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on behalf of himself and others similarly situated

FILED
Superior Court Of California,
Sacramento
08/12/2020
Istewart1
By _____, Deputy
Case Number:
34-2020-00283173

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

STEVEN THAMES, on behalf of himself
and others similarly situated,

Plaintiff,

vs.

CENTRAL TRANSPORT LLC, a Indiana
limited liability company; and DOES 1
through 50, inclusive

Defendants.

Case No.

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime
Under Labor Code § 510;
3. Recovery of Reporting Time Pay
4. Meal-Period Liability Under Labor
Code § 226.7;
5. Rest-Break Liability Under Labor Code
§ 226.7;
6. Reimbursement of Necessary Expenditures
Under Labor Code § 2802;
7. Violation of Labor Code § 226(a);
8. Failure to Keep Required Payroll
Records Under Labor Code §§ 1174 and
1174.5;
9. Violation of Labor Code § 221;
10. Penalties Pursuant to Labor Code § 203;
11. Violation of Business & Professions Code
§ 17200 *et seq.*;
12. Penalties Pursuant to Labor Code § 2699,
et seq.

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff STEVEN THAMES, (hereinafter “Plaintiff”) on behalf of himself and all others
2 similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all similarly situated current
6 and former employees within the State of California who, at any time four (4) years prior to the
7 filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendants
8 CENTRAL TRANSPORT LLC, a Indiana limited liability company, and DOES 1 through 50 (all
9 defendants being collectively referred to herein as “Defendants”). Plaintiff alleges that
10 Defendants, and each of them, violated various provisions of the California Labor Code, relevant
11 orders of the Industrial Welfare Commission (IWC), and California Business & Professions Code,
12 and seeks redress.

13 2. Plaintiff is a resident of California and during the time period relevant to this
14 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
15 California at Defendants’ facilities and offices in Sacramento, California. Plaintiff and the other
16 Class members worked for Defendants in Sacramento County and throughout California, and
17 consistently worked at Defendants’ behest without being paid all wages due. More specifically,
18 Plaintiff and the other similarly situated Class members were employed by Defendants and
19 worked at Defendants’ offices and other facilities where the conduct giving rise to the allegations
20 in this Class Action Complaint occurred. Upon information and belief, Plaintiff was employed by
21 Defendants and (1) shared similar job duties and responsibilities, (2) was subjected to the same
22 policies and practices, and (3) endured similar violations at the hands of Defendants as the other
23 Employee Class members who served in similar and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
25 and to perform work and remain under Defendants’ control during their meal and rest breaks.,
26 Defendants also failed to provide Plaintiff and the Class with lawful meal periods and failed to
27 authorize and permit them to take all required rest breaks, as Employees were not provided with
28 the opportunity to take uninterrupted and duty-free rest breaks and meal breaks or Defendants

1 failed to timely provide them as required by the Labor Code and applicable IWC Wage Orders.
2 Plaintiff and the Class members were also compelled to clock out for meal periods and return to
3 work off the clock or to otherwise work through meal periods and rest breaks while remaining
4 under Defendants' control due to the difficult work requirements and management demands
5 placed upon them. Defendants thus failed to pay Plaintiff and the Class members for all hours
6 worked, and provided them with inaccurate wage statements that prevented Plaintiff and the Class
7 from learning of these unlawful pay practices.

8 **THE PARTIES**

9 **A. The Plaintiff**

10 4. Plaintiff STEVEN THAMES has resided in California and during the time period
11 relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within
12 the State of California at Defendants' facilities and offices in Sacramento, California.

13 **B. The Defendants**

14 5. Defendant CENTRAL TRANSPORT LLC, ("CTL") is a Indiana limited liability
15 company with its principle executive offices in Warren, Michigan and has been listed as the
16 employer on the wage statements issued to Plaintiff during the relevant time period. CTL lists an
17 address in Warren, Michigan with the California Secretary of State, but employs Plaintiff and the
18 Class members in Sacramento County, including at Defendants' offices and facilities in
19 Sacramento, California, and throughout California and Defendants conduct business throughout
20 California.

21 6. The true names and capacities, whether individual, corporate, associate, or
22 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
23 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
24 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
25 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
26 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
27 this Complaint to reflect the true names and capacities of the Defendants designated herein as
28 Does 1 through 50 when their identities become known.

