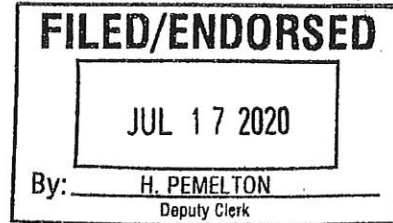


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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SACRAMENTO**

12 RANDY L. HOFF and KEISAR E. KIRK, on
13 behalf of themselves and all others similarly
14 situated,

15 Plaintiffs,

16 vs.

17 DEPENDABLE HIGHWAY EXPRESS.
INC., a California Corporation; and DOES 1-
18 50, inclusive.

19 Defendants.
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23
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25
26
27
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CASE NO.: 34-2020-00272729-CU-OE-GDS

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- 1) MINIMUM WAGE VIOLATIONS (LABOR
CODE §§ 1182.12, 1194, 1194.2, 1197);
- 2) MEAL PERIOD VIOLATIONS (LABOR
CODE §§ 226.7 AND 512);
- 3) REST PERIOD VIOLATIONS (LABOR
CODE §§ 226.7 AND 516);
- 4) FAILURE TO INDEMNIFY ALL
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE §
2802)
- 5) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226a);
- 6) WAITING TIME PENALTIES (LABOR
CODE §§ 201-203);
- 7) UNFAIR COMPETITION (BUS & PROF
CODE § 17200 *et seq.*); and

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

1 8) CIVIL PENALTIES UNDER THE
2 PRIVATE ATTORNEYS GENERAL ACT
3 (LABOR CODE § 2698 *et seq.*)

4 **DEMAND FOR JURY TRIAL**

5 Plaintiffs Randy L. Hoff and Keisar E. Krik (“Plaintiffs”) on behalf of themselves,
6 and all others similarly situated, complains and alleges as follows:

7 **INTRODUCTION**

8 1. Defendant Dependable Highway Express. Inc. (“Defendant”) a California
9 corporation, and DOES 1-50 (collectively “Defendants”) are the largest California based West
10 Coast LTL trucking company. Plaintiffs, truck drivers, bring this class action against Defendants for
11 alleged violations of the California Labor Code, Industrial Welfare Commission Wage Order No. 9,
12 and Business and Professions Code § 17200 *et. seq.* As set forth below, Plaintiffs allege that
13 Defendants’ piece-rate pay policies/practices failed to pay them and all other similarly situated non-
14 exempt truck-drivers the minimum wage for all hours worked, and for all work related duties.
15 Plaintiffs further allege that Defendants’ meal and rest period policies/practices failed to provide
16 them and all other similarly situated truck-drivers with compliant meal and rest periods, or premium
17 wages in lieu thereof. Plaintiffs also allege that Defendants failed to reimburse for necessary
18 business expenses incurred. As a result of the foregoing violations, Plaintiffs allege that Defendants
19 failed to provide them and similarly situated truck-drivers with accurate written itemized wage
20 statements, and failed to timely pay all of their final wages following separation of employment.
21 Based on these alleged violations, Plaintiffs now bring this Class and Private Attorneys General Act
22 (“PAGA”) representative action to recover unpaid wages, restitution, penalties and other related
23 relief on behalf of themselves and all other similarly situated truck drivers.

24 **JURISDICTION AND VENUE**

25 2. Plaintiffs, on behalf of themselves and all others similarly situated non-exempt
26 truck-drivers hereby bring this class and PAGA representative action for recovery of unpaid wages
27 and penalties under California Labor Code §§ 201-203, 204, 226a, 226.7, 510, 516, 512, 558,
28 1182.12, 1194, 1194.2, 1197, 2802, 2804, 2698 *et seq.*, and Wage Order No. 9, in addition to
seeking declaratory relief and restitution pursuant to California Business and Professions Code §

1 17200, *et. seq.* This class action is brought pursuant to California Code of Civil Procedure § 382.
2 This Court has jurisdiction over Defendants' violations of the California Labor Code and Wage
3 Order No. 9 because the amount in controversy exceeds this Court's jurisdictional minimum.

4 3. Venue is proper in this judicial district pursuant to California Code of Civil
5 Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in
6 the City of Sacramento, County of Sacramento. Defendants own, maintain offices, transact
7 business, employ Plaintiff, and have an agent or agents within the County of Sacramento, and/or
8 otherwise are found within the County of Sacramento. Defendants are within the jurisdiction of this
9 Court for purposes of service of process.

