

1 LAW OFFICE OF KEVIN SCHWIN
KEVIN SCHWIN, SBN 262595
2 1220 East Olive Avenue
Fresno, California 93728
3 Telephone: (559)715-2889
Facsimile: (559)221-6812
4 E-mail: Kevin@Schwinlaw.com

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

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John A. Clarke, Executive Officer/Clerk
BY Cristina Grigalva Deputy

5 ALIREZA ALIVANDIVAVA, SBN 255730
1925 Century Park East, Suite 2120
6 Los Angeles, California 90067
Telephone: (424)239-0787
7 Facsimile: (310)300-1015
E-mail: aalivandi@gmail.com

8 LAW OFFICES OF THOMAS W. FALVEY
9 THOMAS W. FALVEY, SBN 65744
J.D. HENDERSON, SBN 235767
10 MICHAEL H. BOYAMIAN, SBN 256107
301 North Lake Avenue, Suite 800
11 Pasadena, California 91101
Telephone: (626) 795-0205
12 Facsimile: (626) 795-3096
E-mail: thomaswfalvey@gmail.com, hendersonj2004@gmail.com,
13 mike.falveylaw@gmail.com

14 Attorneys for Plaintiff MOHAMMED SHARIF,
individually and on behalf of all others similarly situated

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF LOS ANGELES

18 MOHAMMED SHARIF, individually and
19 on behalf of all others similarly situated,

20 Plaintiff,

21 vs.

22 KEYES MOTOR, INC. d/b/a KEYES
AUTOMOTIVE GROUP, a California
23 Corporation; KEYES AUTO BODY, INC., a
California Corporation; KEYES
24 EUROPEAN, LLC, a California limited
liability company; and DOES 1 through 25,
inclusive,

26 Defendants.

CASE NO.:

BC515169

[CLASS ACTION]

COMPLAINT FOR:

1. UNPAID WAGES (LABOR CODE §§ 216 and 1194);
2. FAILURE TO PAY MINIMUM WAGE (LABOR CODE §1194 *et seq.*);
3. FAILURE TO PAY REPORTING TIME AND CONTRACT WAGES (LABOR CODE §§ 1194 and 1198);
4. FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS (LABOR CODE §

226);

5. WAITING TIME PENALTIES (LABOR CODE §§ 201-203);
6. INDEMNIFICATION (LABOR CODE §§ 2800 and 2802);
7. COMMON LAW CONVERSION;
8. UNFAIR COMPETITION (BUSINESS AND PROFESSIONS CODE § 17200, *et seq.*); and
9. PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE §§ 2698 *et seq.*).

JURY TRIAL DEMANDED

Plaintiff MOHAMMED SHARIF (“Plaintiff”), individually and on behalf of all similarly situated individuals, alleges as follows:

GENERAL ALLEGATIONS

1. This is a proposed class action brought against Defendants KEYES EUROPEAN, LLC, a California limited liability company, KEYES MOTORS, INC. doing business as KEYES AUTOMOTIVE GROUP, a California corporation, and KEYES AUTO BODY, INC., a California corporation, and DOES 1 through 25, inclusive (collectively, “Defendants” or “Keyes”), on behalf of Plaintiff and all other individuals who were employed as an Auto Service Technician (including, but not limited to the titles “service technician”, “technician”, “engineer”, “mechanic” or other titles involving the service and repair of vehicles) (collectively referred to as “Auto Service Technicians”), at any time during the four years preceding the filing of this action, and continuing while this action is pending (“Class Period”), and who were denied the benefits and protections required under the Labor Code and other statutes and regulations applicable to employees in the State of California.

2. During the Class Period, Defendants:

- a. failed to pay wages for all hours worked, including for hours worked in excess of eight hours a day or forty hours a week, by the Auto Service

1 Technicians;

2 b. failed to pay minimum wages due to the Auto Service Technicians;

3 c. failed to pay contract and reporting time due to the Auto Service
4 Technicians;

5 d. failed to provide the Auto Service Technicians with timely and accurate
6 wage and hour statements;

7 e. failed to pay the Auto Service Technicians compensation in a timely
8 manner upon their termination or resignation;

9 f. failed to maintain complete and accurate payroll records for the
10 Auto Service Technicians;

11 g. failed to indemnify the Auto Service Technicians for all necessary
12 expenditures or losses;

13 h. wrongfully withheld wages and compensation due to the Auto Service
14 Technicians;

15 i. committed unfair business practices in an effort to increase profits and to
16 gain an unfair business advantage at the expense of the Auto Service
17 Technicians and the public; and

18 j. violated the Labor Code and owe civil penalties pursuant to Labor Code §
19 2699(a).

