

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

1 Scott Edward Cole, Esq. (S.B. #160744)
2 Jessica L. Campbell, Esq. (S.B. #280626)
3 **SCOTT COLE & ASSOCIATES, APC**
4 1970 Broadway, Ninth Floor
5 Oakland, California 94612
6 Telephone: (510) 891-9800
7 Facsimile: (510) 891-7030
8 Email: scole@scalaw.com
9 Email: jcampbell@scalaw.com
10 Web: www.scalaw.com

11 Attorneys for Representative Plaintiffs
12 and the Plaintiff Class

13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN DIEGO**

15 MICHAEL HASEGAWA and PEDRO
16 GARCIA, individually, and on behalf
17 of all others similarly situated,

18 Plaintiffs,

19 vs.

20 NEKTER JUICE BAR, INC., and
21 DOES 1 through 100, inclusive,

22 Defendant.

Case No. 37-2014-00000280-CU-DE-CTL

CLASS ACTION

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, AND RESTITUTION**

[Jury Trial Demanded]

23 Representative Plaintiffs allege as follows:

24 **PRELIMINARY STATEMENT**

25 1. This is a class action, brought on behalf of Plaintiffs Michael Hasegawa and
26 Pedro Garcia (hereinafter "Representative Plaintiffs") and all other persons similarly situated
27 ("Class Members") who are or were non-exempt employees of Defendant Nekter Juice Bar, Inc.
28 and Does 1 through 100, inclusive (collectively "Defendant" and/or "Nekter") in any Nekter
store in California within the applicable Class Period. The Representative Plaintiffs, on behalf of
themselves as individuals and the Class Members, seek unpaid wages, including for missed meal
and rest periods and interest thereon, liquidated damages and other penalties, injunctive and

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Superior Court of California,
County of San Diego
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By My-Vinh B. Pham, Deputy Clerk

1 other equitable relief, and reasonable attorneys' fees and costs under, *inter alia*, Title 8 of the
2 California Code of Regulations, California Business and Professions Code §§ 17200, *et seq.*,
3 California Code of Civil Procedure § 1021.5, and various provisions of the California Labor
4 Code.

5 2. The Class Period is designated as the time from January 28, 2010 through the date
6 of trial, based upon the allegation that the violations of California's wage and hour laws, as
7 described more fully below, have been ongoing throughout that time.

8 3. During the Class Period, Defendant has had a consistent policy of, *inter alia*, (1)
9 willfully failing to compensate Representative Plaintiff and Class Members for all time worked,
10 (2) willfully failing to provide Representative Plaintiffs and Class Members with statutorily-
11 mandated meal and rest periods, (3) unlawfully failing to provide Representative Plaintiffs and
12 Class Members with accurate and itemized semimonthly wage statements, (4) willfully failing to
13 provide expense reimbursements as required by California Labor Code § 2802, and (5) willfully
14 failing to pay compensation in a prompt and timely manner to the Representative Plaintiffs and
15 those Class Members whose employment with Nekter has terminated.

16
17 **INTRODUCTION**

18 4. Representative Plaintiffs are informed and believe and, on that basis, allege that,
19 within the Class Period, Nekter operated numerous stores throughout California, including those
20 in which Representative Plaintiffs have worked as non-exempt employees. In doing so, Nekter
21 employed hundreds of individuals in California in recent years as non-exempt employees at its
22 Nekter Juice Bar locations, employment positions which enjoy an entitlement to full,
23 uninterrupted, and statutorily-mandated meal and rest periods, as well as other benefits of
24 employment as set forth herein.

25 5. Despite actual knowledge of these facts and legal mandates, Nekter has enjoyed
26 and continues to enjoy an advantage over its competition and a resultant disadvantage to its
27 workers by electing to not provide its non-exempt employees with mandated meal and rest
28 periods, not reimburse its non-exempt employees for business expenses, and not pay all wages

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1 due (including missed meal and rest period compensation) and/or all penalties due (including
2 "waiting time" penalties) to its non-exempt employees at its Nekter Juice Bar locations.

3 6. Representative Plaintiffs are informed and believe and, on that basis, allege that
4 officers of Nekter knew of these facts and legal mandates yet, nonetheless, repeatedly authorized
5 and/or ratified the violation of the laws cited herein.

6 7. Despite Nekter's knowledge of Class Members' entitlement to meal and/or rest
7 periods for all applicable work periods and Defendant's own duty to indemnify its employees for
8 all necessary expenditures incurred by employees while acting in the course of Nekter's employ,
9 Defendant failed to conduct itself in a manner meeting these requirements, in violation of
10 California state statutes, the applicable California Industrial Welfare Commission Wage Order,
11 and Title 8 of the California Code of Regulations. This action is brought to redress and end this
12 prolonged pattern of unlawful conduct once and for all.