10 PARTIES

11 4. At all relevant times herein, Plaintiffs, who are over the age of 18, were and
12 currently are California residents residing in California. Defendants employed Plaintiff Randy L.
13 Hoff as a non-exempt truck driver in the County of Sacramento. Defendants employed and continue
14 to employ Plaintiff Keisar E. Krik as a non-exempt truck driver in the County of Los Angeles.

15 5. Plaintiffs were, and are, victims of Defendants' policies and/or practices complained
16 of herein, lost money and/or property, and has been deprived of the rights guaranteed to them by
17 California Labor Code §§ 201-203, 204, 226a, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2,
18 1197, 2802-2804, 2698 *et seq.*, and California Business and Professions Code § 17200 *et seq.*
19 (Unfair Competition), and Wage Order No. 9, which sets employment standards for the workers in
20 the transportation industry.

21 6. Plaintiffs are informed and believe, and based thereon allege, that during the four
22 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
23 continue to do) business in the State of California, County of Sacramento. Additionally, Defendants
24 operate and own a warehouse in Sacramento, California.

25 7. Plaintiffs do not know the true names or capacities, whether individual, partner, or
26 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
27 Defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
28 amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed,

1 and believe, and thereon allege, that each of said fictitious defendants, whether individual, partners,
2 or corporate, were responsible in some manner for the acts and omissions alleged herein, and
3 proximately caused Plaintiffs and the Classes to be subject to the unlawful employment practices,
4 wrongs, injuries and damages complained of herein.

5 8. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned
6 herein, Defendants were and are the employers of Plaintiffs and all members of the Classes. At all
7 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
8 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
9 them, were the agents, servants, and employees of each and every one of the other Defendants, as
10 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
11 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
12 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

13 9. At all times mentioned herein, Defendants, and each of them, were members of and
14 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
15 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
16 Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and all
17 members of the Classes.

18 **FACTUAL ALLEGATIONS**

19 10. Plaintiff Randy L. Hoff worked for Defendants as a non-exempt truck driver out of
20 Defendants' Sacramento location starting on or about July 2019 until February 2020. Plaintiff
21 Keisar E. Krik continues to be employed by Defendants as a non-exempt truck driver in the Los
22 Angeles and Southern California region. Plaintiffs and other non-exempt truck drivers are engaged
23 in the hauling and delivery of freight across the United States and within California.

24 11. At all relevant times, Defendants paid Plaintiffs and other non-exempt truck drivers
25 using a piece-rate formula, including but not limited to, per load pay and per delivery pay. As a
26 result of Defendants' uniform piece-rate pay policies/practices, Plaintiffs and other non-exempt
27 truck drivers were and are not being paid at least the minimum wage for all hours worked in
28 violation of Labor Code §§ 204, 510, 1194, 1197.1, 1199, and Wage Order No. 9.

1 12. As a result of Defendants' piece-rate pay policies/practices, Plaintiffs and other non-
2 exempt truck drivers were not paid for time spent on non-driving duties including but not limited to,
3 inspections of trucks, preparation of trucks, loading/unloading of cargo, cleaning of trucks,
4 swapping/changing trucks, idle time in traffic, communicating with dispatch, parking, mechanical
5 failures, lines at distribution centers, late or absent drivers, fueling, maintenance, putting on snow
6 chains, and performing "drop and hooks." As a result, Defendants did not provide sufficient pay
7 equal to at least minimum wage for all the additional hours worked performing non-driving tasks.

8 13. Defendants also failed and continue to fail to pay Plaintiffs and other non-exempt
9 truck drivers for time spent during layovers and waiting time, when truck drivers are required to
10 stop driving, and are not to leave their trucks unattended for up to 10 hours. During these regular
11 and lengthy layovers, Plaintiffs and other non-exempt truck drivers were often required to park and
12 remain with their trucks in legal and safe areas. See *Morrillion v. Royal Packing Co.* (2000) 22
13 Cal.4th 575, 587 (where an employer required employees "to meet at designated places to take its
14 buses to work" and "prohibit[ed] them from taking their own transportation," the employees were
15 "subject to the control of an employer.")). As a result, Plaintiffs and other non-exempt truck drivers
16 were subjected to Defendants' control during these layover periods.

17 14. Under California law, employees must be paid for all of the time that they were
18 subject to Defendants' control, and employers must pay employees at least the minimum wage per
19 hour for all hours worked. See Cal. Code Regs., Tit. 8 § 11090. "Hours worked" is defined as "the
20 time during which an employee is subject to the control of an employer, and includes all the time
21 the employee is suffered or permitted to work, whether or not required to do so." *Id.* In *Morrillion*
22 *v. Royal Packing Co.* (2000) 22 Cal. 4th 575, the California Supreme Court explained that, "an
23 employee who is subject to an employer's control does not have to be working during that time to
24 be compensated." The Court reasoned that when "an employer requires employees to meet at
25 designated places to take its buses to work and prohibits them from taking their own transportation"
26 the employees are "subject to the control of an employer" and the time spent traveling on the buses
27 "is compensable as 'hours worked.'" *Id.* at 587.