20 3. The foregoing acts and other acts by Defendants - committed throughout
21 California and Los Angeles County - violated numerous provisions of California law, including
22 Labor Code §§ 201, 202, 203, 204, 210, 216, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174,
23 1174.5, 1194, 1194.2, 1197, 1197.1, 1199, 2802, and 2698 *et seq.* and the applicable Wage
24 Orders issued by the Industrial Welfare Commission (collectively, "Employment Laws and
25 Regulations"), Business & Professions Code §§ 17200 *et seq.*, owe civil penalties pursuant to the
26 Private Attorneys General Act, Labor Code §§ 2698 *et seq.* ("PAGA"), and violated Plaintiff's
27 rights and the rights of the Auto Service Technicians.

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1 below.

2 10. Plaintiff is informed and believe and based thereon allege that DOES 1 through
3 25, inclusive, were the agents, servants and/or employees of Defendants and, in doing the things
4 hereinafter alleged and at all times, were acting within the scope of their authority as such agents,
5 servants and employees, and with the permission and consent of Defendants.

6 11. Plaintiff is informed and believes and based thereon alleges that Defendant
7 ratified, authorized, and consented to each and all of the acts and conduct of each other as alleged
8 herein. Each of the defendants was the agent and/or employee of the others, and the conduct of
9 each defendant herein alleged was authorized and/or ratified by the others. The conduct of Keyes
10 was carried on by and through its authorized agents, including owners, officers, directors,
11 managers and supervisors.

12 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

13 12. Plaintiff alleges that on or about May 31, 2013, Plaintiff provided written notice
14 by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendant of
15 the facts and theories regarding the violations of the Employment Laws and Regulations.
16 Attached as Exhibit 1 is a true and correct copy of the letter sent to the LWDA and Keyes.

17 13. More than 33 calendar days have elapsed since Plaintiff's notice to the LWDA
18 and Defendants. The LWDA has not advised Plaintiff that it intends to investigate Plaintiff's
19 claims, nor has Defendant provided notice that the alleged violations have been cured.

20 14. Plaintiff has therefore exhausted all administrative procedures required under
21 Labor Code §§ 2698, 2699 and 2699.3, and as a result, are justified as a matter of right in seeking
22 penalties pursuant to PAGA.

23 **FACTS**

24 15. Plaintiff is an individual who was a resident of the County of Los Angeles, during
25 the four years preceding the filing of this action. Plaintiff was employed by Defendant as Service
26 Technicians in Los Angeles County within the last four years preceding the filing of this action.

27 16. During Plaintiff's employment with Defendants, Keyes regularly scheduled
28 Plaintiff to work and in fact did work as a piecemeal employee or as if he was a commissioned

1 salesperson with the job title of Auto Mechanic, (also known as service technician, technician, or
2 engineer), and was not paid for all hours worked. Keyes also failed to provide overtime wages
3 earned for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week.

4 17. Throughout his employment with Defendants, Plaintiff did not receive the
5 appropriate amount of overtime hours, nor did he receive the appropriate overtime rate. Further,
6 Plaintiff did not receive the appropriate amount of waiting time on all occasions that the
7 appropriate wage order mandates. Specifically, Defendants failed to pay Plaintiff, including
8 absent class members, a minimum wage during their waiting time where Plaintiff was on the
9 clock, but awaiting vehicles to inspect, repair or perform other non-repair tasks, such as ordering
10 parts. Defendants compensated Plaintiff - and as a matter of uniform company policy all of its
11 mechanics - on an unlawful piece-rate basis, in which Plaintiff and all similarly situated are
12 primarily paid on the basis of the repair or service tasks completed. Plaintiff was paid a flat rate
13 for each "flag hour" he accrued. Plaintiff, and all similarly situated employees, only accrued flag
14 hours while working on a repair or inspection order. This compensation scheme is illegal and is
15 in violation of the Employment Laws and Regulations.