13 JURISDICTION AND VENUE

14 8. This Court has jurisdiction over the Representative Plaintiffs' and Class
15 Members' claims for unpaid wages, reimbursements, and/or penalties under, *inter alia*, the
16 applicable Industrial Welfare Commission Wage Order, Title 8 of the California Code of
17 Regulations, Labor Code §§ 201-204, inclusive, 226, 226.7, 510, 512, 1174, 1194, 1198, 2802,
18 2698, *et seq.*, and/or the California Code of Civil Procedure § 1021.5.

19 9. This Court also has jurisdiction over the Representative Plaintiffs' and Class
20 Members' claims for injunctive relief and restitution of ill-gotten benefits arising from Nekter's
21 unfair and/or fraudulent business practices under California Business & Professions Code
22 §§ 17200, *et seq.*

23 10. Venue as to Defendant is proper in this judicial district pursuant to California
24 Code of Civil Procedure § 395(a). Nekter maintains stores within the County of San Diego,
25 transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of
26 service of process. The unlawful acts alleged herein have and have had a direct effect on the
27 Representative Plaintiffs and those similarly situated within the State of California, including
28

1 those within the County of San Diego. Nekter operates said facilities and has employed
2 numerous Class Members in the County of San Diego and throughout counties within the State
3 of California.

4
5 **PLAINTIFFS**

6 11. Representative Plaintiff Michael Hasegawa is a natural person who was employed
7 by Nekter in non-exempt positions, namely juicer and shift lead, during the Class Period at one
8 or more of Defendant's California locations.

9 12. Representative Plaintiff Pedro Garcia is a natural person who was employed by
10 Nekter in non-exempt positions, namely juicer, shift lead, and assistant manager, during the
11 Class Period at one or more of Defendant's California locations.

12 13. At all times herein relevant, the Representative Plaintiffs were and are now
13 persons within the class of persons further described and defined herein.

14 14. As used throughout this Complaint, the term "Class Members" and/or "Plaintiff
15 Class" refers to the Representative Plaintiffs herein as well as each and every person eligible for
16 membership in the class of persons as further described and defined herein.

17 15. The Representative Plaintiffs bring this action on behalf of themselves as
18 individuals and as a class action, pursuant to California Code of Civil Procedure § 382, on behalf
19 of all persons similarly situated and proximately damaged by the unlawful conduct described
20 herein.

21 **DEFENDANTS**

22 16. Representative Plaintiffs are informed and believe and, on that basis, allege that at
23 all times herein relevant, defendants Nekter and Does 1 through 100, were/are corporations
24 and/or other form of business entities, duly licensed, located and doing business in, but not
25 limited to, the County of San Diego in the state of California.

26 17. Representative Plaintiffs are informed and believe and, on that basis, allege that
27 defendant Nekter directly or indirectly employs and, since January 28, 2010, has employed
28 and/or exercised control over the wages, hours and working conditions of Representative

1 Plaintiffs and Class Members in various California counties, including, but not limited to, the
2 County of San Diego.

3 18. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
4 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or
5 each of the remaining defendants. Representative Plaintiffs are informed and believe and, on that
6 basis, allege that at all relevant times herein mentioned, defendant Nekter and those defendants
7 identified as Does 1 through 100, inclusive, employed, and/or exercised control over the wages,
8 hours, and/or working conditions of the Representative Plaintiffs and Class Members at
9 numerous California locations as identified in the preceding paragraph.

10 19. Representative Plaintiffs are unaware of the true names and capacities of those
11 defendants sued herein as Does 1 through 100 inclusive, and therefore sue these defendants by
12 such fictitious names. The Representative Plaintiffs will seek leave of court to amend this
13 Complaint when such names are ascertained. The Representative Plaintiffs are informed and
14 believe and, on that basis, allege that each of the fictitiously-named defendants were responsible
15 in some manner for, gave consent to, ratified, and/or authorized the conduct herein alleged and
16 that the Representative Plaintiffs' and Class Members' damages, as herein alleged, were
17 proximately caused thereby.

18 20. Representative Plaintiffs are informed and believe and, on that basis, allege that,
19 at all relevant times herein mentioned, each of the defendants were the agent and/or employee of
20 each of the remaining defendants and, in doing the acts herein alleged, were acting within the
21 course and scope of such agency and/or employment.

