STATEMENT AS TO THE BASIS FOR AMENDMENT TO SECTION 11 OF WAGE ORDER NO. 1 REGARDING EMPLOYEES IN THE MANUFACTURING INDUSTRY

TAKE NOTICE that the Industrial Welfare Commission of the State of California ("IWC"), in accordance with the authority vested in it by the California Constitution, Article 14, Section 1, as well as Labor Code §§ 500-558, and 1171-1204, has promulgated an amendment Wage Order 1, Section 11 (Meal Periods) for employees working in the manufacturing industry. The promulgation of the amendment was initiated by a joint request in a letter dated May 31, 2001 from New United Motor Manufacturing, Inc. (hereinafter "NUMMI") and the United Automobile Workers, Local 2244 (hereinafter the "UAW") to the Industrial Welfare Commission (hereinafter the "IWC"). NUMMI and the UAW proposed that Section 11(A) be amended as follows:

> "(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 thirty (30) minutes, except that when a work period of not more than six (6) hours will complete the days' work the meal period may be waived by mutual consent of employer and employee. In case of employees covered by a valid collective bargaining agreement, the parties to the collective bargaining agreement may agree to a meal period that commences after no more than six (6) hours of work."

During its preliminary investigation that the IWC conducted in accordance with the provisions of Labor Code §§ 1173, 1178, and 1178.5, the IWC received public comment regarding the above amendment from NUMMI representative Ann O'Regan. Ms. O'Regan explained that NUMMI and the UAW believe that, in situations where there is a valid collective bargaining agreement in which the union and management have agreed to extend the work time from five hours to no more than six hours before employee meal periods are required, there would be no problems for employees and the interests of all parties to the agreement would be served. She further suggested that the joint request of NUMMI and the UAW satisfies the provisions of Labor Code § 512 (b)**1**.

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1 Labor Code § 512(b) provides: "Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees."

In addition, Ms. O'Regan referred the IWC to Wage Orders 12 and 16 as precedent for the request. She stated that Wage Orders 12 and 16 cover a significant number of employees that are subject to collective bargaining agreements. Wage Order 12 provides that employees must receive a meal period of from thirty (30) minutes to no more than one (1) hour after working six (6) hours, and a subsequent meal period not later than six (6) hours after the termination of the preceding meal period. Wage Order 16 exempts employees from the thirty (30) minute meal period entirely, if the employees are covered by a valid collective bargaining agreement that expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

During the public meeting held August 24, 2001, the IWC advised Ms. O'Regan that the recent enactment of Senate Bill 1208**2** clarified the provisions of Labor Code §514 regarding the effect of collective bargaining agreements on the State wage and hour law requirements. Employees covered by valid collective bargaining agreements are not subject to the daily overtime and alternative workweek provisions of Labor Code §§ 510 and 511only, "if the agreement expressly provides for the wages, hours of work, and working conditions of the

employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage." Thus, employees and employers covered by valid collective bargaining agreements must still comply with the meal period and other working conditions requirements of the Labor Code and the IWC's wage orders. The IWC advised Ms. O'Regan that, in order to convene a wage board, it would need more evidence from employees. IWC Chair Bill Dombrowski stated . . . "I mean, what we're saying is we need more evidence from employees that they are being harmed by this [meal period] provision. And we haven't seen that yet."

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2 Stats 2001, Ch. 148

At the public hearing held October 29, 2001, Ms. O'Regan appeared with UAW attorney Jonathan Weissglass. Mr. Weissglass advised the IWC that the UAW fully joined in NUMMI's request to amend Section 11 of Wage Order 1. The IWC thereafter held a public hearing on the proposed amendment to Section 11. Ms. O'Regan and a representative of the UAW appeared at the hearing and testified. The IWC did not receive any information or testimony from employees and employers in other types of non-automobile businesses in the manufacturing industry. However, the IWC received letters for NUMMI employees who stated that they currently take their meal period after working five (5) hours and fifteen (15) minutes, and would prefer not to be required to take their meal period after no more than five (5) hours. One employee also stated: "The current schedule is better for team members because it breaks up our schedule into 2½ hour work periods, which coincides with our change in work rotation."

Following the investigation, and as part of its continuing duties to ascertain the wages, hours, and conditions of labor and employment of employees in the State, the IWC determined that the current meal period provisions in Wage Order 1 may be prejudicial to the health, safety, and welfare of such employees. The IWC therefore decided to convene a wage board and selected an equal number of employee and employer representatives, and a non-voting chairperson, to consider whether Section 11, Meal Periods, should be amended. The IWC asked the wage board to report its recommendation as to whether Section 11, Meal Periods should be amended for employees covered by Wage Order 1 generally, or for employees of automobile manufacturers specifically, so that they may take their thirty (30) minute meal period after working no more than six (6), rather than five (5), hours.