16 18. During Plaintiff's employment with Defendants, Defendants failed and refused to
17 provide Plaintiff with timely and accurate wage and hour statements in violation of the
18 Employment Laws and Regulations.

19 19. During Plaintiff's employment with Defendants, Defendants failed to indemnify
20 Plaintiff for all necessary expenditures or losses incurred by them in direct consequence of the
21 discharge of their duties, or of their obedience to the directions of Defendants.

22 20. During Plaintiff's employment with Defendants, Defendants wrongfully withheld
23 from Plaintiff and failed to pay wages and other compensation due for all hours worked, for
24 overtime work, and as otherwise required per Employment Laws and Regulations.

25 21. To the extent that any Auto Mechanic, including Plaintiff, entered into any
26 arbitration agreement with any Defendant, such agreement is void and unenforceable. Any such
27 agreement was one of adhesion, executed under duress, lacked consideration and mutuality, and

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1 is otherwise void under both Labor Code § 229 and the California Supreme Court case of
2 *Armendariz v. Foundation Health Psychare Services, Inc.* (2000) 24 Cal.4th 83.

3 **CLASS ACTION ALLEGATIONS**

4 22. All current and former Auto Mechanics who were employed by Defendants in
5 California during the Class Period, including Plaintiff, are proposed class members (henceforth,
6 “Class Members”).

7 23. The Auto Mechanics’ duties and activities during their respective working hours
8 and each shift are known to and directed by Defendants, and are set and controlled by
9 Defendants.

10 24. During the Class Period, Defendants have routinely failed and refused to
11 compensate Auto Mechanics for all wages earned (“off-the-clock” work).

12 25. During the Class Period, Keyes failed and refused to pay Auto Mechanics for all
13 hours worked including time during which Auto Mechanics were subject to Keyes’ control and
14 were suffered or permitted to work for Keyes. Keyes failed and refused to pay Auto Mechanics
15 for all hours worked, including but not limited to time worked before and after the official start
16 and end times of their shifts.

17 26. During the Class Period, Keyes subjected Auto Mechanics to an unlawful piece-
18 rate policy in which Auto Mechanics were not compensated for all of their hours worked. In
19 addition, Keyes failed to provide overtime wages earned for all hours worked in excess of eight
20 (8) hours per day and/or forty (40) hours per week.

21 27. During the Class Period, Defendants have failed and refused to provide Auto
22 Mechanics with timely and accurate wage and hour statements.

23 28. During the Class Period, Defendants have failed and refused to pay accrued wages
24 and other compensation earned and due immediately to Auto Mechanics who were terminated,
25 and Defendants have failed and refused to pay accrued wages and other compensation earned and
26 due within seventy-two hours to Auto Mechanics who ended their employment.

27 29. During the Class Period, Defendants have failed and refused to maintain complete
28 and accurate payroll records for Auto Mechanics showing gross hours earned, total hours

1 worked, all deductions made, net wages earned, and all applicable hourly rates in effect during
2 each pay period and the corresponding number of hours worked at each hourly rate.

3 30. During the Class Period, Defendants have failed and refused to indemnify the
4 Auto Mechanics for all necessary expenditures or losses incurred by them in direct consequence
5 of the discharge of their duties, or of their obedience to the directions of Defendants.

6 31. During the Class Period, Defendants have wrongfully withheld and failed to pay
7 Auto Mechanics wages and other compensation earned and due them for all hours worked, for
8 overtime premium pay, and as otherwise required pursuant to the Employment Laws and
9 Regulations.

10 32. Defendants' conduct violated the Employment Laws and Regulations. Defendants'
11 systematic acts and practices also violated, *inter alia*, Business & Professions Code §§ 17200, *et*
12 *seq.*

13 33. Plaintiff also seeks payment of overtime premium pay and other compensation, all
14 benefits required pursuant to the Employment Laws and Regulations, plus penalties and interest,
15 owed to Auto Mechanics.

16 34. The duties and business activities of the Class Members were essentially the same
17 as the duties and activities of the Plaintiff described above. At all times during the Class Period,
18 all of the Class Members were employed in the same or similar job as Plaintiff (as an Auto
19 Mechanic, Service Technicians, Technician, or Engineer) and were paid in the same manner and
20 under the same standard employment procedures and practices as Plaintiff.