22
23 **CLASS ACTION ALLEGATIONS**

24 21. Representative Plaintiffs bring this action on behalf of themselves as individuals
25 and as a class action on behalf of all persons similarly situated and proximately damaged by
26 Nekter's conduct including, but not necessarily limited to, the following Plaintiff Class:

27 *All persons who are and/or were employed by Nekter Juice Bar,*
28 *Inc. in a non-exempt position in one or more of its California*
locations at any time on or after January 28, 2010.

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22. Defendant, its officers, and directors are excluded from the Plaintiff Class.

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

a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Plaintiff Class are so numerous that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiffs are informed and believe and, on that basis, allege that there are sufficient Class Members to meet the numerosity requirement. Membership in the Class will be determined upon analysis of employee and payroll, among other, records maintained by Nekter.

b. Commonality: The Representative Plaintiffs and the Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, including, but not necessarily limited to:

- 1) Whether Defendant violated California Labor Code §§ 226.7 and/or 512 by failing to consistently provide duty-free meal and/or rest periods to its non-exempt employees;
- 2) Whether Defendant violated California Labor Code §§ 201-204 by failing to pay all wages due and owed during the pendency of employment and/or at the time of the termination of employment of Representative Plaintiffs and Class Members;
- 3) Whether Defendant violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;
- 4) Whether Defendant violated California Labor Code § 226 by failing to provide semimonthly itemized statements to Class Members of the total hours worked by each and all applicable hourly rates in effect during the pay period;
- 5) Whether Defendant violated California Labor Code § 2802 by failing to reimburse Representative Plaintiffs and Class Members for expenses and losses as required by statute;
- 6) Whether Class Members are entitled to "waiting time" penalties, pursuant to California Labor Code § 203;
- 7) Whether Defendant violated California Business and Professions Code § 17200, *et seq.* by engaging in unfair, unlawful and/or fraudulent business practices; and

1 8) Whether the Representative Plaintiffs and Class Members are
2 entitled to penalties under the Private Attorneys General Act
3 of 2004, California Labor Code § 2698, *et seq.*

4 c. Typicality: The Representative Plaintiffs' claims are typical of the
5 claims of Class Members. The Representative Plaintiffs and Class
6 Members sustained damages arising out of and caused by
7 Defendant's common course of conduct in violation of law, as
8 alleged herein.

9 d. Adequacy of Representation: The Representative Plaintiffs in this
10 class action are adequate representatives of the Plaintiff Class in
11 that the Representative Plaintiffs' claims are typical of those of the
12 Plaintiff Class and the Representative Plaintiffs have the same
13 interest in the litigation of this case as the Class Members. The
14 Representative Plaintiffs are committed to vigorous prosecution of
15 this case and have retained competent counsel who are experienced
16 in conducting litigation of this nature. The Representative
17 Plaintiffs are not subject to any individual defenses unique from
18 those conceivably applicable to Class Members as a whole. The
19 Representative Plaintiffs anticipate no management difficulties in
20 this litigation.

21 e. Superiority of Class Action: Since the damages suffered by
22 individual Class Members, while not inconsequential, may be
23 relatively small, the expense and burden of individual litigation by
24 each member makes or may make it impractical for Class
25 Members to seek redress individually for the wrongful conduct
26 alleged herein. Should separate actions be brought, or be required
27 to be brought, by each individual Class Member, the resulting
28 multiplicity of lawsuits would cause undue hardship and expense
for the Court and the litigants. The prosecution of separate actions
would also create a risk of inconsistent rulings which might be
dispositive of the interests of other Class Members who are not
parties to the adjudications and/or may substantially impede their
ability to adequately protect their interests.

COMMON FACTUAL ALLEGATIONS

21 24. As described herein, for years, Nekter has knowingly failed to adequately
22 compensate those employees within the class definition identified above for all wages earned
23 (including, but not necessarily limited to, compensation for missed meal and/or rest periods) and
24 failed to reimburse those employees for business expenses under the California Labor Code and
25 the applicable IWC Wage Order, thereby enjoying a significant competitive edge over its
26 competitors. Moreover, Defendant has failed to provide the Plaintiff Class with net ten minute
27 rest periods for work shifts exceeding four hours or a major fraction thereof, and has failed to
28 provide uninterrupted, unrestricted meal periods of at least 30 minutes for work shifts exceeding

1 five hours. Defendant has declined to pay the wages due as a result of these violations, even
2 upon a Class Member's termination or resignation from employment, in blatant violation of
3 California Labor Code §§ 201-204, inclusive. More than 30 days has passed since certain Class
4 Members, including Representative Plaintiffs, have left Defendant's employ.