The wage board met on March 5, 2002. During the meeting, an employee representative said the UAW has had a collective bargaining agreement in place for 18 years that covers the timing of meal periods and employees are happy with the present arrangement. Another employee representative added that other manufacturing unions support the change as long as employees and management agree. An employer representative proposed that the amendment to Section 11 apply broadly to all occupations covered by Wage Order 1-2001. His only concern was the possibility that workers could take meals after five and a half hours and then be required to work a double shift. However, an employee representative stated that he was not aware of any complaints or problems regarding multiple shifts, and noted that the UAW negotiates three-year contracts in a totally democratic process so employees have a voice in these issues. In addition, he stated that the UAW does not condone double shifts for anyone; the collective bargaining agreement provides for breaks and overtime. In terms of general industry practice, he said, most manufacturers consider two shifts unsafe, and believe that they should be used only in emergency situations. Another employee representative stated that the unions he represents have no problems with multiple shifts. He emphasized the proposed language applies only to employees working under collective bargaining agreements.

The general consensus of the employer and employee representatives on the wage board was that the proposed amendment should apply generally to all workers covered by Wage Order 1-2001. An employer representative

pointed out there that was no dissent from anyone during the public notice and comment period. The wage board thereafter voted unanimously to adopt the proposed modification to Section 11, and unanimously agreed to recommend that the IWC send out a proposed regulation for public comment that contains the bold and italicized language set forth above.
Labor Code § 1178.5(c) provides that "proposed regulations shall include any recommendation of a wage board which received the support of at least two-thirds of the members of the wage board." Thus at its public meeting held March 11, 2002, the IWC voted to include the above language in a proposed amendment to Section 11 of Wage Order 1, and send out notices for hearings to receive public comment.

The IWC held public hearings in San Francisco on April 10, in San Diego on April 12, and in Los Angeles on April 15. No one appeared in either San Francisco or San Diego to comment on the proposed amendment. In Los Angeles, only one person, a representative of the United Food and Commercial Workers Union, Local 324 and the Graphic Communications Union, District Council Number 2, appeared to testify. He raised four issues: 1) that the proposed amendment would result in unions being pressed into waiving their members' rights to a meal period after five hours in order to have a collective bargaining agreement; 2) that other industries would seek the same type of partial exemption; 3) that six hours is too long a period of time within which to have an employee go without a meal; and 4) that it maybe unlawful in light of the U.S. Supreme Court's opinion in Livadas v. Bradshaw (1994) 512 U.S. 107. He also suggested that the better solution would be to amend Section 17, Exemptions, of Wage Order 1, as well as the exemption sections of all the wage orders.

The IWC has considered the issues raised at the last public hearing on the proposed amendment. With regard to the first and third issues, the IWC notes that the wage board unanimously determined that a meal period beginning after six hours of work is consistent with the health and welfare of employees covered by Wage Order 1. (See Labor Code § 512(b).) Labor Code § 1182(a) mandates that, where at least two-thirds of the wage board recommends proposed regulations, the IWC "shall adopt such proposed regulations, unless it finds there is no substantial evidence to support such regulations." The IWC has reviewed the administrative record regarding the proposed amendment to Section 11 and cannot find that there is no substantial evidence to support it. The IWC also notes that, if other industries or occupational groups seek a similar amendment to the meal period provisions, they will have to go through the same regulatory process as here, and the IWC will have to find that such an amendment is consistent with the health and welfare of the employees in those industries and occupational groups. Moreover, the IWC does not believe that the amendment is unlawful because union-represented employees covered by Wage Order 1 will have the full protection of Labor Code § 512, absent any agreement for something different. (See Livadas v. Bradshaw 512 U.S. at 131-132.)

Finally, even if the IWC could amend Section 17 of Wage Order 1 at this point in time**3**, it is not inclined to do so. The exemptions section of the IWC's wage orders allows the Division of Labor Standards Enforcement, after an investigation and finding that enforcement would not materially affect the welfare or comfort of employees, and would work an undue hardship on the employer, to exempt the employer and employees from the requirements of certain sections of the IWC's wage orders. During the process of promulgating wage orders to implement the "Eight-Hour-Day Restoration and Workplace Flexibility Act," Stats. 1999, ch. 134 (commonly referred to as "A.B. 60"), the IWC received testimony and correspondence regarding the lack of employer compliance with the meal period provisions of its wage orders. After considering this testimony and correspondence, and in light of the mandatory provisions of Labor Code § 512, the IWC decided to remove Meal Periods from the list of sections that can be exempt from enforcement. The IWC also included language that requires an employer to pay an employee one additional hour of pay at the employee's regular rate of pay for each work day that a meal period is not provided, and prohibited an employer from counting the additional hour of pay as "hours worked" for purposes of calculating overtime pay. The IWC has received no testimony, correspondence, or other information that would support changing these decisions.

The IWC received no compelling evidence, and concluded there was no authority at this time, to warrant making any other change in the provisions of this Section.

3 In order to amend Section 17, the IWC would have to follow the regular promulgation process set forth in Labor Code § 1173, et seq.