21 35. During the Class Period, Defendants were fully aware that Plaintiff and the Class
22 Members were performing "off-the-clock" unpaid work and not being paid overtime premium pay
23 in violation of the provisions of the Labor Code.

24 36. Defendants' violations of the Employment Laws and Regulations were repeated,
25 willful and intentional.

26 37. Plaintiff and the Class Members have been damaged by Defendants' conduct.

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1 38. While the exact number of Class Members is unknown to Plaintiff at the present
2 time, based on information and belief, there are more than 40 such persons. A class action is the
3 most efficient mechanism for resolution of the claims of the Class Members.

4 39. In addition, a class action is superior to other available methods for the fair and
5 efficient adjudication of this controversy because the damages suffered by individual Class
6 Members may be relatively small, and the expense and burden of individual litigation would make
7 it impossible for such Class Members individually to redress the wrongs done to them. Moreover,
8 because of the similarity of the Class Members' claims, individual actions would present the risk
9 of inconsistent adjudications subjecting the Defendants to incompatible standards of conduct.

10 40. Plaintiff is currently unaware of the identities of all the Class Members.
11 Accordingly, Defendants should be required to provide to Plaintiff a list of all persons employed
12 as Auto Mechanics (and similarly situated individuals who held titles involving the service and
13 repair of vehicles) in California beginning four years prior to the filing of this Complaint until the
14 present, stating their last known addresses and telephone numbers, so that Plaintiff may give such
15 Class Members notice of the pendency of this action and an opportunity to make an informed
16 decision about whether to participate in it.

17 41. The proposed Class that Plaintiff seeks to represent is defined as follows:
18 All automotive service technicians (including, but not limited to, the titles of "service
19 technician", "technician", "engineer", "mechanic" or other titles involving the service and
20 repair of vehicles) who are or have been employed by Defendants in the State of California
at any time during the four years prior to the commencement of this suit.

21 42. There is a well-defined community of interest in the litigation and the proposed
22 Class is easily ascertainable:

23 a. Numerosity: While the precise number of Class Members has not been
24 determined at this time, Plaintiff is informed and believes that Defendants have employed in
25 excess of 40 persons as Automotive Service Technicians in California during the proposed Class
26 Period.

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1 b. Commonality: There are questions of law and fact common to Plaintiff and
2 the Class that predominate over any questions affecting only individual Class Members. These
3 common questions of law and fact include, without limitation:

- 4 i. Whether Defendants failed to compensate Plaintiff and the Class
5 Members for all hours worked, including for hours worked in
6 excess of eight hours a day or forty hours a week;
- 7 ii. Whether Defendants failed to pay Plaintiff and the Class Members
8 contract, reporting time, and minimum wages when those wages
9 came due as required by law;
- 10 iii. Whether Defendants failed to pay Plaintiff and the Class Members
11 the required minimum wage for every hour where work was
12 performed;
- 13 iv. Whether Defendants failed to provide Plaintiff and the Class
14 Members with accurate itemized statements;
- 15 v. Whether Defendants failed to maintain complete and accurate
16 payroll records for Plaintiff and the Class Members;
- 17 vi. Whether Defendants owe Plaintiff and the Class Members waiting
18 time penalties pursuant to Labor Code §203;
- 19 vii. Whether Defendants engaged in unfair business practices under
20 Business and Professions Code §17200;
- 21 viii. Whether Defendants wrongfully converted Plaintiff's and the
22 Class Members' property; and
- 23 ix. The effect upon and the extent of damages suffered by Plaintiff and
24 the Class Members and the appropriate amount of compensation.

25 c. Typicality: Plaintiff's claims are typical of the claims of the proposed
26 Class. Plaintiff and all Class Members sustained injuries and damages arising out of and caused
27 by Defendants' common course of conduct in violation of law as alleged herein.

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1 d. Adequacy of Representation: Plaintiff are members of the proposed Class
2 and will fairly and adequately represent and protect the interests of the Class Members. Counsel
3 who represent Plaintiff are competent and experienced in litigating large wage and hour and other
4 employment class actions.