7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Employees, or suffered or permitted Employees to work, or engaged, thereby creating a common law employment relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly employed Employees.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities giving rise to this lawsuit occurred at least in part in Sacramento County and Defendants maintain and operate company offices and facilities in Sacramento County, and employ Plaintiff and other Class members in Sacramento County and throughout California.

FACTUAL BACKGROUND

9. The Employees who comprise the Class, including Plaintiff, are nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who work in non-exempt positions at the direction of Defendants in the State of California. Plaintiff and the Class members were either not paid by Defendants for all hours worked or were not paid at the appropriate overtime rates. Specifically, Defendants required Employees to work post-shift, in excess of their scheduled shifts for which they were not paid wages as Employees were required to spend working hours under the control of Defendants by Employees performed dock work after the scheduled shift and were not compensated for this time.

10. Moreover, Plaintiff contends that Defendants failed to pay Plaintiff and the Class

1 members all wages due and owing, by making unlawful deductions from their pay, failed to
2 provide meal and rest breaks, and failed to furnish accurate wage statements, all in violation of
3 various provisions of the California Labor Code and applicable Wage Order provisions.

4 11. Additionally, from at least four (4) years prior to the filing of this lawsuit and
5 continuing to the present, Defendants' policies and practices required them to call in or otherwise
6 report to work. Plaintiff and the Class members often times had to make a number of calls to
7 Defendants to confirm if they could show up to work. However, Plaintiff and the Class members
8 were not paid for the time spent making these calls to Defendants. Additionally, when Plaintiff
9 and the Class members were told not show up to work they were not provided reporting time pay
10 in violation of California law.

11 12. During the course of Plaintiff and the Class members' employment with
12 Defendants, they were not paid all wages they were owed, including for all work performed and
13 for all overtime hours worked, and they were forced to work during their meal and rest breaks to
14 keep labor budgets low.

15 13. As a matter of uniform and unlawful Company policy, Plaintiff and the Class
16 members were required to work during their meal periods and rest breaks, and they were again
17 not compensated for this off the clock work, in violation of the California Labor Code. Plaintiff
18 and the Class members were also not paid regular wages and overtime for the time they were
19 required to comply with other work demands and requirements imposed upon them, which they
20 often had to complete while working through their meal and rest breaks and without
21 compensation. As a result Plaintiff and the Class members worked shifts over eight (8) hours in a
22 day and over forty (40) hours in a work week, but they were not paid at the appropriate overtime
23 rate for all such hours, including by being required to perform work duties and tasks without pay
24 and while off-the-clock which caused overtime to begin accruing before it did in Defendants'
25 timekeeping and payroll systems. As a result, Plaintiff and the Class members worked substantial
26 overtime hours during their employment with Defendants for which they were not compensated,
27 in violation of the California Labor Code and applicable IWC Wage Orders.

28 14. As a result of the above, the failure to calculate and pay wages at the correct rates,

1 the daily work demands and pressures to work through breaks, and the other wage violations they
2 endured at Defendants' hands, Plaintiff and the Class members were not properly paid for all
3 wages earned and for all wages owed to them by Defendants, including when working more than
4 eight (8) hours in any given day and/or more than forty (40) hours in any given week. As a result
5 of Defendants' unlawful policies and practices, Plaintiff and Class members incurred overtime
6 hours worked for which they were not adequately and completely compensated, in addition to the
7 hours they were required to work off the clock. To the extent applicable, Defendants also failed to
8 pay Plaintiff and the Class members at an overtime rate of 1.5 times the regular rate for the first
9 eight hours of the seventh consecutive work day in a week and overtime payments at the rate of 2
10 times the regular rate for hours worked over eight (8) on the seventh consecutive work day, as
11 required under the Labor Code, applicable IWC Wage Orders.

12 15. Therefore, from at least four (4) years prior to the filing of this lawsuit and
13 continuing to the present, Defendants had a consistent policy or practice of failing to pay
14 Employees for all hours worked, and failing to pay minimum wage for all time worked as required
15 by California Law.

16 16. Additionally from at least four (4) years prior to the filing of this lawsuit and
17 continuing to the present, Defendants had a consistent policy or practice of failing to pay
18 Employees overtime compensation at premium overtime rates for all hours worked in excess of
19 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
20 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
21 sections of IWC Wage Orders.

