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Attorneys for Plaintiff and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

MICHAEL GIBSON, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

SOUTHWEST TRADERS
INCORPORATED, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: STK-CV-UOE-2020-10620

(Assigned to the Honorable Erin Guy Castillo,
Dept. 10B)

**DECLARATION OF PLAINTIFF IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE THE PARTIES' SETTLEMENT
AGREEMENT PURSUANT TO THE LABOR
CODE PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

Date: September 27, 2022;
September 28, 2022;
September 29, 2022;
September 30, 2022; or
October 3, 2022

Time: 9:00 a.m.
Dept.: 10B

1 I, Michael Gibson, declare under penalty of perjury as follows:

2 I am an individual over the age of 18. I am the named Plaintiff in the above-referenced
3 action. I have personal knowledge of the facts set forth below and if called to testify I could and
4 would do so competently.

5 1. This declaration is submitted in support of Plaintiff's Motion to Approve the
6 Parties' Settlement Agreement Pursuant to the Private Attorneys General Act. I was employed by
7 Defendant Southwest Traders Incorporated ("Defendant") as a Commercial Class A Driver from
8 about October 2017 until on or about March 27, 2020.

9 2. I earned non-discretionary remuneration, including without limitation, incentive
10 pay such as "Safe Incentive" wages. During workweeks when I worked in excess of eight hours
11 in a workday and/or forty hours in a workweek and received non-discretionary remuneration
12 during the same workweek, Defendants failed to include any non-discretionary remuneration
13 earned into the calculation of the regular rate. Thus, I claim that I am owed additional overtime
14 pay based on the correct, higher regular rate of pay. Similarly, when I received sick pay, it was
15 disbursed at an incorrect rate of pay. Sick pay was disbursed at the base rate of pay rather than the
16 regular rate, factoring in all non-discretionary remuneration earned during the workweek. In
17 addition, Defendants failed to provide me proper meal and rest breaks. Defendants routinely
18 denied meal and rest breaks through scheduling and setting performance goals. In lieu of
19 providing proper meal and rest breaks, however, Defendants did not pay meal and rest period
20 premiums. To date, I have yet to receive the underpaid overtime wages, sick pay, and meal and
21 rest premium compensation owed to me. Moreover, given the underpayment and/or nonpayment
22 of overtime wages, sick pay, and meal and rest premiums, the wage statements provided to me
23 displayed inaccurate overtime rates of pay and net and gross wages earned. Moreover, the wage
24 statements provided to me failed to identify the accurate applicable hours worked at each hourly
25 rate of pay and accurate total hours worked. Specifically, my wage statements routinely displayed
26 70 total hours worked, which were made up of 40 regular hours worked, 20 overtime hours
27 worked, and 10 double time hours worked. This amount did not reflect reality, as Defendants did
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1 not allow employees to record the exact beginning and ending time of their shifts. On multiple
2 occasions, I worked 15-16 hours days for 5 days a week, exceeding the 70 total hours per week
3 displayed on my wage statements. Finally, I was required to use my personal cell phone in order
4 to perform my job. Defendants failed to reimburse me for said costs.

5 3. I understood that this action was also being prosecuted on behalf of the State of
6 California as a private attorney general. During the pendency of this lawsuit, I was required to
7 provide assistance to my attorneys, including meeting with them and providing them with
8 documents and information. I estimate that I spent at least 15 hours meeting and/or conferring
9 with my attorneys in connection with the assistance of the representative claims. Throughout this
10 case, I have continuously been kept apprised of the status of this case.

11 4. I believe that the settlement is fair, adequate and reasonable for employees and the
12 State of California. I am proud of the result and accomplishment of this lawsuit. I feel that it is a
13 positive accomplishment and understand that other people and the State of California will benefit
14 because of the actions that I have taken.

15 5. I do not have any relationship with or connection to the *cy pres* recipient, Legal
16 Aid at Work.

17 I declare under penalty of perjury that the foregoing is true and correct. Executed on
18 August 22, 2022, at Elk Grove, California.

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21 Michael Gibson
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