5 e. Superiority of Class Action: A class action is superior to other available
6 means for the fair and efficient adjudication of this controversy. Questions of law and fact
7 common to the proposed Class predominate over any questions affecting only individual Class
8 Members. Each proposed Class Member has been damaged and is entitled to recovery by reason
9 of Defendants' illegal policies and/or practices of failing to pay full and correct wages, including
10 the minimum wage and overtime premium wages, as required by law. A class action will allow
11 those similarly situated persons to litigate their claims in the manner that is most efficient and
12 economical for the parties and the judicial system.

13
14 **FIRST CAUSE OF ACTION**

15 **(Failure to Pay Compensation For All Hours Worked - Labor Code §§ 216 and 1194**
16 **By Plaintiff Individually and on Behalf of All Class Members)**

17 43. As a separate and distinct cause of action, Plaintiff complains and realleges all of
18 the allegations contained in this complaint, and incorporates them by reference into this cause of
19 action as though fully set forth herein, excepting those allegations which are inconsistent with this
20 cause of action.

21 44. Plaintiff brings this action to recover unpaid compensation for all hours worked,
22 including for work over eight hours in a day and over forty hours in a workweek.

23 45. Defendants' conduct described in this Complaint violates, among other things,
24 Labor Code §§ 204, 216, 218, 218.5, 218.6, 510, 1194, and 1198 and the IWC Wage Orders.

25 46. Defendants failed to pay Plaintiff and the Class Members for all of the actual hours
26 worked, including for work over eight hours in a day and over forty hours in a workweek.

27 Defendants knew or should have known that Plaintiff and the Class Members were working these
28 hours.

1 47. Plaintiff and the Class Members are also entitled to penalties pursuant to Paragraph
2 No. 20 of the applicable IWC Wage Order which provides, in addition to any other civil penalties
3 provided by law, any employer or any other person acting on behalf of the employer who violates,
4 or causes *to be* violated, the provisions of the IWC Wage Order, shall be subject to a civil penalty
5 of \$50.00 (for initial violations) or \$100.00 (for subsequent violations) for each underpaid
6 employee for each pay period during which the employee was underpaid in addition to the amount
7 which is sufficient to recover unpaid wages.

8 48. As a result of Defendants' unlawful acts, Plaintiff and the Class Members have
9 been deprived of compensation in an amount according to proof at the time of trial, and are
10 entitled to recovery of such amounts, plus interest thereon, liquidated damages pursuant to Labor
11 Code § 1194.2, and attorneys' fees and costs, pursuant to Labor Code §§ 1194 and 2698, in an
12 amount according to proof at the time of trial. Plaintiff and the Class Members are also entitled to
13 additional penalties and/or liquidated damages pursuant to statute.

14
15 **SECOND CAUSE OF ACTION**

16 **(Failure to Pay Minimum Wages - Labor Code § 1194**

17 **By Plaintiff Individually and on Behalf of All Class Members)**

18 49. As a separate and distinct cause of action, Plaintiff complains and realleges all of
19 the allegations contained in this complaint, and incorporate them by reference into this cause of
20 action as though fully set forth herein, excepting those allegations which are inconsistent with this
21 cause of action.

22 50. At all relevant times, the IWC Wage Orders contained in Title 8 of the Code of
23 Regulations ("Wage Orders") applied to Plaintiff in Plaintiff's capacity as employees of
24 Defendants. The Wage Orders and California law provided, among other things, that Plaintiff
25 must receive minimum wage earnings for all hours worked.

26 51. During the Class Period, Defendants have routinely failed to pay Class Members,
27 including Plaintiff, the minimum wage required by the Employment Laws and Regulations for all
28 hours worked.

1 57. Class Members, including Plaintiff, also performed diagnostic and repair work for
2 the benefit of Defendants for which they were never paid.

3 58. The Class Members, including Plaintiff, have been deprived of their rightfully
4 earned wages as a direct and proximate result of Defendants' policies and practices and
5 Defendants' failure and refusal to pay that compensation.

6 59. As a result of Defendants', and each of their unlawful acts, Plaintiff and the Class
7 Members have been deprived of compensation in an amount according to proof at the time of
8 trial, and are entitled to recovery of such amounts, plus interest thereon and attorneys' fees and
9 costs according to proof at the time of trial.