22 17. Additionally, from at least four (4) years prior to the filing of this lawsuit and
23 continuing to the present, Defendants have regularly required Employees to work shifts in excess
24 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
25 (30) minutes, and shifts in excess of ten (10) hours without providing them with second meal
26 periods of not less than thirty minutes; nor did Defendants pay Employees "premium pay," i.e. one
27 hour of wages at each Employee's effective hourly rate of pay, for each meal period that
28 Defendants failed to provide or deficiently provided.

1 18. From at least four (4) years prior to the filing of this lawsuit and continuing to the
2 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
3 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
4 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
5 provided or were deficiently provided.

6 19. From at least four (4) years prior to the filing of this lawsuit and continuing to the
7 present, Defendants have consistently and unlawfully collected or received wages from Employees
8 by making automatic deduction from Employees' wages for alleged meal periods which
9 Employees were consistently denied.

10 20. Additionally from at least four (4) years prior to the filing of this lawsuit, and
11 continuing to the present, Defendants have consistently failed to provide Employees with timely,
12 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

13 21. Additionally from at least three (3) years prior to the filing of this lawsuit, and
14 continuing to the present, Defendants have consistently failed to keep accurate time and wage
15 records as required by California wage-and-hour laws.

16 22. From at least four (4) years prior to the filing of this lawsuit and continuing to the
17 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
18 performance of their job duties for Defendants including, but not limited to, the cost of cell phone
19 usage which was necessary to perform their duties under Defendants' employ which was used
20 throughout the course of Employees' duties under Defendants' employ in violation of Labor Code
21 § 2802.

22 23. From at least four (4) years prior to filing this lawsuit and continuing to the present,
23 Defendants have had a consistent policy of failing to pay all wages fur and owed to Employees at
24 the time of their termination of within seventy-two (72) hours of their resignation, as required by
25 California wage-and-hour laws.

26 24. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
27 Code §§ 98.6, 201, 202, 203, 204, 210, 218, 221, 223, 226, 226.3, 226.7, 432, 510, 512, 558,
28 558.1, 1174, 1174.5, 1182.12, 1185, 1197.1 1194, 1194.2, 1197, 1198, 1198.5, 1199, 1670.5,

2698, 2699, *et seq.*, 2802, 6300 *et seq.*, and 6712; provisions of the Industrial Welfare Commission (IWC) Wage Order(s), including Sections 3, 4, 7, 9, 11, and 12; and California Business & Professions Code § 17200 *et seq.* Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code.

CLASS ALLEGATIONS

25. Plaintiff brings this class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows: “All individuals employed by Defendants, at any time within four (4) years of the filing of this lawsuit, as non-exempt, hourly employees within the State of California.

26. Further, plaintiff seeks to represent the following Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Recovery of Reporting Time Pay. All Class members who were subject to Defendants’ policy and/or practice of not compensating reporting time pay.

d. Subclass 4. Meal Period Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

e. Subclass 5. Rest Break Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee’s regular rate of pay in lieu thereof.

f. Subclass 6. Payroll Records Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to keep accurate time and wage records as required

by California wage-and-hour laws.

g. Subclass 7. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

h. Subclass 8. Unauthorized Deductions from Wages Subclass. All Class members who were subject to Defendants' policy and/or practice of automatically deducting 30-minutes worth of wages from Employees for alleged meal periods they were denied and/or by understating the hours worked by Employees.

i. Subclass 9. Failure to Reimburse for Necessary Business Expenditures. All Class members who were subject to Defendants failing to reimburse for expenses necessarily incurred in the performance of Employees job duties for Defendants which were necessary to perform their duties under Defendants' employ.

j. Subclass 10. Failure to Reimburse for Necessary Business Expenditures. All Class members who were subject to Defendants failing to reimburse for expenses necessarily incurred in the performance of Employees job duties for Defendants which were necessary to perform their duties under Defendants' employ.

k. Subclass 11. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

l. Subclass 12. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

27. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or further division into subclasses or limitation to particular issues.