1 15. Defendants' piece-rate pay policies/practices failed and continue to fail to
2 compensate Plaintiffs and other non-exempt truck drivers the legal minimum wage for all work
3 related duties and tasks as described herein, including but not limited to numerous hours spent
4 inside their trucks during layover times. However, because Defendants are capable of tracking the
5 time worked by Plaintiffs and other non-exempt truck drivers to the minute, Defendants' pay
6 practice itself exists not for the convenience or benefit of the employees, but to benefit Defendants
7 by underpaying truck drivers for all work related duties. As a result, Plaintiffs and other non-
8 exempt truck drivers were not properly paid for all hours worked in violation of Labor Code §§
9 204, 510, 1194, 1197.1, 1199, and Wage Order No. 9.

10 16. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
11 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
12 restitution of wages, and liquidated damages as follows: (1) for any initial violation that is
13 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
14 period for which the employee is underpaid. . . [and] (2) [f]or each subsequent violation for the
15 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
16 period for which the employee is underpaid regardless of whether the initial violation is
17 intentionally committed. As set forth above, Defendants failed to compensate Plaintiffs and other
18 non-exempt truck drivers all wages for all hours worked, and are thus liable for restitution of wages,
19 civil penalties and liquidated damages.

20 17. At all relevant times, Plaintiffs and other non-exempt truck drivers routinely worked
21 shifts in excess of 10.0 hours, but were not provided with legally complaint off-duty meal periods
22 of at least thirty (30) minutes before the end of the fifth and tenth hour of work, due to Defendants'
23 unlawful meal period practices that required Plaintiffs and other non-exempt truck drivers to remain
24 working on duty during meal periods. Defendants did not maintain a compliant meal period policy
25 applicable to truck drivers, nor did Defendants inform its employees, that they were permitted to
26 take meal periods as provided under the Labor Code. Further, Defendants' work requirements did
27 not allow Plaintiffs and other non-exempt truck drivers to take timely off-duty meal periods, as
28 truck drivers were expected and required to continue working through meal periods in order to meet

1 rigorous delivery expectations and timelines. On other occasions, Defendants also interrupted
2 Plaintiffs and other non-exempt truck drivers' meal periods with communications and requests from
3 dispatch.

4 18. Labor Code § 512 requires employers to provide employees with a thirty (30) minute
5 uninterrupted and duty-free meal period within the first five (5) hours of work. An employee who
6 works more than ten (10) hours per day is entitled to receive a second thirty (30) minute
7 uninterrupted and duty-free meal period. *Brinker Rest. Corp. v. Superior Court*, (2012) 53 Cal. 4th
8 1004, 1042 ("Accordingly, first meal periods must start after no more than five hours."); *See also*
9 *Munoz v. Giumarra Vineyards Corp.*, 2015 WL 5350563 at *3 (E.D. Cal. Sept. 11, 2015) (holding
10 that meal periods must be taken within the first five hours of work).

11 19. Labor Code § 226.7 provides "an employer shall not require an employee to work
12 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
13 regulation, standard, or order of the Industrial Welfare Commission ("IWC"). *See Brinker*
14 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1016-1017 ("[T]he wage order's meal
15 period requirement is satisfied if the employee (1) has at least 30 minutes uninterrupted, (2) is free
16 to leave the premises, and (3) is relieved of all duty for the entire period. . . The employer satisfies
17 the [meal period] obligation if it relieves its employees of all duty, relinquishes control over their
18 activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and
19 does not impede or discourage them from doing so"). Pursuant to Labor Code § 226.7 and Wage
20 Order No. 9, each failure to provide a complaint off-duty meal period entitles Plaintiffs and other
21 non-exempt truck drivers to receive an additional compensation premium equal to one hour of pay.

22 20. Accordingly, for each day that Plaintiffs and other non-exempt truck drivers did not
23 receive compliant meal periods, they are entitled to receive meal period premiums pursuant to
24 Labor Code § 226.7 and Wage Order No. 9. As a result of Defendants' unlawful meal period
25 policy/practices, Plaintiffs seeks to recover on behalf of themselves and other non-exempt truck
26 drivers, meal period premiums and penalties under Labor Code § 226.7 and § 512.