10
11 **FOURTH CAUSE OF ACTION**

12 **(Failure to Furnish Accurate Wage and Hour Statements - Labor Code § 226**

13 **By Plaintiff Individually and on Behalf of All Class Members)**

14 60. As a separate and distinct cause of action, Plaintiff complains and realleges all of
15 the allegations contained in this complaint, and incorporate them by reference into this cause of
16 action as though fully set forth herein, excepting those allegations which are inconsistent with this
17 cause of action.

18 61. During the Class Period, Defendants have routinely failed to provide Class
19 Members, including Plaintiff, with timely and accurate wage and hour statements showing gross
20 hours earned, total hours worked, all deductions made, net wages earned, and all applicable hourly
21 rates in effect during each pay period and the corresponding number of hours worked at each
22 hourly rate.

23 62. As a consequence of Defendants' actions, Class Members are entitled to all
24 available statutory penalties, costs and reasonable attorneys' fees, including those provided in
25 Labor Code § 226(e), as well as all other available remedies.

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1 **FIFTH CAUSE OF ACTION**

2 **(For Waiting Time Penalties - Labor Code §§ 201-203**

3 **By Plaintiff Individually and on Behalf of All Class Members)**

4 63. As a separate and distinct cause of action, Plaintiff complains and realleges all of
5 the allegations contained in this complaint, and incorporates them by reference into this cause of
6 action as though fully set forth herein, excepting those allegations which are inconsistent with this
7 cause of action.

8 64. During the Class Period, Defendants failed to pay accrued wages and other
9 compensation due immediately to each Class Member who was terminated, and failed to pay
10 accrued wages and other compensation due within seventy-two hours to each Class Member,
11 including Plaintiff, who ended his employment.

12 65. Labor Code § 201 requires an employer who discharges an employee to pay
13 compensation due and owing to said employee immediately upon discharge. Labor Code § 203
14 provides that if an employer willfully fails to pay compensation promptly upon discharge, as
15 required by § 201, the employer is liable for waiting time penalties in the form of continued
16 compensation for up to 30 work days.

17 66. Defendants, and each of them, willfully failed and refused, and continue to
18 willfully fail and refuse, to timely pay compensation due to Class Members upon termination or
19 resignation, as required by Labor Code § 201. As a result, Defendants, and each of them, are
20 liable to Plaintiff and all Class Members similarly situated for waiting time penalties, together
21 with interest thereon, pursuant to Labor Code § 203, as well as all other available remedies, in an
22 amount according to proof at the time of trial.

23
24 **SIXTH CAUSE OF ACTION**

25 **(For Indemnification - Labor Code § 2802**

26 **By Plaintiff Individually and on Behalf of All Class Members)**

27 67. As a separate and distinct cause of action, Plaintiff complain and reallege all of the
28 allegations contained in this complaint, and incorporate them by reference into this cause of action

1 as though fully set forth herein, excepting those allegations which are inconsistent with this cause
2 of action.

3 68. Pursuant to Labor Code § 2802(a), an employer shall indemnify its employees for
4 all necessary expenditures or losses incurred by the employees in direct consequence of the
5 discharge of their duties, or of their obedience to the directions of the employer, even though
6 unlawful, unless the employee, at the time of obeying the directions, believed them to be
7 unlawful.

8 69. During the Class Period, the Class Members, including Plaintiff, incurred
9 necessary business-related expenses and costs that were not fully reimbursed by Defendants,
10 including and without limitations, specialized hand tools

11 70. During the Class Period, Defendants failed to reimburse the Class Members,
12 including Plaintiff, for necessary business-related expenses and costs.

13 71. The Class Members, including Plaintiff, are entitled to recover from Defendants
14 their business-related expenses and costs incurred during the course and scope of their
15 employment, plus attorneys' fees, costs and interest accrued from the date on which the employee
16 incurred the necessary expenditures.

17
18 **SEVENTH CAUSE OF ACTION**

19 **(For Common Law Conversion**

20 **By Plaintiff Individually and on Behalf of All Class Members)**

21 72. As a separate and distinct cause of action, Plaintiff complains and realleges all of
22 the allegations contained in this complaint, and incorporates them by reference into this cause of
23 action as though fully set forth herein, excepting those allegations which are inconsistent with this
24 cause of action.