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

1 **A. Numerosity**

2 29. The potential members of the class as defined are so numerous that joinder of all
3 the member of the class is impracticable. While the precise number of class member has not been
4 determined at this time, Plaintiff is informed and believes that, during the time period relevant to
5 this lawsuit, Defendants employed more than 100 individuals within the State of California.

6 30. Accounting for employee turnover during the relevant time period increases this
7 number substantially. Plaintiff alleges that Defendants' employment records will provide
8 information as to the number and location of all class members.

9 **B. Commonality**

10 31. There are questions of law and fact common to the class that predominate over any
11 questions affecting only individual class members. These common questions of law and fact
12 include:

- 13 a. Whether Defendants failed to pay Employees minimum wages;
14 b. Whether Defendants failed to pay Employees wages for all hours worked;
15 c. Whether Defendants failed to pay Employees overtime as required under Labor
16 Code § 510;
17 d. Whether Defendants failed to pay Employees reporting time pay;
18 e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
19 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
20 premium pay in lieu thereof;
21 f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
22 Orders, by failing to provide Employees with requisite rest breaks or premium pay
23 in lieu thereof;
24 f. Whether Defendants failed to keep required payroll records under Labor Code §§
25 1174 and 1174.5;
26 g. Whether Defendants violated Labor Code § 226(a);
27 h. Whether Defendants violated Labor Code § 221;
28 i. Whether Defendants failed to reimburse Employees for necessary business

1 expenses;

2 j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
3 wages and compensation due and owing at the time of termination of employment;

4 k. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;

5 l. Whether Employees are entitled to equitable relief pursuant to Business and
6 Professions Code § 17200 *et seq.*;

7 m. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*

8 **C. Typicality**

9 32. The claims of the named plaintiff are typical of those of the other Employees.

10 Employees all sustained injuries and damages arising out of and caused by Defendant's common
11 course of conducts in violation of statutes, as well as regulations that have the force and effect of
12 law, as alleged herein.

13 **D. Adequacy of Representation**

14 33. Plaintiff will fairly and adequately represent and protect the interest of Employees.

15 Counsel who represents Employees are experienced and competent in litigating employment class
16 actions.

17 **E. Superiority of Class Action**

18 34. A class action is superior to other available means for the fair and efficient
19 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
20 questions of law and fact common to all Employees predominate over any questions affecting only
21 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
22 Defendants' illegal policies or practices of failing to compensate Employees properly.

23 35. Class action treatment will allow those persons similarly situated to litigate their
24 claims in the manner that is most efficient and economical for the parties and the judicial system.

25 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

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FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

36. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

37. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of misstating Employees time records and failing to pay Employees for all hours worked. Specifically, Defendants had a consistent policy of failing to pay Employees for hours worked during alleged meal periods for which Employees were consistently denied. (see infra). Defendants also required Employees to work post-shift, in excess of their scheduled shifts for which they were not paid wages as Employees were required to spend working hours under the control of Defendants by Employees performed dock work after the scheduled shift and were not compensated for this time. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

38. The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are therefore entitled to double the minimum wage during the relevant period.

39. The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to California Labor Code § 1194(a) which states:

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

40. As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission.

41. California Labor Code § 1194.2 also provides for the following remedies:

1 In any action under Section 1194 . . . to recover wages because of
2 the payment of a wage less than the minimum wages fixed by an
3 order of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

4 42. Defendants have the ability to pay minimum wages for all time worked and have
5 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
6 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

7 43. Wherefore, Employees are entitled to recover the unpaid minimum wages
8 (including double minimum wages), liquidated damages in an amount equal to the minimum
9 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
10 to California Labor Code § 1194(a).

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

13 **(Against All Defendants)**

14 44. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
15 full herein.

16 45. By their conduct, as set forth herein, Defendants violated California Labor Code §
17 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
18 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
19 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
20 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
21 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
22 (8) hours on any seventh day of work in a workweek.

23 46. Defendants had a consistent policy of not paying Employees wages for all hours
24 worked including time Employees were consistently required to work "post-shift" hours, in
25 excess of their eight-hour shift in a given work day by Employees performed dock work after the
26 scheduled shift and were not compensated for this time. Employees were often not properly
27 compensated, nor were they paid overtime rates for all hours worked in excess of eight hours in a
28 given day, and/or forty hours in a given week.