27 21. Plaintiffs and other non-exempt truck drivers were also not provided with rest
28 periods of at least ten (10) ten minutes for each four (4) hour work period, or major fraction thereof

1 due to Defendants' unlawful rest period practices that required truck drivers to remain working on
2 duty during rest periods. Defendants did not maintain a compliant rest period policy applicable to
3 Plaintiffs and other non-exempt truck drivers, nor did Defendants inform their truck drivers that
4 they were permitted to take rest periods as provided under the Labor Code. Making matters worse,
5 Defendants' work requirements did not allow truck drivers to take timely off-duty rest periods, as
6 truck drivers were expected and required to continue working through rest periods in order to meet
7 rigorous delivery expectations. On other occasions, Defendants also interrupted truck drivers' rest
8 periods with communications and requests from dispatch.

9 22. Plaintiffs further allege that Defendants did not separately pay for compliant 10-
10 minute rest periods in violation of California law. See *Bluford v. Safeway Inc.* (2013) 216
11 Cal.App.4th 864 (task- piece-rate compensation formula that does not compensate separately for
12 rest periods does not comply with California minimum wage laws). Specifically, Plaintiffs allege
13 that Defendants failed and continues to fail to comply with Labor Code § 226.2, and with the
14 requirements to pay drivers for 10-minute rest periods at their regular rate of pay, or at least at
15 California's applicable minimum wage. Plaintiffs allege that Defendants paid rest period time at a
16 lower rate than the minimum wage for such rest time, and regularly underpaid truck drivers for the
17 actual number of rest periods they were entitled to. As a result, Defendants failed and continues to
18 fail to provide at least minimum wage for each ten-minute rest period and failed to provide paid rest
19 periods to Plaintiffs and other non-exempt truck drivers.

20 23. As a result, Plaintiffs and other non-exempt truck drivers were unable to take
21 compliant rest periods as required by Labor Code § 226.7. In addition, Defendants also failed to
22 maintained any mechanism for the payment of rest period premium payments as required by Labor
23 Code § 226.7. Therefore, Plaintiffs seek to recover on behalf of themselves and other non-exempt
24 truck drivers rest period premiums and penalties. Consequently, Defendants have violated Labor
25 Code §§ 226.7, 512 and Wage Order No. 9.

26 24. At all relevant times, Defendants routinely denied and continues to deny Plaintiffs
27 and other non-exempt truck drivers reimbursement for necessary expenditures incurred as a direct
28 consequence and requirement of performing their job duties, including but not limited to, expenses

associated with the usages of their personal cell phones with data plans, expenses associated with truck up-keep, including washer fluid, motor oil, wash, parking, and other driving related business expenses. Despite requiring truck drivers to use their personal cell phones and to incur essential driving maintenance expenses, Plaintiffs and other non-exempt truck drivers were not adequately reimbursed. Consequently, Defendants failed to comply with Labor Code §§ 2802-2804 and Wage Order No. 9.

25. As a result of Defendants' unlawful pay policies and practices that resulted in a failure to pay Plaintiffs and other non-exempt truck drivers the minimum wage for all hours worked, and Defendants' failure to provide legally compliant meal and rest periods or compensation in lieu thereof, Defendants also intentionally failed and continue to fail to furnish Plaintiffs and other non-exempt truck drivers with itemized wage statements that accurately reflect the correct amount of gross wages earned, net wages earned and premium wages due for missed meal and rest periods as required by Labor Code § 226(a). Consequently, since Defendants failed to comply with Labor Code § 226(a), Plaintiffs and other non-exempt truck drivers would be entitled to recover penalties under Labor Code § 226(e).

26. As a further result of Defendants' failure to pay Plaintiffs and other non-exempt truck drivers for all hours worked, and failure to provide legally compliant meal and rest periods or compensation in lieu thereof, Defendants also failed to pay Plaintiffs and other non-exempt truck drivers all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203.

CLASS ACTION ALLEGATIONS

27. Class Definition: Plaintiffs bring this action on behalf of themselves and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- (1) All non-exempt truck drivers who worked for Defendants in California, during the four years immediately preceding the filing of the Complaint through the date of trial. (“Class”); and
- (2) All non-exempt truck drivers who worked for Defendants in California, and who have left Defendants’ employ during one year immediately preceding the filing of

1 the Complaint through the date of trial. ("Waiting Time Penalty Class")
2 (Collectively "Classes").

3 28. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
4 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
5 unknown to Plaintiffs at this time; however, it is estimated that the Classes number greater than one
6 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection
7 of Defendants' employment records.