5 25. Furthermore, despite its knowledge of the Representative Plaintiffs' and the Class
6 Members' entitlement to compensation for all hours worked, Defendant violated California
7 Labor Code § 1174(d) by failing to provide or require the use, maintenance, or submission of
8 time records by members of the class. Nekter also failed to provide the Representative Plaintiffs
9 and Class Members with accurate semimonthly itemized statements of the total number of hours
10 worked by each, and all applicable hourly rates in effect, during the pay period, in violation of
11 California Labor Code § 226. In failing to provide the required documents, Defendant has not
12 only failed to pay its workers the full amount of compensation due but the company has also,
13 until now, effectively shielded itself from its employees' scrutiny by concealing the magnitude
14 and financial impact of its wrongdoing that such documents might otherwise have led workers to
15 discover.

16 26. California Labor Code § 2802 provides that an employer "shall indemnify his or
17 her employee for all necessary expenditures or losses incurred by the employee in direct
18 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
19 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
20 believed them to be unlawful."

21 27. Despite knowledge of its duties, Defendant failed to indemnify Plaintiffs and the
22 Plaintiff Class for all business expenses and/or losses as required under California Labor Code §
23 2802 incurred while working under the direction of Defendant. For example, Defendant expected
24 and required Plaintiffs and other Class Members to utilize their own personal vehicles in
25 travelling during the course of their employment with and under the direction of Defendant, yet
26 Defendant elected not to provide Class Members with compensation or reimbursement for
27 requiring its employees to use their own personal vehicles.

28

1 28. As a consequence of Defendant's willful conduct in not indemnifying its
2 employees for business expenses incurred, Representative Plaintiffs and Class Members are
3 entitled to damages regarding expense reimbursements pursuant to California Labor Code
4 § 2802(b), including interest and attorneys' fees and costs.

5 29. As a direct and proximate result of Defendant's unlawful conduct, as set forth
6 herein, Representative Plaintiffs and Class Members have sustained damages, as described
7 above, including compensation for loss of earnings for hours worked on behalf of Defendant, in
8 an amount to be established at trial. As a further direct and proximate result of Defendant's
9 unlawful conduct, as set forth herein, certain Class Members are entitled to recover "waiting
10 time" penalties (pursuant to California Labor Code § 203) and penalties for failure to provide
11 semimonthly statements of hours worked and all applicable hourly rates (pursuant to California
12 Labor Code § 226) in an amount to be established at trial. As a further direct and proximate
13 result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiffs and Class
14 Members are also entitled to recover costs and attorneys' fees pursuant to California Code of
15 Civil Procedure § 1021.5, among other authorities.

16 30. Representative Plaintiffs seek injunctive relief prohibiting Defendant from
17 engaging in the complained-of illegal labor acts and practices in the future. Representative
18 Plaintiffs also seek restitution of costs incurred by Representative Plaintiffs and Class Members
19 under California's Unfair Competition Law. Unless enjoined, Defendant's unlawful conduct will
20 continue unchecked, while Representative Plaintiffs and Class Members bear the financial brunt
21 of Defendant's unlawful conduct. As a further direct and proximate result of Defendant's
22 unlawful conduct, as set forth herein, Representative Plaintiffs and the Plaintiff Class are also
23 entitled to recover costs and attorneys' fees, pursuant to statute.

24 35. Representative Plaintiffs complied with the procedures for bringing suit as
25 specified in California Labor Code § 2699.3. By letters dated January 28, 2014, Plaintiffs gave
26 written notice, by certified mail, to the Labor and Workforce Development Agency ("LWDA")
27 and Defendant of the specific provisions of the California Labor Code alleged to have been
28 violated, including the facts and theories to support the alleged violations.

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1 **FIRST CAUSE OF ACTION**
2 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
3 **(California Labor Code §§ 226.7 and 512)**

4 36. Representative Plaintiffs incorporate in this cause of action each and every
5 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
6 herein.

7 37. At all relevant times, Defendant was aware of and was under a duty to comply
8 with California Labor Code § 226.7 and § 512.

9 38. California Labor Code § 226.7 provides:

10 (b) An employer shall not require any employee to work
11 during a meal or rest or recovery period mandated pursuant
12 to...an applicable order of the Industrial Welfare
13 Commission....

14 (c) If an employer fails to provide an employee a meal period
15 or rest or recovery period in accordance with a state law,
16 including, but not limited to, an applicable...order of the
17 Industrial Welfare Commission..., the employer shall pay
18 the employee one additional hour of pay at the employee's
19 regular rate of compensation for each workday that the
20 meal or rest period is not provided.