1 47. Defendants' failure to pay compensation in a timely fashion also constituted a
2 violation of California Labor Code § 204, which requires that all wages shall be paid
3 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
4 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
5 and overtime compensation earned by Employees. Each such failure to make a timely payment of
6 compensation to Employees constitutes a separate violation of California Labor Code § 204.

7 48. Employees have been damaged by these violations of California Labor Code §§
8 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

9 49. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
10 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
11 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
12 reasonable attorneys' fees and costs.

13 **THIRD CAUSE OF ACTION**
14 **RECOVERY OF REPORTING TIME PAY**
15 **(Against All Defendants)**

16 50. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
17 full herein.

18 51. The IWC Wage Orders, including those applicable to the transportation industry
19 (which is part of the Transportation Industry and subject to Wage Order 9), require that reporting
20 time pay be provided to any employee who is required to report for work and does report, but is
21 not put to work or is furnished less than half said employee's usual or scheduled day's work.

22 52. Plaintiff is informed and believes and thereon alleges that all or substantially all of
23 Defendants' hourly paid employees are subject to Defendants' policies and practices requiring
24 them to call in or otherwise report to work, but they are not provided reporting time pay for the
25 same in violation of California law. *See e.g. Ward v. Tilly's, Inc.* (2019) 31 Cal.App.5th 1167,
26 review denied (May 15, 2019). Additionally, as discussed above Plaintiff and Class members
27 were not paid for the time spent calling Defendants numerous to find out if they must report for
28 work, or any reporting time pay if they were told not to report for work.

53. Therefore, Employees are owed the unpaid balance of said wages pursuant to the Wage order according to proof at trial, Interest pursuant to Labor Code §§ 218.6 and 1194(a), Civil Code §§ 3287 and § 3289, and reasonable attorneys' fees and costs and/or penalties pursuant to Labor Code § 558(a).

FOURTH CAUSE OF ACTION

MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

54. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

55. Employees regularly worked shifts greater than five (5) hours and greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of more than five (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second meal period of not less than thirty (30) minutes.

56. Defendants failed to provide Employees with meal periods as required under the Labor Code. Employees were consistently required to work through their meal periods which they were consistently denied. Employees were also required to take meal periods after working well beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal period as required by law.

57. Moreover, Defendants failed to compensate Employees for each meal period not provided or inadequately provided, as required under Labor Code § 226.7.

58. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective regular rates of pay for each meal period not provided or deficiently provided, a sum to be proven at trial.

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1 **FIFTH CAUSE OF ACTION**

2 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

3 **(Against All Defendants)**

4 59. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 60. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
7 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
8 not less than ten (10) minutes for each consecutive four (4) hour shift.

9 61. Defendants failed to provide Employees with timely rest breaks of not less than ten
10 (10) minutes for each consecutive four (4) hour shift.

11 62. Moreover, Defendants did not compensate Employees with an additional hour of
12 pay at each Employee's effective hourly rate for each day that Defendants failed to provide them
13 with adequate rest breaks, as required under Labor Code § 226.7.

14 63. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
15 an amount equal to one (1) hour of wages at their effective regular rates of pay for each day
16 worked without the required rest breaks, a sum to be proven at trial.

17 **SIXTH CAUSE OF ACTION**

18 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

19 **IN VIOLATION OF LABOR CODE § 2802**

20 **(Against All Defendants)**

21 64. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
22 full herein.

23 65. Under Labor Code § 2802(a) an employer must indemnify its employees for all
24 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
25 of his or her duties, or of his or her obedience to the directions of the employer.

26 66. Employees incurred necessary expenditures in the performance of their job duties
27 for Defendants, namely the cost of cell phone usage which was necessary to perform their duties
28 under Defendants' employ. From four (4) years prior to the original filing of this lawsuit and

1 continuing to the present, Defendants consistently failed to reimburse Employees for these
2 necessarily incurred business expenses.

3 67. As a result of the unlawful acts of Defendants, Employees have been deprived of
4 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
5 plus interest and penalties thereon, attorneys' fees, and costs.