8 29. **Common Questions of Law and Fact Predominate/Well Defined Community of**
9 **Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly situated
10 employees, which predominate over questions affecting only individual members including,
11 without limitation to:

- 12 1. Whether Defendants' piece-rate payment policies/practices resulted in a failure to
13 pay members of the Classes minimum wages for all hours worked;
- 14 2. Whether Defendants provided legally compliant meal and rest periods or
15 compensation in lieu thereof to members of the Classes;
- 16 3. Whether Defendants failed to reimburse members of the Classes for all necessary
17 business expenditures;
- 18 4. Whether Defendants furnished legally compliant wage statements to members of the
19 Classes pursuant to Labor Code § 226; and
- 20 5. Whether the timing and amount of payment of final wages to members of the
21 Waiting Time Penalty Class at the time of separation from employment were
22 unlawful.

23 30. **Predominance of Common Questions:** Common questions of law and fact
24 predominate over questions that affect only individual members of the Classes. The common
25 questions of law set forth above are numerous and substantial and stem from Defendants' policies
26 and/or practices applicable to each individual class member, such as Defendants' piece-rate pay
27 policies/practices, Defendants' uniform policy of failing to provide complaint meal and rest periods,
28 Defendants' failure to reimburse necessary business expenditures, and Defendants' resulting failure

1 to provide accurate itemized wage statements and to pay for all wages due upon termination. As
2 such, the common questions predominate over individual questions concerning each individual
3 class member's showing as to his or her eligibility for recovery or as to the amount of his or her
4 damages.

5 31. **Typicality:** The claims of Plaintiffs are typical of the claims of the Classes because
6 Plaintiffs were employed by Defendants as a non-exempt truck driver in California during the
7 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As
8 alleged herein, Plaintiffs, like the members of the Classes was deprived of minimum wages as a
9 result of Defendants' unlawful piece-rate pay policies/practices, were deprived of meal and rest
10 period premium wages, were subject to Defendants' uniform pay practices, meal and rest period
11 policies/practices, were not reimbursed for necessary business expenditures, were not provided
12 accurate itemized wage statements, and were not paid all wages owed at the time of her separation
13 of employment.

14 32. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
15 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
16 Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the members of the
17 Classes and Plaintiffs. Plaintiffs' attorneys have prosecuted several wage-and-hour class actions in
18 state and federal court in the past and are committed to vigorously prosecuting this action on behalf
19 of the members of the Classes.

20 33. **Superiority:** The Labor Code is broadly remedial in nature and serves an important
21 public interest in establishing minimum working conditions and standards in California. These laws
22 and labor standards protect the average working employee from exploitation by employers who
23 have the responsibility to follow the laws and who may seek to take advantage of superior
24 economic and bargaining power in setting onerous terms and conditions of employment. The nature
25 of this action and the format of laws available to Plaintiffs and members of the Classes make the
26 class action format a particularly efficient and appropriate procedure to redress the violations
27 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
28 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm

1 the limited resources of each individual plaintiff with their vastly superior financial and legal
2 resources. Moreover, requiring each member of the Classes to pursue an individual remedy would
3 also discourage the assertion of lawful claims by employees who would be disinclined to file an
4 action against their former and/or current employer for real and justifiable fear of retaliation and
5 permanent damages to their careers at subsequent employment. Further, the prosecution of separate
6 actions by the individual class members, even if possible, would create a substantial risk of
7 inconsistent or varying verdicts or adjudications with respect to the individual class members
8 against Defendants herein; and which would establish potentially incompatible standards of conduct
9 for Defendants; and/or legal determinations with respect to individual class members which would,
10 as a practical matter, be dispositive of the interest of the other class members not parties to
11 adjudications or which would substantially impair or impede the ability of the class members to
12 protect their interests. Further, the claims of the individual members of the Classes are not
13 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
14 costs and expenses attending thereto. As such, the Classes identified in Paragraph 27 are
15 maintainable as Classes under § 382 of the Code of Civil Procedure.

16 **FIRST CAUSE OF ACTION**

17 **MINIMUM WAGE VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

19 34. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

20 35. Wage Order No. 9, § 4 and Labor Code §§ 1197 and 1182.12 establish the right of
21 employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor
22 Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum
23 wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys'
24 fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and
25 interest accrued thereon.

26 36. At all relevant times herein, Defendants failed to conform their pay practices to the
27 requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform
28 and unlawful piece-rate pay policies/practices, which resulted in these individuals not being paid for

1 all hours they were actually suffered or permitted worked. Accordingly, Plaintiffs and members of
2 the Classes were not compensated for all hours worked including, but not limited to, all hours they
3 were subject to the control of Defendants and/or suffered or permitted to work under the Labor
4 Code and Wage Order No. 9.