25 73. Defendants have knowingly and wrongfully withheld Class Members' property.
26 Earned wages for labor already performed is property. The right to possess this property fully
27 vested at the time the labor and services were performed and, accordingly, this property belongs to
28 Plaintiff and the Class Members, and is not and never was the property of Defendants.

1 74. Defendants wrongfully and knowingly converted Class Members' property as part
2 of a deliberate scheme to maximize profits at the expense of the Class Members, including
3 Plaintiff.

4 75. Defendants wrongfully converted the property of Plaintiff and the Class Members
5 by:

6 a. Withholding property which the Class Members, including Plaintiff, owned
7 and had the legal right to hold, possess and dispose of, and then

8 b. Taking this property and utilizing it for Defendants' own use, purpose and
9 benefit.

10 76. At the time the conversion took place, Class Members, including Plaintiff, were
11 entitled to possession of this fully-vested property.

12 77. The Class Members, including Plaintiff, have been injured by Defendants'
13 wrongful conversion of their property. The Class Members, including Plaintiff, are entitled to
14 immediate possession of all property wrongfully converted by Defendants, with interest, as well
15 as any and all profits, whether direct or indirect, which Defendants' acquired by the unlawful
16 conversion.

17 78. As alleged herein, Defendants' conduct was oppressive in that it subjected the
18 Class Members, including Plaintiff, to cruel and unjust hardship in conscious disregard of the
19 rights of Class Members, including Plaintiff.

20 79. In addition to the actual damages caused, the Class Members, including Plaintiff,
21 are entitled to recover damages for the sake of example and by way of punishing Defendants.

22

23

EIGHTH CAUSE OF ACTION

24

(For Unfair Competition - Business & Professions Code § 17200, *et seq.*

25

By Plaintiff Individually and on Behalf of All Class Members)

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80. As a separate and distinct cause of action, Plaintiff complains and realleges all of
the allegations contained in this complaint, and incorporates them by reference into this cause of

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1 action as though fully set forth herein, excepting those allegations which are inconsistent with
2 this cause of action.

3 81. As a result of Defendants' unfair business practices, Defendants have reaped unfair
4 benefits and illegal profits at the expense of Class Members, including Plaintiff, and members of
5 the public. Defendants should be made to disgorge their ill-gotten gains and to restore them to
6 Class Members, including Plaintiff.

7 82. Defendants' unfair business practices violate the Unfair Competition Laws and
8 entitle Plaintiff to seek preliminary and permanent injunctive relief including, but not limited to,
9 orders that Defendants account for, disgorge and restore to the Class Members, including
10 Plaintiff, the wages and other compensation unlawfully withheld from them.

11 83. In addition to the actual damages caused by the unlawful conversion, the Class
12 Members, including Plaintiff, are entitled to recover damages for the sake of example and by way
13 of punishing Defendants.

14
15 **NINTH CAUSE OF ACTION**

16 **(Private Attorneys General Act - Labor Code §§ 2698 et seq.**

17 **On Behalf of Plaintiff and All Those Similarly Aggrieved)**

18 84. As a separate and distinct cause of action, Plaintiff complains and realleges all of
19 the allegations contained in this complaint, and incorporate them by reference into this cause of
20 action as though fully set forth herein, excepting those allegations which are inconsistent with this
21 cause of action.

22 85. Plaintiff is an "aggrieved employee" as defined in Labor Code § 2699 (a). Plaintiff
23 bring this cause of action on behalf of himself and other current or former employees affected by
24 the labor law violations alleged in this complaint.

25 86. Defendants, at all times relevant to this complaint, were employers or persons
26 acting on behalf of an employer who violated Plaintiff's rights by violating the Employment Laws
27 and Regulations and are subject to civil penalties.

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1 87. Defendants committed the following violations of the Labor Code against Plaintiff,
2 and, on information and belief, against other current or former employees while they were
3 employed by Defendants:

4 (a) Defendants violated Labor Code §§ 201-203 by failing to pay all wages due
5 on the date of the employee's involuntary termination or within 72 hours of the employee's
6 voluntary termination.

7 (b) Defendants violated Labor Code § 216 by, having the ability to pay,
8 willfully refusing to pay wages due and payable after demand has been made.