6 **SEVENTH CAUSE OF ACTION**
7 **VIOLATION OF LABOR CODE § 226(a)**
8 **(Against All Defendants)**

9 68. California Labor Code § 226(a) requires an employer to furnish each of his or her
10 employees with an accurate, itemized statement in writing showing the gross and net earnings,
11 total hours worked, and the corresponding number of hours worked at each hourly rate; these
12 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
13 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
14 statements may be given to the employee separately from the payment of wages; in either case the
15 employer must give the employee these statements twice a month or each time wages are paid.

16 69. Defendants failed to provide Employees with accurate itemized wage statements in
17 writing, as required by the Labor Code. Specifically, the wage statements do not show the
18 overtime rate, a wage statement is provided along with an additional document that contains the
19 daily and weekly hours and overtime (this information is not on the wage statement), and the wage
20 statements show the start date of the pay period is the same as the end date. Additionally, the wage
21 statements given to Employees by Defendants failed to accurately account for wages, overtime,
22 and premium pay for deficient meal periods and rest breaks, and automatically deducted wages
23 for alleged meal periods, all of which Defendants knew or reasonably should have known were
24 owed to Employees, as alleged hereinabove.

25 70. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
26 Employees suffered injuries, including among other things confusion over whether they received
27 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
28 forcing them to make mathematical computations to analyze whether the wages paid in fact

1 compensated them correctly for all hours worked.

2 71. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
3 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
4 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
5 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
6 award of costs and reasonable attorneys' fees.

7 **EIGHTH CAUSE OF ACTION**

8 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**
9 **AND 1174.5**

10 **(Against All Defendants)**

11 72. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
12 full herein.

13 73. California Labor Code § 1174 requires that all employers shall keep accurate time
14 and wage records for all employees. California Labor Code § 1174.5 further requires that any
15 employee suffering injury due to a willful violation of the aforementioned obligations may seek
16 damages, including civil penalties, from the employer.

17 74. During the course of Plaintiff's and Employees' employment, Defendants
18 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
19 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
20 overtime, and premium pay as discussed above.

21 75. Accordingly, Defendants are liable for civil penalties pursuant to the California
22 Labor Code §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

23 **NINTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 221**

25 **(Against All Defendants)**

26 76. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.

28 77. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or

1 receive from an employee any part of wages theretofore paid by said employer to said employee.”

2 78. Defendants unlawfully received and/or collected wages from employees by
3 implementing a policy of automatically deducting 30 minutes worth of vested wages, from
4 Employees, for alleged meal periods which they were consistently denied, as well as by
5 understating the hours worked by Employees as alleged above.

6 79. As a direct and proximate cause of the unauthorized deductions, Employees have
7 been damaged, in an amount to be determined at trial.

8 **TENTH CAUSE OF ACTION**
9 **VIOLATION OF LABOR CODE § 203**
10 **(Against All Defendants)**

11 80. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 81. Numerous Employees are no longer employed by Defendants; they either quit
14 Defendants’ employ or were fired therefrom.

15 82. Defendants failed to pay these Employees all wages due and certain at the time of
16 termination or within seventy-two (72) hours of resignation.

17 83. The wages withheld from these Employees by Defendants remained due and owing
18 for more than thirty (30) days from the date of separation of employment.

19 84. Defendants’ failure to pay wages, as alleged above, was willful in that Defendants
20 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
21 under Labor Code § 203, which provides that an employee’s wages shall continue until paid for up
22 to thirty (30) days from the date they were due.

23 **ELEVENTH CAUSE OF ACTION**
24 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**
25 **(Against All Defendants)**

26 85. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.

28 86. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim

1 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in
2 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
3 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
4 meaning of Code of Civil Procedure
5 § 1021.5.

6 87. Plaintiff is a “person” within the meaning of Business & Professions Code
7 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
8 relief, restitution, and other appropriate equitable relief.

9 88. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
10 business practices.

11 89. Wage-and-hour laws express fundamental public policies. Paying employees their
12 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
13 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
14 vigorously to enforce minimum labor standards, to ensure that employees are not required or
15 permitted to work under substandard and unlawful conditions, and to protect law-abiding
16 employers and their employees from competitors who lower costs to themselves by failing to
17 comply with minimum labor standards.

18 90. Defendants have violated statutes and public policies. Through the conduct alleged
19 in this Complaint Defendants have acted contrary to these public policies, have violated specific
20 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
21 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
22 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
23 guaranteed to all employees under the law.