21 39. Moreover, California Labor Code § 512(a) provides:

22 An employer may not employ an employee for a work period of
23 more than five hours per day without providing the employee with
24 a meal period of not less than 30 minutes, except that if the total
25 work period per day of the employee is no more than six hours, the
26 meal period may be waived by mutual consent of both the
27 employer and employee. An employer may not employ an
28 employee for a work period of more than 10 hours per day without
providing the employee with a second meal period of not less than
30 minutes, except that if the total hours worked is no more than
12 hours, the second meal period may be waived by mutual
consent of the employer and the employee only if the first meal
period was not waived.

40. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that
employers provide all applicable meal and/or rest periods to non-exempt employees.

41. Section 11 of the applicable IWC Wage Order provides:

(A) No employer shall employ any person for a work period of
more than five (5) hours without a meal period of not less
than 30 minutes....

1 (B) If an employer fails to provide an employee a meal period
2 in accordance with the applicable provisions of this Order,
3 the employer shall pay the employee one (1) hour of pay at
4 the employee's regular rate of compensation for each work
5 day that the meal period is not provided.

4 42. Moreover, Section 12 of the applicable IWC Wage Order provides:

5 (A) Every employer shall authorize and permit all employees to
6 take rest periods, which insofar as practicable shall be in
7 the middle of each work period. The authorized rest period
8 time shall be based on the total hours worked daily at the
9 rate of ten (10) minutes net rest time per four (4) hours or
10 major fraction thereof....

11 (B) If an employer fails to provide an employee a rest period in
12 accordance with the applicable provisions of this Order, the
13 employer shall pay the employee one (1) hour of pay at the
14 employee's regular rate of compensation for each work day
15 that the rest period is not provided.

12 43. By failing to consistently provide uninterrupted thirty-minute meal periods within
13 the first five hours of work each day and/or authorize and permit uninterrupted net ten-minute
14 rest periods to Class Members, Defendant violated the California Labor Code and applicable
15 IWC Wage Order provisions.

16 44. Even where Defendant's records specifically evidence that no meal and/or rest
17 periods were provided to Representative Plaintiffs and Class Members, Defendant refuses to
18 provide these employees with one hour of compensation for these respective violations as
19 mandated by California law. Representative Plaintiffs are informed and believe and, on that
20 basis, allege that Defendant has never paid the one hour of compensation to any Class Member
21 due to its violations of the California Labor Code and applicable IWC Wage Order provisions.

22 45. As a direct and proximate result of Defendant's unlawful conduct, as set forth
23 herein, Representative Plaintiffs and Class Members have sustained damages, including lost
24 compensation resulting from missed meal and/or rest periods, in an amount to be established at
25 trial.

26 46. As a further direct and proximate result of Defendant's unlawful conduct, as set
27 forth herein, certain Class Members are entitled to recover "waiting time" and other penalties; in
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1 amounts to be established at trial, as well as recovery of attorneys' fees and costs, pursuant to
2 statute.

3 **SECOND CAUSE OF ACTION**
4 **UNLAWFUL FAILURE TO PAY WAGES**
5 **(Violation of IWC Wage Order 7 and Labor Code §§ 201-204, 510, 1194, and 1198)**

6 47. Representative Plaintiffs incorporate in this cause of action each and every
7 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
8 herein.

9 48. During the Class Period, the Representative Plaintiffs and the Class Members
10 worked, on many occasions, in excess of eight hours in a workday and/or forty hours in a
11 workweek. The precise number of hours will be proven at trial.

12 49. During the Class Period, Defendant refused to compensate Plaintiff and Class
13 Members for all of the wages earned, in violation of the applicable IWC Wage Order and
14 provisions of the California Labor Code.

15 50. At all relevant times, Defendant was aware of, and was under a duty to comply
16 with the wage and overtime provisions of the California Labor Code, including, but not limited
17 to California Labor Code §§ 201-204, 510, 1194 and 1198.

18 51. California Labor Code § 510(a), in pertinent part, provides:

19 Any work in excess of eight hours in one workday and any work in
20 excess of 40 hours in any one workweek and the first eight hours
21 worked on the seventh day of work in any one workweek shall be
22 compensated at the rate of no less than one and one-half times the
23 regular rate of pay for an employee

24 52. California Labor Code § 1194(a), in pertinent part, provides:

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

53. California Labor Code § 1198, in pertinent part, provides:

The maximum hours of work and the standard conditions of labor
fixed by the commission shall be the maximum hours of work and
the standard conditions of labor for employees. The employment of
any employee for longer hours than those fixed by the order or
under conditions of labor prohibited by the order is unlawful.