9 (c) Defendants violated Labor Code § 226 by failing to provide accurate
10 itemized wage statements.

11 (d) Defendants violated Labor Code §§ 1194, 1198, 204, 210, 218, 218.5,
12 218.6, and 8 California Code of Regulations § 11040 *et seq.* by failing to pay Class Members,
13 including Plaintiff, contract, reporting time, and minimum wages when those wages came due as
14 required by law.

15 (e) Defendants violated Labor Code § 1174 by failing to maintain payroll
16 records showing the daily hours worked.

17 (f) Defendants violated Labor Code §§ 510, 1194 and 1197 and provisions of
18 the applicable IWC Wage Order by failing to pay the legal minimum wage and overtime premium
19 pay.

20 (g) Defendants violated Labor Code § 1199 by requiring or causing Class
21 Members, including Plaintiff, to work under conditions of labor prohibited by the applicable IWC
22 Wage Order, by paying Class Members, including Plaintiff, a wage less than the minimum fixed
23 by the applicable Wage Order, or by violating or refusing or neglecting to comply with the
24 provisions of Labor Code Division 2, Part 4, Chapter 1 or the applicable IWC Wage Order.

25 (h) Defendants violated Labor Code § 2802 by failing to indemnify Class
26 Members, including Plaintiff, for all necessary expenditures or losses incurred in direct
27 consequence of the discharge of their duties, or of their obedience to the directions of Defendants.

28 ///

1 88. Plaintiff provided written notice on or about May 31, 2013 by certified mail to the
2 Labor and Workforce Development Agency and to Keyes of the facts and theories regarding the
3 violations of the Employment Laws and Regulations. Attached as Exhibit 1 is a true and correct
4 copy of the letter sent to the LWDA and Keyes.

5 89. More than 33 calendar days have elapsed since Plaintiff's notice to the LWDA and
6 Defendants. The LWDA has not advised Plaintiff that it intends to investigate Plaintiff's claims,
7 nor have Defendants provided notice that the alleged violations have been cured. Plaintiff have
8 therefore exhausted all administrative procedures required under Labor Code §§ 2698, 2699 and
9 2699.3, and as a result, are justified as a matter of right in bringing forward this cause of action.

10 90. Pursuant to PAGA, Plaintiff should be awarded twenty-five percent (25%) of all
11 penalties due under California law, including attorneys' fees and costs.


12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for judgment
14 against Defendants as follows:

- 15 1. For an Order certifying the First through Eighth Causes of Action as a class action;
- 16 2. For an Order appointing Plaintiff's counsel as Class counsel;
- 17 3. For compensatory damages in an amount to be ascertained at trial;
- 18 4. For restitution in an amount to be ascertained at trial;
- 19 5. For punitive and exemplary damages in an amount to be ascertained at trial;
- 20 6. For all penalties allowed by law, including PAGA penalties;
- 21 7. That the Ninth Cause of Action (PAGA) be maintained as a representative
22 action;
- 23 8. For prejudgment interest;
- 24 9. For reasonable attorneys' fees pursuant to Labor Code §§ 1194 and 2698;
- 25 10. For costs of suit incurred herein;
- 26 11. For disgorgement of profits garnered as a result of Defendants' unlawful failure to
27 pay wages, including overtime wages, earned; and
- 28 12. For such further relief as the Court may deem appropriate.

1 DATED: July 15, 2013

LAW OFFICES OF THOMAS W. FALVEY
ALIREZA ALIVANDIVAF
LAW OFFICES OF KEVIN SCHWIN


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5 By: 
6 MICHAEL H. BOYAMIAN
7 Attorneys for Plaintiff MOHAMMED SHARIF,
8 individually and on behalf of all others similarly
9 situated

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff Mohammed Sharif, individually and on behalf of all similarly situated individuals,
10 demand jury trial of this matter.

11
12 DATED: July 15, 2013

LAW OFFICES OF THOMAS W. FALVEY
ALIREZA ALIVANDIVAF
LAW OFFICES OF KEVIN SCHWIN

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14
15 By: 
16 MICHAEL H. BOYAMIAN
17 Attorneys for Plaintiff MOHAMMED SHARIF,
18 individually and on behalf of all others similarly
19 situated
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