24 91. Defendants’ conduct, as alleged hereinabove, constitutes unfair competition in
25 violation of the Business & Professions Code § 17200 *et seq.*

26 92. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
27 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
28 reasonable care should have known that their conduct was unlawful; therefore their conduct

violates the Business & Professions Code § 17200 *et seq.*

93. As a proximate result of the above-mentioned acts of Defendants, Employees have been damaged, in a sum to be proven at trial. Unless restrained by this Court Defendants will continue to engage in such unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by the Business & Professions Code, including but not limited to the disgorgement of such profits as may be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

TWELFTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.

(Against All Defendants)

94. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

95. Plaintiff and Employees are aggrieved employees as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the alleged violators, Defendants.

96. Plaintiff seeks wages and penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the penalty provisions, without limitation, based on the following California Labor Code sections: 98.6, 201, 202, 203, 204, 210, 218, 221, 223, 226, 226.3, 226.7, 432, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1197.1 1194, 1194.2, 1197, 1198, 1198.5, 1199, 1670.5, 2698, 2699, *et seq.*, 2802, 6300 *et seq.*, and 6712; provisions of the Industrial Welfare Commission (IWC) Wage Order(s), including Sections 3, 4, 7, 9, 11, and 12; and California Business & Professions Code § 17200 *et seq.*

97. The penalties shall be allocated as follows: 75% to the Labor and Workforce Development Agency (LWDA) and 25% to the affected employee.

98. Employees also seek any and all penalties and remedies set forth in Labor Code

§ 558, which states:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

92. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

99. Plaintiff has exhausted his administrative remedy by sending a certified letter to the LWDA and Defendants postmarked on August 11, 2020.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

- 1 1. For an order certifying this action as a class action;
- 2 2. For compensatory damages in the amount of the unpaid minimum wages for work
3 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
4 the filing of this action, as may be proven;
- 5 3. For liquidated damages in the amount equal to the unpaid minimum wage and
6 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 7 4. For compensatory damages in the amount of all unpaid wages, including overtime
8 and double-time pay, as may be proven;
- 9 5. For recovery of the unpaid balance of the full amount of the reporting time pay due
10 pursuant to the Wage Order as may be proven;
- 11 6. For compensatory damages in the amount of the hourly wage made by Employees
12 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
13 years prior to the filing of this action, as may be proven;
- 14 7. For compensatory damages in the amount of the hourly wage made by Employees
15 for each day requisite rest breaks were not provided or were deficiently provided where no
16 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
17 be proven;
- 18 8. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 19 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
20 for all class members in violation of Labor Code § 221, as may be proven;
- 21 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
22 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 23 11. For penalties pursuant to Labor Code § 1174.5, as may be proven;
- 24 12. For restitution for unfair competition pursuant to Business & Professions Code
25 § 17200 *et seq.*, including disgorgement or profits, as may be proven;
- 26 13. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;
- 27 14. For compensatory damages in the amount of all previously unreimbursed business
28 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants

1 from four (4) years prior to the original filing of this action, as may be proven;

2 15. For an order enjoining Defendants and their agents, servants, and employees, and
3 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
4 duties adumbrated in this Complaint;

5 16. For all general, special, and incidental damages as may be proven;

6 17. For an award of pre-judgment and post-judgment interest;

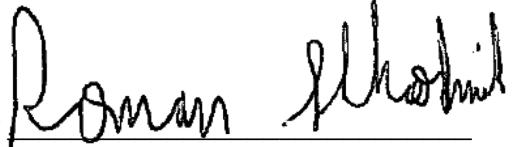
7 18. For an award providing for the payment of the costs of this suit;

8 19. For an award of attorneys' fees; and

9 20. For such other and further relief as this Court may deem proper and just.

10
11 DATED: August 11, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

12
13 By 

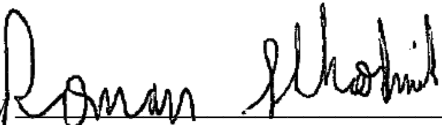
14 David Yeremian
15 Roman Shkodnik
16 Attorneys for Plaintiff
17 STEVEN THAMES
18 and the putative class
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: August 11, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

By 

David Yeremian
Roman Shkodnik
Attorneys for Plaintiff
STEVEN THAMES
and the putative class