5 37. Labor Code § 1198 makes unlawful the employment of an employee under
6 conditions that the Industrial Welfare Commission prohibits. Labor Code §§ 1194(a) and 1194.2(a)
7 provide that an employer who has failed to pay its employees the legal minimum wage is liable to
8 pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
9 amount equal to the wages due and interest thereon.

10 38. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
11 Plaintiffs and the Classes have sustained economic damages, including but not limited to unpaid
12 wages and lost interest, in an amount to be established at trial, and they are entitled to recover
13 economic and statutory damages and penalties and other appropriate relief as a result of
14 Defendants' violations of the Labor Code and Wage Order No. 9.

15 39. Defendants' practice and uniform administration of corporate policy regarding
16 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiffs and
17 members of the Classes in a civil action for the unpaid amount of minimum wages, liquidated
18 damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according
19 to Labor Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

20 **SECOND CAUSE OF ACTION**

21 **MEAL PERIOD VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

23 40. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

24 41. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed
25 in their affirmative obligation to provide all of their hourly non-exempt truck drivers, including
26 Plaintiffs and members of the Classes, with all required meal periods in accordance with the
27 mandates of the California Labor Code and Wage Order No. 9, for the reasons set forth in the
28 factual allegations and definitions sections of this Complaint.

1 42. Labor Code § 512(a), in part, provides that employers, including Defendants, may
2 not employ an employee for a work period of more than five hours per day without providing an
3 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except
4 that if the total work period per day of the employee is no more than six hours, the meal period may
5 be waived by mutual consent of both the employer and the employee. Employers may not employ
6 an employee for a work period more than 10 hours per day without providing the employee with a
7 second meal period of not less than 30 minutes.

8 43. Pursuant to Labor Code § 226.7(b) and the applicable Wage Orders, Defendants
9 shall pay an employee one additional hour of pay at the employee's regular rate of compensation
10 for each meal period that is missed

11 44. At all relevant times herein, Plaintiffs and the Class Members were denied the 30-
12 minute off-duty meal periods to which they were entitled.

13 45. Defendants failed to advise Plaintiffs and the Class Members of their right to receive
14 thirty (30) minute uninterrupted meal periods within the first five hours of his and their shifts or
15 their right to receive a second meal period on days where they worked more than ten (10) hours a
16 day.

17 46. Plaintiffs and the Class Members were regularly required to take late, on-duty, or
18 interrupted meal periods, or forego them entirely. Defendants also failed to pay Plaintiffs and the
19 Class Members meal period premiums for each workday that the employees did not receive all
20 compliant meal periods.

21 47. Defendants violated Labor Code §§ 226.7, 512, and the applicable Wage Orders
22 every pay period with respect to Plaintiffs and the Class Members because Plaintiffs and the Class
23 Members were not provided with all mandatory meal periods and Defendants failed to pay
24 Plaintiffs and the Class Members one additional hour of compensation in lieu thereof.

25 48. On information and belief, Plaintiffs and the Class Members did not voluntarily or
26 willfully waive the mandated meal periods. Any expressed or implied waivers obtained from
27 Plaintiffs and the Class Members were not willfully obtained, were not voluntarily agreed to, were a
28 condition of employment, or were a part of a contract of unlawful adhesion. Defendants did not

1 permit or authorize Plaintiffs and the Class Members to take meal periods in accordance with
2 California law.

3 49. By their failure to provide Plaintiffs and the Class Members with meal periods as
4 required by California law, and failing to pay one hour of additional wages in lieu of each meal
5 period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and applicable
6 Wage Orders. Accordingly, Defendants are liable for one hour of additional wages at the
7 employee's regular rate of compensation for each workday that a meal period was not lawfully
8 provided in an amount to be proven at time of trial.

9 50. As a result, Defendants are responsible for paying premium compensation for meal
10 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to Wage
11 Order No. 9, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

12 **THIRD CAUSE OF ACTION**

13 **REST PERIOD VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

15 51. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

16 52. Wage Order No. 9, § 12 and Labor Code §§ 226.7 and 516 establish the right of
17 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
18 period worked, or major fraction thereof.

19 53. Due to their unlawful rest period policy and practices, Defendants did not authorize
20 and permit Plaintiffs and members of the Classes to take any rest periods to which they were legally
21 entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to
22 Plaintiffs and members of the Classes at their respective regular rates of pay for each violation, in
23 accordance with Labor Code § 226.7.