1 54. By refusing to compensate the Representative Plaintiffs and Class Members for
2 hours worked and wages earned at the appropriate rate, Defendant violated those California
3 Labor Code provisions cited herein as well as the applicable IWC Wage Order.

4 55. As a direct and proximate result of Defendant's unlawful conduct, as set forth
5 herein, the Representative Plaintiffs and the Plaintiff Class have sustained damages, including
6 loss of earnings for hours of overtime worked on behalf of Certified Tire, in an amount to be
7 established at trial, and are entitled to recover attorneys' fees and costs of suit.

8
9 **THIRD CAUSE OF ACTION**
10 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
11 **(California Labor Code §§ 226 and 1174)**

12 56. Representative Plaintiffs incorporate in this cause of action each and every
13 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
14 herein.

15 57. California Labor Code § 226(a) provides:

16 Every employer shall, semimonthly or at the time of each payment
17 of wages, furnish each of his or her employees, either as a
18 detachable part of the check, draft, or voucher paying the
19 employee's wages, or separately when wages are paid by personal
20 check or cash, an accurate itemized statement in writing showing
21 (1) gross wages earned, (2) total hours worked by the employee...,
22 (4) all deductions, provided that all deductions made on written
23 orders of the employee may be aggregated and shown as one item,
24 (5) net wages earned, (6) the inclusive dates of the period for
25 which the employee is paid, (7) the name of the employee and only
26 the last four digits of his or her social security number or an
27 employee identification number other than a social security
28 number, (8) the name and address of the legal entity that is the
29 employer..., and (9) all applicable hourly rates in effect during the
30 pay period and the corresponding number of hours worked at each
31 hourly rate by the employee....

32 58. Moreover, California Labor Code § 226(e) provides:

33 An employee suffering injury as a result of a knowing and
34 intentional failure by an employer to comply with subdivision (a)
35 is entitled to recover the greater of all actual damages or fifty
36 dollars (\$50) for the initial pay period in which a violation occurs
37 and one hundred dollars (\$100) per employee for each violation in
38 a subsequent pay period, not to exceed an aggregate penalty of four

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1 thousand dollars (\$4,000), and is entitled to an award of costs and
2 reasonable attorney's fees.

3 59. Finally, California Labor Code § 1174 provides:

4 Every person employing labor in this state shall . . . Keep, at a
5 central location in the state...payroll records showing the hours
6 worked daily by and the wages paid to...employees employed at
7 the respective plants or establishments. These records shall be kept
8 in accordance with rules established for this purpose by the
9 commission, but in any case shall be kept on file for not less than
10 three years.

11 60. Defendant has failed to provide timely, accurate itemized wage statements to the
12 Representative Plaintiffs and Class Members in accordance with California Labor Code § 226.
13 Representative Plaintiffs are informed and believe and, on that basis, allege that none of the
14 statements provided by Defendant accurately reflected actual gross wages earned, net wages
15 earned, or the appropriate deductions for any Class Members.

16 61. As a direct and proximate result of Defendant's unlawful conduct, as set forth
17 herein, the Representative Plaintiffs and Class Members have sustained damages in an amount to
18 be established at trial, and are entitled to recover attorneys' fees and costs of suit.

19 **FOURTH CAUSE OF ACTION**
20 **FAILURE TO PAY WAGES ON TERMINATION**
21 **(California Labor Code § 203)**

22 62. Representative Plaintiffs incorporate in this cause of action each and every
23 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
24 herein.

25 63. California Labor Code § 203(a) provides that:

26 If an employer willfully fails to pay, without abatement or
27 reduction, in accordance with Sections 201, 201.3, 201.5, 202, and
28 205.5, any wages of an employee who is discharged or who quits,
the wages of the employee shall continue as a penalty from the due
date thereof at the same rate until paid or until an action therefor is
commenced; but the wages shall not continue for more than 30
days.

64. Numerous Class Members, including Representative Plaintiffs, were employed by
Defendant during the Class Period and were thereafter terminated or resigned from their

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1 positions, yet they were not paid all owed compensation due upon said termination or within 72
2 hours of said resignation of employment therefrom. Said non-payment was the direct and
3 proximate result of a willful refusal to do so by Defendant.

4 65. More than 30 days have elapsed since certain Class Members were involuntarily
5 terminated or voluntarily resigned from Defendant's employ.

6 66. As a direct and proximate result of Defendant's willful conduct in failing to pay
7 said Class Members for all hours worked, affected Class Members are entitled to recover
8 "waiting time" penalties of up to thirty days' wages pursuant to California Labor Code § 203, in
9 an amount to be established at trial, together with interest thereon, and attorneys' fees and costs.

