

1 MORGAN, LEWIS & BOCKIUS LLP  
 2 JOHN S. BATTENFELD (SBN 119513)  
 3 300 South Grand Avenue, 22nd Floor  
 4 Los Angeles, CA 90071-3132  
 5 Tel: 213.612.2500  
 6 Fax: 213.612.2501  
 7 Email: [jbattenfeld@morganlewis.com](mailto:jbattenfeld@morganlewis.com)

8 MORGAN, LEWIS & BOCKIUS LLP  
 9 DARREN J. CAMPBELL, SBN 223088  
 10 5 Park Plaza, Suite 1750  
 11 Irvine, California 92614  
 12 Tele: 949-399-7000  
 13 Fax: 949-399-7001  
 14 email: [dcampbell@morganlewis.com](mailto:dcampbell@morganlewis.com)

15 Attorneys for Defendant  
 16 BDO SEIDMAN, LLP

17 UNITED STATES DISTRICT COURT  
 18 CENTRAL DISTRICT OF CALIFORNIA

19 NAM NGUYEN,  
 20  
 21 Plaintiff,  
 22  
 23 vs.  
 24 BDO SEIDMAN, LLP, a Limited  
 25 Liability Partnership; and DOES 1-  
 26 10, inclusive,  
 27  
 28 Defendant.

Case No. SACV07-1352 JVS (MLGx)

Hon. James V. Selna

CLASS ACTION

**DEFENDANTS BDO SEIDMAN,  
 LLP'S ANSWER TO PLAINTIFF'S  
 COMPLAINT**

1 Defendant BDO SEIDMAN, LLP (“BDO”), through its undersigned counsel,  
2 answer the factual allegations of Plaintiff Nam Nguyen’s (“Plaintiff”) Complaint as  
3 follows:

4 **INTRODUCTION**

5 1. Answering Paragraph 1 of the Complaint, BDO does not believe that  
6 the paragraph alleges any facts. To the extent that the paragraph makes any factual  
7 allegation against BDO, BDO denies such allegations.

8 2. Answering Paragraph 2 of the Complaint, BDO does not believe that  
9 the paragraph alleges any facts. To the extent that the paragraph makes any factual  
10 allegation against BDO, BDO denies such allegations.

11 3. Answering Paragraph 3 of the Complaint, BDO does not believe that  
12 the paragraph alleges any facts. To the extent that the paragraph makes any factual  
13 allegation against BDO, BDO denies such allegations.

14 **PARTIES**

15 4. Answering Paragraph 4 of the Complaint, BDO lacks information  
16 sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 4,  
17 and on that basis, denies the allegations. In further answering Paragraph 4 of the  
18 Complaint, BDO admits that Plaintiff worked for BDO from June 17, 2002  
19 through November 15, 2004 as an accountant. BDO does not have sufficient  
20 information to admit or deny whether Plaintiff held an “advanced degree in  
21 accountancy,” was licensed as an accountant by a state or federal agency, or if  
22 Plaintiff had tested for or received the designation “Certified Public Accountant” or  
23 “CPA” from the State of California within the past four years, and thereupon denies  
24 this allegation. Except as expressly admitted, BDO denies all remaining allegations  
25 in Paragraph 4 of the Complaint.

26 5. Answering Paragraph 5 of the Complaint, BDO admits that it is a  
27 Limited Liability Partnership organized under the laws of the State of New York  
28 and it is authorized to conduct business in the State of California. Except as

1 expressly admitted, BDO denies all remaining allegations in Paragraph 5 of the  
2 Complaint.

3 6. Answering Paragraph 6 of the Complaint, BDO denies each and every  
4 allegation contained in Paragraph 6.

5 7. Answering Paragraph 7 of the Complaint, BDO denies each and every  
6 allegation contained in Paragraph 7.