24 54. The foregoing violations create an entitlement to recovery by Plaintiffs and members
25 of the Classes in a civil action for the unpaid amount of rest period premiums owing, including
26 interest thereon, statutory penalties, and costs of suit pursuant to Wage Order No. 9, Labor Code §§
27 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

28 **FOURTH CAUSE OF ACTION**

**FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES
(AGAINST ALL DEFENDANTS)**

55. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

56. It was necessary for Plaintiffs and members of the Classes to incur various expenses as outlined herein above in the discharge of their job duties. These expenses include but are not limited to expenses associated with the use of a personal cell phone with a data plan, and expenses related to upkeep of the company trucks. Although Plaintiffs and members of the Classes incurred these expenses at the direction of Defendants and/or in the direct discharge of their job duties, Defendants did not reimburse these employees for such necessary work expenditures during the four years preceding the filing of the Complaint.

57. At all relevant times herein, Defendants were subject to Labor Code § 2802, which states that “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

58. At all relevant times herein, Defendants were subject to Labor Code § 2804, which states that “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 personal representative of any right or remedy to which he is entitled under the laws of this State.”

59. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiffs and members of the Classes were damaged in sums, which will be shown according to proof at trial.

60. Plaintiffs and members of the Classes are entitled to attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

61. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiffs and members of the Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

3 **(AGAINST ALL DEFENDANTS)**

4 62. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

5 63. Labor Code 226(a) states in pertinent part the following:

6 “(a) An employer, semimonthly or at the time of each payment of
7 wages, shall furnish to his or her employee, either as a detachable
8 part of the check, draft, or voucher paying the employee’s wages, or
9 separately if wages are paid by personal check or cash, an accurate
10 itemized statement in writing showing (1) gross wages earned, (2)
11 total hours worked by the employee, except as provided in
12 subdivision (j), (3) the number of piece-rate units earned and any
13 applicable piece rate if the employee is paid on a piece-rate basis,
14 (4) all deductions, provided that all deductions made on written
15 orders of the employee may be aggregated and shown as one item,
16 (5) net wages earned, (6) the inclusive dates of the period for which
17 the employee is paid, (7) the name of the employee and only the last
18 four digits of his or her social security number or an employee
19 identification number other than a social security number, (8) the
20 name and address of the legal entity that is the employer and, if the
21 employer is a farm labor contractor, as defined in subdivision (b) of
22 Section 1682, the name and address of the legal entity that secured
23 the services of the employer, and (9) all applicable hourly rates in
24 effect during the pay period and the corresponding number of hours
25 worked at each hourly rate by the employee.

26 64. As set forth above, during the Class Period, Defendants issued and continues to issue
27 wage statements to its employees including Plaintiffs and members of the Classes which are
28 inadequate under Labor Code § 226(a). Here, by failing to pay Plaintiffs and the Classes for all
hours worked, including all minimum wages, and failing to pay all missed meal and rest period
premiums, Defendants failed to include the required information on Plaintiffs and the Classes’ wage
statements, including, but not limited to, the gross wages earned and the net wages earned in
violation of Labor Code § 226a.

27 65. Defendants’ failure to comply with Labor Code § 226(a) was knowing and
28 intentional.

66. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiffs and members of the Classes in violation of Labor Code § 226(a), Plaintiffs and members of the Classes are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every member of the Classes from Defendants pursuant to Labor Code § 226(e), costs and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

67. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

68. The actionable period for this cause of action is three years prior to the filing of this Complaint through the present, and on-going until the violation are corrected or the class is certified.

69. Sections 201 and 202 of the Labor Code require Defendants to pay all compensation due and owing to Plaintiff Randy L. Hoff (“Plaintiff”) and the Waiting Time Penalty Class during the actionable period for this cause of action at or around the time that their employment is or was terminated, or ended.

70. Section 203 of the Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) work days.

71. Defendants willfully failed to pay Plaintiffs and the Waiting Time Penalty Class for all hours worked, including minimum wages, and their meal and rest period premiums prior to or upon termination or separation from employment with Defendants as required by Labor Code §§ 201 and 202.

72. As a result, Defendants are liable to Plaintiff and the Waiting Time Penalty Class for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time Penalty Class pursuant to Labor Code § 203. *See, e.g.* DLSE Manual, 4.3.4 (Failure to pay any sort

1 of wages due upon termination entitles an employee to recover waiting time penalties).

2 **SEVENTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION BUSINESS & PROFESSIONS CODE § 17200 *et seq.***

4 **(AGAINST ALL DEFENDANTS)**

5 73. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

6 74. Defendants have engaged and continue to engage in unfair and/or unlawful business
7 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
8 failing to pay for all hours worked, including all minimum wages, by failing to provide all legally
9 required meal and rest periods or make premium payments in lieu thereof, by failing to reimburse
10 for all necessary business expenditures, by failing to provide accurate itemized wage statements,
11 and by failing to pay members of the Waiting Time Penalty Class all earned wages at the time of
12 their separation.