10
11 **FIFTH CAUSE OF ACTION**
12 **FAILURE TO REIMBURSE EXPENSES**
13 **(California Labor Code § 2802, et seq.)**

14 67. Representative Plaintiffs incorporate in this cause of action each and every
15 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
16 herein.

17 68. California Labor Code § 2802 provides, in pertinent part:

18 (a) An employer shall indemnify his or her employee for all
19 necessary expenditures or losses incurred by the employee
20 in direct consequence of the discharge of his or her duties,
21 or of his or her obedience to the direction of the employer,
22 even though unlawful, unless the employee, at the time of
23 obeying the direction, believed them to be unlawful.

24 (b) All awards made by a court or by the Division of Labor
25 Standards Enforcement for reimbursement of necessary
26 expenditures under this section shall carry interest at the
27 same rate as judgments in civil actions....

28 69. Furthermore, California Labor Code § 2802(c) specifically includes attorneys'
fees incurred in pursuit of enforcing these rights as "necessary expenditures or losses," as
referred to in this section.

70. California Labor Code § 2804 states:

Any contract or agreement, express or implied, made by any
employee to waive the benefits of this article or any part thereof is
null and void, and this article shall not deprive any employee or his

1 personal representative of any right or remedy to which he is
2 entitled under the laws of this State.

3 71. Section 9(B) of the IWC Wage Orders states in pertinent part:

4 When tools or equipment are required by the employer or are
5 necessary to the performance of a job, such tools and equipment
6 shall be provided and maintained by the employer, except that an
7 employee whose wages are at least two (2) times the minimum
8 wage provided herein may be required to provide and maintain
9 hand tools and equipment customarily required by the trade or
10 craft...

11 72. Defendant failed to indemnify Representative Plaintiffs and the Class Members
12 for all business expenses and/or losses as required under Labor Code § 2802 incurred while
13 working under the direction of Defendant. For example, Defendant expected and required
14 Representative Plaintiffs and affected Class Members to provide and utilize their own personal
15 vehicles for work performed for Defendant and without compensation or reimbursement.
16 Representative Plaintiffs and Class Members were not reimbursed for such expenses as required
17 by Labor Code § 2802 and the applicable Wage Order, even though they did not always receive
18 at least two (2) times the appropriate minimum wage.

19 73. Defendant's unlawful conduct alleged herein occurred in the course of
20 employment of Representative Plaintiffs and all others similarly situated and such conduct has
21 continued through the filing of this Complaint.

22 74. Representative Plaintiffs on behalf of themselves and the Class, seek damages and
23 all other relief allowable for expense reimbursement by the aforementioned labor code and pre-
24 judgment interest.

25 **SIXTH CAUSE OF ACTION**
26 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
27 **(California Business & Professions Code §§ 17200, et seq.)**

28 75. Representative Plaintiffs incorporate in this cause of action each and every
allegation of the preceding paragraphs, with the same force and effect as though fully set forth
herein.

76. Representative Plaintiffs further bring this cause of action seeking equitable and
statutory relief to stop Defendant's misconduct, as complained of herein, and to seek restitution

SCOTT COLE & ASSOCIATES, APC
ATTORNEY'S AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

1 of the amounts Defendant acquired through the unfair, unlawful, and fraudulent business
2 practices described herein.

3 77. Defendant's knowing conduct, as alleged herein, constitutes an unlawful and/or
4 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-
5 17208. Specifically, Defendant conducted business activities while failing to comply with the
6 legal mandates cited herein.

7 78. Defendant has clearly established a policy of accepting a certain amount of
8 collateral damage, as represented by the damages to the Representative Plaintiffs and to Class
9 Members herein alleged, as incidental to its business operations, rather than accept the
10 alternative costs of full compliance with fair, lawful, and honest business practices, ordinarily
11 borne by its responsible competitors and as set forth in legislation and the judicial record.

12
13 **SEVENTH CAUSE OF ACTION**
14 **PRIVATE ATTORNEYS GENERAL ACT CLAIM**
15 **(California Labor Code §§ 2699, et seq.)**

16 79. Representative Plaintiffs incorporate in this cause of action each and every
17 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
18 herein.

19 80. The Private Attorneys General Act of 2004, California Labor Code § 2699(a),
20 states:

21 Notwithstanding any other provision of the law, any provision of
22 this code that provides for a civil penalty to be assessed and
23 collected by the Labor and Workforce Development Agency or
24 any of its departments, divisions, commissions, boards, agencies,
25 or employees, for a violation of this code, may, as an alternative,
26 be recovered through a civil action brought by an aggrieved
27 employee on behalf of himself or herself and other current or
28 former employees....