### 7 **JURISDICTION AND VENUE**

8 8. Answering Paragraph 8 of the Complaint, BDO admits that it is a  
9 Limited Liability Partnership organized under the laws of the State of Delaware and  
10 that its principal place of business is Chicago. BDO further avers that the  
11 allegations set forth in Paragraph 8 are conclusions of law, to which no answer is  
12 required. To the extent any such allegations are not deemed to be conclusions of  
13 law, BDO denies such allegations that are not expressly admitted.

14 9. Answering Paragraph 9 of the Complaint, BDO avers that the  
15 allegations set forth are conclusions of law, to which no answer is required. BDO  
16 denies all factual allegations.

### 17 **FACTUAL ALLEGATIONS**

18 10. Answering Paragraph 10 of the Complaint, BDO admits that Plaintiff  
19 worked for BDO from June 17, 2002 through November 15, 2004 as an accountant.  
20 BDO does not have sufficient information to admit or deny whether Plaintiff held  
21 an “advanced degree in accounting” or if Plaintiff had received the designation  
22 “Certified Public Accountant” or “CPA” from the State of California within the  
23 past four years, and thereupon denies this allegation. BDO further avers that the  
24 allegations set forth in Paragraph 10 are conclusions of law, to which no answer is  
25 required. To the extent any such allegations are not deemed to be conclusions of  
26 law, BDO denies such allegations that are not expressly admitted.

27 11. Answering Paragraph 11 of the Complaint, BDO denies each and  
28 every allegation contained in Paragraph 11.



1           21.    Answering Paragraph 21 of the Complaint, including all subparts,  
2 BDO avers that the allegations set forth in Paragraph 21 are conclusions of law, to  
3 which no answer is required. To the extent any such allegations are not deemed to  
4 be conclusions of law, BDO denies such allegations.

5           22.    Answering Paragraph 22 of the Complaint, including all subparts,  
6 BDO avers that the allegations set forth in Paragraph 22 are conclusions of law, to  
7 which no answer is required. To the extent any such allegations are not deemed to  
8 be conclusions of law, BDO denies such allegations.

9           23.    Answering Paragraph 23 of the Complaint, BDO denies each and  
10 every allegation contained in Paragraph 23.

11          24.    Answering Paragraph 24 of the Complaint, BDO avers that the  
12 allegations set forth in Paragraph 24 are conclusions of law, to which no answer is  
13 required. To the extent any such allegations are not deemed to be conclusions of  
14 law, BDO denies such allegations.

15          25.    Answering Paragraph 25 of the Complaint, BDO avers that the  
16 allegations set forth in Paragraph 25 are conclusions of law, to which no answer is  
17 required. To the extent any such allegations are not deemed to be conclusions of  
18 law, BDO denies such allegations.

19          26.    Answering Paragraph 26 of the Complaint, BDO avers that the  
20 allegations set forth in Paragraph 26 are conclusions of law, to which no answer is  
21 required. To the extent any such allegations are not deemed to be conclusions of  
22 law, BDO denies such allegations.

23          27.    Answering Paragraph 27 of the Complaint, BDO avers that the  
24 allegations set forth in Paragraph 27 are conclusions of law, to which no answer is  
25 required. To the extent any such allegations are not deemed to be conclusions of  
26 law, BDO denies such allegations.

27          28.    Answering Paragraph 28 of the Complaint, including all subparts,  
28 BDO denies each and every allegation contained in Paragraph 28.









1 extent any such allegations are not deemed to be conclusions of law, BDO denies  
2 such allegations.

3 55. Answering Paragraph 55 of the Complaint, BDO admits that Plaintiff  
4 purports to seek the relief set forth in Paragraph 55. However, BDO denies that  
5 Plaintiff is entitled to the relief set forth in Paragraph 55 or to any relief based on  
6 any of the allegations set forth in the Complaint.

7 **Fifth Cause Of Action Against BDO**

8 56. Answering Paragraph 56 of the Complaint, BDO incorporates herein  
9 its responses to all prior paragraphs of the Complaint.