13 75. Defendants' utilization of these unfair and/or unlawful business practices deprived
14 Plaintiffs and continues to deprive members of the Classes of compensation to which they are
15 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
16 over Defendants' competitors who have been and/or are currently employing workers and
17 attempting to do so in honest compliance with applicable California wage and hour laws.

18 76. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct alleged
19 herein, Plaintiffs for themselves and on behalf of the members of the Classes, seeks full restitution
20 of monies, as necessary and according to proof, to restore any and all monies withheld, acquired
21 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

22 77. The acts complained of herein occurred within the last four years immediately
23 preceding the filing of the Complaint in this action.

24 78. Plaintiffs were compelled to retain the services of counsel to file this court action to
25 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
26 Defendants' current and former hourly non-exempt truck drivers, and to enforce important rights
27 affecting the public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees
28 and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

79. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

80. Defendants have committed several Labor Code violations against Plaintiffs and other similarly aggrieved employees. Plaintiff Randy L. Hoff ("Plaintiff"), an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other similarly aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other similarly aggrieved employees for all hours worked, including all minimum wages in violation of Labor Code §§ 204, 510, 1194, 1197, and 1182.12;
- b. Failing to provide Plaintiff and other similarly aggrieved employees with all of their statutorily mandated meal periods in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;
- c. Failing to authorize and permit Plaintiff and other similarly aggrieved employees with all of their statutorily mandated rest periods in violation of Labor Code §§ 226.7, and 516;
- d. Failing to furnish Plaintiff and other similarly situated employees with complete, accurate, itemized wage statements in violations of Labor Code § 226;
- e. Failing to compensate Plaintiff and similarly aggrieved employees with all earnings at their separation of employment in violation of Labor Code §§ 201-203; and
- f. Failing to maintain accurate records on behalf of Plaintiffs and similarly aggrieved employees in violation of Labor Code § 1174.

81. On or about January 7, 2020, Plaintiff Randy L. Hoff (“Plaintiff”) notified Defendant Dependable Highway Express, Inc. (“Defendant”), and the California Labor and Workforce Development Agency (“LWDA”) via email of Defendant’s violations of the California Labor Code § 2698 *et seq.*, with respect to violations of the California Labor Code identified in Paragraph 80 (a)-(f). Now that the sixty-five days have passed from Plaintiff notifying Defendant of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

82. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment for themselves and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiffs as representatives of the Classes;
3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
7. Upon the Fourth Cause of Action, all unreimbursed expenses recoverable under Labor Code § 2802, along with interest from the date the expense was incurred, and reasonable costs attorneys' fees;

- 1 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
2 reasonable costs and attorneys' fees;
- 3 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
4 Labor Code §§ 201-203.
- 5 10. Upon the Seventh Cause of Action, for restitution to Plaintiffs and members of the
6 Classes of all money and/or property unlawfully acquired by Defendants by means
7 of any acts or practices declared by this Court to be in violation of Business and
8 Professions Code § 17200 *et seq.*;
- 9 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other similarly
10 aggrieved employees, and the State of California according to proof pursuant to
11 Labor Code § 2699 (a) and (f), including, but not limited to (1) \$100.00 for each
12 initial violation and (2) \$200 for each subsequent violation per employee per pay
13 period for those violations of the Labor Code for which no civil penalty is
14 specifically provided;
- 15 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
16 § 218.6 and Civil Code §§ 3287 and 3289;
- 17 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
18 218.5, 226, and Code of Civil Procedure § 1021.5; and
- 19 14. For such other and further relief, the Court may deem just and proper.

20 Dated: July 10, 2020

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

21
22 By: 

23 Joshua S. Falakassa, Esq.

24 Mehrdad Bokhour, Esq.

25 Attorneys for Plaintiff and the Putative Classes
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On July 10, 2020, I served the following document(s) described as **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Timothy M. Fisher, Esq.
SCOPELITIS, GARVIN, LIGHT,
HANSON & FEARY, LLP
2 North Lake Avenue, Suite 560
Pasadena, California 91101

Joshua S. Falakassa Esq.
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1901 Avenue of the Stars, Suite 450
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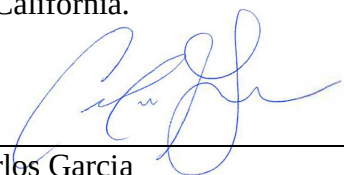
**Counsel for defendant
Dependable Highway Express, Inc.**

**Co-counsel for Plaintiffs on behalf of
themselves and all others similarly situated**

BY MAIL: I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully pre-paid. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, the correspondence is deposited with the U.S. Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 10, 2020, at Los Angeles, California.



Carlos Garcia