employees also could not take rest breaks due to a staff shortage.

By failing to regularly provide timely, uninterrupted, complete, and unrestricted rest periods, during which Franco's and Other Aggrieved Employees were required to be relieved of all duty, Goodyear Company violated California Labor Code sections 226.7 and Wage Order No. 9-2001 or other applicable Wage Orders of the Industrial Welfare Commission.

C. Failure to Provide Accurate Itemized Wage Statements

Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

As set forth above, Goodyear Company failed to provide such adequate statements willingly and with full knowledge of their obligations under section 226.

D. Failure to Pay All Wages Due at Separation

Labor Code section 201 provides that an employer is required to provide an employee who is terminated all accrued wages and compensation at the time of termination. Labor Code section 202 similarly requires Goodyear Company to pay their employees all wages due not later than 72 hours after employee's quit notice, unless the employee has given 72 hours previous notice of his intention to quit. Under Labor Code section 203, if an employer willfully fails to pay such wages, for every day that final wages or any part of the final wages remain unpaid, the employer is liable for a penalty equivalent to the employee's daily wage, for a maximum of 30 days.

As set forth above, Franco's and Other Aggrieved Employees were not properly paid meal and rest period premium wages at the regular rate of compensation. As a result, Franco's and Other Aggrieved Employees whose employment with Goodyear Company have ended necessarily had outstanding wages due and owing at the time they separated; those wages remain outstanding.

Since the date of Franco's and Other Aggrieved Employees' separation to this date, Franco's and Other Aggrieved Employees have been available and ready to receive the wages due and owing to them. Franco's and Other Aggrieved Employees have not refused to receive any payment from Defendants.

This letter is intended to comply with the requirements of California Labor Code section 2699.3(a). Pursuant to Labor Code section 2699.3(a)(1), as aggrieved employees, the Claimants on behalf of themselves and other current and former employees of Goodyear Company hereby notifies the California Labor and Workforce Development Agency and Goodyear Company of the various Labor Code violations committed by Goodyear Company.

We would appreciate hearing from the LWDA at your earliest convenience.

Respectfully Submitted,

Alexei Kuchinsky, Esq.

<u>VIA CERTIFIED U.S. MAIL TO</u>

Cert. Mail (7018 3090 0000 8319 6913)
The Goodyear Tire and Rubber Company.
C/O Sarah Ross
Littler Mendelson P.C.
2049 Century Park East, 5th Floor,
Los Angeles, CA 90067-3107

DANIEL RODAS
c/o DIVERSITY LAW GROUP, P.C.
515 S. FIGUEROA STREET, SUITE 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

July 21, 2021

VIA ONLINE FILING

California Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: *Rodas v. The Goodyear Tire & Rubber Co.*

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code § 2699.3 of claims against The Goodyear Tire & Rubber Co. (the "Company"). I allege that the Company:

1. Violated Labor Code §§ 201-204, 510, 558, 1194, 1197, 1197.1 by not paying proper overtime wages to me and other similarly situated aggrieved employees by failing to pay overtime at the correct rate of pay. Throughout our employment with the Company, non-exempt employees and I earned non-discretionary remuneration, including, but not limited to incentives and SPIFFS. As these items are non-discretionary forms of remuneration, they should have been included in the regular rate of pay for purposes of paying me and other employees our overtime wages. However, whenever the Company paid me and other employees our overtime wages during work weeks in which we earned this non-discretionary remuneration, the overtime wages were not paid at 1.5 time the regular rate of pay as such renumeration were not factored into the regular rate of pay. Further as a result of such violations, the Company violated Labor Code §§ 201-203 by not paying employees all of their wages upon separation of employment due to the underpaid wages and Labor Code § 226(a) as the net/gross wages earned and hours worked shown on the wage statements were inaccurate due to the wage violations set forth above.

2. As a separate violation, the Company further violated Labor Code § 226(a) by failing to provide accurate, itemized wage statements to me and other similarly situated aggrieved employees as the wage statements failed to identify the applicable rate of pay and hours worked, as well as the applicable pieces and piece rates of pay for wages earned on a piece rate basis. Specifically, the Company routinely issued wage statements that identified wages being paid as "Details Not Displayed" and thus did not identify the hourly rates of pay and hours worked used to calculate such wages. Rather, it simply displayed the gross amount for such wages. Second, as some of the incentives/SPIFFS were earned on a piece rate basis, when such wages were paid, the wage statements did not reflect the applicable piece rate and pieces used to calculate such wages.

The address for the Company is:

The Goodyear Tire & Rubber Co.
200 Innovation Way
Akron, OH 44316

Please contact my attorney, Larry W. Lee, if you have any questions regarding this matter.

Sincerely,

DocuSigned by:
Rodas
7B4C8250B55345C...

Daniel Rodas

cc: The Goodyear Tire & Rubber Co. (by certified mail)