24 84. Representative Plaintiffs are "aggrieved employee[s]" as defined by California
25 Labor Code § 2699(c) because they were employed by Defendant and were one of many
26 employees against whom violations of the law were committed.

27 85. Representative Plaintiffs have met and/or will meet all of the requirements set
28 forth in California Labor Code § 2699.3 necessary to commence a civil action against Defendant

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

1 for violations of (and/or recovery under) California Labor Code §§ 200-204, inclusive, 226,
2 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1198 and/or 2802.

3 86. Representative Plaintiffs bring this action on behalf of themselves as individuals
4 and all Class Members alleging violations of the California Labor Code sections cited in the
5 preceding paragraph.

6 87. As a direct and proximate result of Defendant's unlawful conduct, as set forth
7 herein, Class Members have sustained damages, including loss of earnings, in an amount to be
8 established at trial. As a further direct and proximate result of Defendant's unlawful conduct, as
9 set forth herein, Class Members are entitled to recover various penalties as provided by
10 California Labor Code § 2699, in an amount to be established at trial, as well as costs and
11 attorneys' fees, pursuant to statute.

12
13 **RELIEF SOUGHT**

14 **WHEREFORE, the Representative Plaintiffs, on behalf of themselves as individuals**
15 **and the proposed Plaintiff Class, prays for judgment and the following specific relief against**
16 **Defendant, and each of them, jointly and separately, as follows:**

17 1. That the Court declare, adjudge, and decree that this action is a proper class action
18 and certify the proposed Class and/or any other appropriate subclasses under California Code of
19 Civil Procedure § 382;

20 2. That the Court declare, adjudge, and decree that Defendant violated the provisions
21 of the California Labor Code and the applicable California Industrial Welfare Commission Wage
22 Order as to the Representative Plaintiffs and Class Members;

23 3. That the Court declare, adjudge, and decree that Defendant willfully violated its
24 legal duties to properly compensate Representative Plaintiffs and Class Members under the
25 California Labor Code and the applicable California Industrial Welfare Commission Wage
26 Orders;

27 4. That the Court declare, adjudge, and decree that the Representative Plaintiffs and
28 Class Members were, at all times relevant hereto, and are still, entitled to be meal and rest

1 periods as provided by the California Labor Code and the applicable California Industrial
2 Welfare Commission Wage Orders;

3 5. That the Court make an award to the Representative Plaintiffs and the Class
4 Members of one hour of pay at each employee's regular rate of compensation for each workday
5 that a meal period was not provided;

6 6. That the Court make an award to the Representative Plaintiffs and the Class
7 Members of one hour of pay at each employee's regular rate of compensation for each workday
8 that a rest period was not provided;

9 7. That the Court declare, adjudge, and decree that Defendant willfully violated its
10 legal duty to reimburse expenses pursuant to California Labor Code § 2802;

11 8. That the Court make an award to the Representative Plaintiffs and Class Members
12 of damages and/or restitution for the unreimbursed expenses, as provided by California Labor
13 Code § 2802(b) and (c) and all applicable statutes, including for interest and attorneys' fees;

14 9. That the Court order Defendant to pay restitution to the Representative Plaintiffs
15 and the Class Members due to Defendant's unlawful activities, pursuant to California Business
16 and Professions Code §§ 17200-17208;

17 10. That the Court further enjoin Defendant, ordering it to cease and desist from
18 unlawful activities in violation of California Business and Professions Code § 17200, *et seq.*;

19 11. For all other Orders, findings and determinations identified and sought in this
20 Complaint;

21 12. For interest on the amount of any and all economic losses, at the prevailing legal
22 rate;

23 13. For reasonable attorneys' fees, pursuant to California Labor Code §§ 1194,
24 2802(c), and/or California Code of Civil Procedure § 1021.5; and

25 14. For costs of suit and any and all such other relief as the Court deems just and
26 proper.


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THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

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Dated: January 28, 2014

SCOTT COLE & ASSOCIATES, APC


By: 
Jessica L. Campbell, Esq.
Attorneys for Representative Plaintiffs
and the Plaintiff Class

JURY DEMAND

Representative Plaintiffs, on behalf of themselves and the Plaintiff Class, hereby demand
a trial by jury.

Dated: January 28, 2014

SCOTT COLE & ASSOCIATES, APC

By: 
Jessica L. Campbell, Esq.
Attorneys for Representative Plaintiffs
and the Plaintiff Class