10 57. Answering Paragraph 57 of the Complaint, BDO lacks information  
11 sufficient to form a belief as to the truth or falsity of the allegations in Paragraph  
12 57, and on that basis, denies the allegations.

13 58. Answering Paragraph 58 of the Complaint, BDO avers that the  
14 allegations set forth are conclusions of law, to which no answer is required. To the  
15 extent any such allegations are not deemed to be conclusions of law, BDO denies  
16 such allegations.

17 59. Answering Paragraph 59 of the Complaint, BDO denies each and  
18 every allegation contained in Paragraph 59.

19 **Sixth Cause Of Action Against BDO**

20 60. Answering Paragraph 60 of the Complaint, BDO incorporates herein  
21 its responses to all prior paragraphs of the Complaint.

22 61. Answering Paragraph 61 of the Complaint, BDO denies each and  
23 every allegation contained in Paragraph 61.

24 62. Answering Paragraph 62 of the Complaint, BDO denies each and  
25 every allegation contained in Paragraph 62.

26 63. Answering Paragraph 63 of the Complaint, BDO denies each and  
27 every allegation contained in Paragraph 63.

28



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

**THIRD DEFENSE**

**(Uncertainty)**

3. Plaintiff’s claims, and the claims of each putative member of each purported class as set forth in the Complaint, are barred in whole or in part because the Complaint is uncertain in that the purported class definitions are ambiguous or conclusory.

**FOURTH DEFENSE**

**(Conduct Reasonable and In Good Faith/Not Willful)**

4. BDO contends that if BDO is found to have failed to pay Plaintiff, or any putative member of the purported class defined in the Complaint, any amount due, which allegations BDO denies, BDO acted at all times on the basis of a good faith and reasonable belief that they had complied fully with California wage and hour laws. Consequently, Defendant’s conduct was not willful within the meaning of Labor Code Section 203.

**FIFTH DEFENSE**

**(Failure to Exhaust Internal and Administrative Remedies/Preconditions)**

5. The claims of Plaintiff and each putative member of the class Plaintiff purports to represent are barred to the extent that Plaintiff has failed to exhaust his internal and/or administrative remedies.

**SIXTH DEFENSE**

**(Statute of Limitations)**

6. Plaintiff’s claims are barred or limited by the applicable statute(s) of limitations, including but not limited to, California Code of Civil Procedure Sections 338, 339, 340 and Labor Code Section 203, and California Business and Professions Code Section 17208.

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

**SEVENTH DEFENSE**

**(Lack of Standing)**

7. Plaintiff lacks standing under the California Labor Code to bring some or all of the claims alleged against BDO.

**EIGHTH DEFENSE**

**(Lack of Standing)**

8. Plaintiff fails to satisfy the prerequisites for class action certification and, therefore, lacks standing and cannot represent the interests of others as to each of the purported causes of action.

**NINTH DEFENSE**

**(Not Appropriate for Class Action)**

9. The types of claims alleged by the named Plaintiff on behalf of himself and the alleged class, the existence of which are expressly denied, are matters in which individual questions predominate and/or the superior method of adjudication for Plaintiff's claims are not appropriate for class action treatment.

**TENTH DEFENSE**

**(Numerosity)**

10. The Complaint fails to the extent it asserts a class action, because the putative class Plaintiff purports to represent, the existence of which are expressly denied, lacks numerosity.

**ELEVENTH DEFENSE**

**(Claims Not Common or Typical)**

11. The claims alleged by the named Plaintiff are neither common to nor typical of those, if any, of the alleged class Plaintiff purports to represent.

1 **TWELFTH DEFENSE**

2 **(Inadequate Representatives)**

3 12. The Complaint fails to the extent it asserts a class action, because  
4 neither Plaintiff nor Plaintiff's counsel will fairly and adequately represent the  
5 purported classes.

6 **THIRTEENTH DEFENSE**

7 **(Superiority)**

8 13. A class claim under California Business and Professions Code Section  
9 17200 is not maintainable for, among other reasons, failure to satisfy the  
10 requirement of superiority.

11 **FOURTEENTH DEFENSE**

12 **(Failure to Mitigate)**

13 14. Plaintiff's monetary claims are barred, in whole or in part, because he  
14 has not appropriately or adequately mitigated his damages, if any.

15 **FIFTEENTH DEFENSE**

16 **(Adequate Remedy at Law)**

17 15. Plaintiff is not entitled to a recovery of equitable relief, including any  
18 relief requested pursuant to California Business and Professions Code Section  
19 17200, because of the existence of an adequate remedy at law.

20 **SIXTEENTH DEFENSE**

21 **(Laches)**

22 16. The Complaint, including the averment of damages purportedly stated  
23 therein, are barred in whole or in part by the doctrine of laches.

24 **SEVENTEENTH DEFENSE**

25 **(Estoppel)**

26 17. The Complaint is barred in whole or in part by Plaintiff's own conduct,  
27 actions, and inactions, which amount to and constitute an estoppel of any relief  
28 sought thereby.

1 **EIGHTEENTH DEFENSE**

2 **(Unclean Hands)**

3 18. Plaintiff's claims are barred in whole or in part by the doctrine of  
4 unclean hands.

5 **NINETEENTH DEFENSE**

6 **(Waiver of Claims)**

7 19. The claims of Plaintiff and of the purported class are barred in whole  
8 or in part because such claims have been waived, discharged, abandoned, and/or  
9 released.

10 **TWENTIETH DEFENSE**

11 **(Excessive Fines)**

12 20. An award of penalties and/or punitive damages under the  
13 circumstances of this case would constitute an excessive fine and otherwise would  
14 be in violation of BDO's due process and other rights under the United States and  
15 California Constitutions.

16 **TWENTY-FIRST DEFENSE**

17 **(Action Unconstitutional)**

18 21. Certification of a class, based upon the facts and circumstances of this  
19 case, would constitute a denial of BDO's right to due process under the Fourteenth  
20 Amendment of the United States Constitution, and the California Constitution.

21 **TWENTY-SECOND DEFENSE**

22 **(Exclusive Remedy Doctrine)**

23 22. Plaintiff's claims for punitive and exemplary damages are barred by  
24 the exclusive remedy doctrine.

25 **TWENTY-THIRD DEFENSE**

26 **(California Law Overtime and Minimum Wage Exemption)**

27 23. Plaintiff and the class he purports to represent are exempt from the  
28 overtime, meal and rest period and time reporting requirements under the California

1 Labor Code and the applicable Industrial Welfare Commission wage order or wage  
2 orders promulgated under the California Labor Code, including but not limited to,  
3 the exemptions set forth in Sections 1(A)(2) and (A)(3) of the applicable wage  
4 order or wage orders, such as the “administrative” exemption and the exemption for  
5 “professionals.” To the extent that Plaintiff or each putative member of each  
6 purported subclass defined in the Complaint perform or performed additional  
7 exempt duties, the rules and interpretive guidance applicable to those exemptions  
8 may apply to such person.

9 **RESERVATION OF RIGHTS**

10 BDO reserves the right to assert such additional defenses that may appear  
11 and prove applicable during the course of this litigation.

12 WHEREFORE, BDO prays for judgment that:

- 13 1. The Court deny Plaintiff’s request to certify this action as a class  
14 action;
- 15 2. Plaintiff takes nothing by reason of the Complaint on file herein, and  
16 that said Complaint be dismissed with prejudice;
- 17 3. Judgment be entered in favor of BDO and against Plaintiff on all  
18 causes of action;
- 19 4. BDO be awarded its costs of suit incurred herein;
- 20 5. BDO be awarded its attorneys’ fees incurred by this action pursuant to  
21 California Labor Code Section 218.5; and,

22 ////  
23 ////  
24 ////  
25 ////  
26 ////  
27 ////  
28 ////

