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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

WESLEY MAAS on behalf of himself and all
others similarly situated

Plaintiff,

vs.

COVENANT TRANSPORT, INC., a
Tennessee corporation, and DOES 1 through
50, inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

CLASS ACTION COMPLAINT

- 1) Failure to pay Lawful Wages Owed;**
- 2) Failure to provide Lawful Meal Periods or Compensation in lieu thereof;**
- 3) Failure to provide Lawful Rest Periods or Compensation in lieu thereof;**
- 4) Failure to Timely Pay Wages;**
- 5) Knowing and intentional Failure to Comply with Itemized Employee Wage Statement Provisions;**
- 6) Failure to Indemnify Employee for expenditures; and**
- 7) Violations of the Unfair Competition Law**

JURY TRIAL DEMANDED

I.

INTRODUCTION

1. Plaintiff WESLEY MAAS (hereinafter “Plaintiff”) on behalf of himself and all Non-Exempt Employees employed by COVENANT TRANSPORT, INC., in California (hereinafter “Non-Exempt Employees” and/or “Class Members”), as truck drivers, assert the following Class Action claim, pursuant to Code of Civil Procedure section 382, against COVENANT TRANSPORT, INC., and DOES 1 through 50 (hereinafter collectively “Defendants”).

2. During the liability period, defined as the applicable statute of limitations for each and every cause of action contained herein, Defendants enforced shift schedules, employment policies and practices, and/or workload requirements wherein Plaintiff and Non-Exempt Employees were, amongst other statutory violations, not paid all lawful wages; not provided compliant rest and meal periods; not provided accurate itemized wage statements; not paid timely wages at termination; not reimbursed for expenses incurred; and not provided proper rest within seven days

3. Plaintiff, on behalf of himself and Non-Exempt Employees, brings this action pursuant to Labor Code sections 201-203, 204, 226, 226.7, 512, 551, 552, 1194, 1197, 2802, Title 8, section 11090 and any other applicable Industrial Welfare Commission (“IWC”) Wage Orders, seeking unpaid lawful wages, unpaid rest and meal period compensation, penalties and other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of himself and all Class Members, pursuant to Business and Professions Code sections 17200-17208, also seeks restitution from Defendants based on Defendants’ violations of California Labor Code of Regulations, Title 8, section 11050 *et seq.*

II.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to the California Constitution Article VI §10, which grants the California Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes here do not give jurisdiction to any

1 other court. The monetary damages and restitution sought by Plaintiff exceed the minimum
2 jurisdiction limits of the California Superior Court and will be established according to proof at
3 trial.

4 6. Venue is proper to each Defendant pursuant to Code of Civil Procedure section
5 395 because they conduct substantial and continuous business activities in San Bernardino
6 County and are within the jurisdiction of this Court for service of process purposes. Defendants
7 employ numerous Non-Exempt Employees in San Bernardino and other Counties throughout
8 California.

9 III.

10 PARTIES

11 7. Plaintiff is, and at all times mentioned was, a resident of California.

12 8. Upon information and belief, Defendants are a truckload carrier headquartered in
13 Chattanooga, Tennessee. Plaintiff believes Defendants are qualified to do business in California
14 and continue to do so.

15 9. The true names and capacities of Defendants, whether individual, corporate,
16 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
17 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
18 section 474. Plaintiff is informed and believes, and based thereon alleges that each of the
19 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful
20 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
21 names and capacities of the Defendants designated hereinafter as DOES when such identities
22 become known.

23 10. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
25 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
26 legally attributable to the other Defendants.

1 IV.

2 **FACTUAL BACKGROUND**

3 11. Plaintiff was employed by Defendants from on or about July 3, 2019 until on or \
4 about April 20, 2020. While employed by Defendants his duties included, but not limited to,
5 driving trucks containing refrigerated goods throughout California and other states. Plaintiff
6 typically worked 7 days per week and 70 hours a week, with most pick ups originating from the
7 Wal-Mart Distribution Center located in Colton, CA.

8 12. During the liability period, Plaintiff and Class Members were paid on a piece rate
9 basis and thus compensated only for completing their driving routes, no matter how much time it
10 actually takes to complete them. Thus, Plaintiff and Class Members were typically not paid for
11 all lawful wages earned including minimum wages. For example, they were not paid for pre-trip
12 and post-trip inspections of their truck which would average 30-45 minutes per trip. Further,
13 Plaintiff and Class Members were not paid for time spent fueling their trucks, nor were they paid
14 for time spent waiting for their trucks to be loaded or unloaded. As a result, Plaintiff and Non-
15 Exempt Employees were not accurately paid lawful wages for all hours worked.

16 13. During the liability period, due to the demands of work shifts, Plaintiff and Non-
17 Exempt Employees worked in excess of 10 hours per shift. During these shifts they received only
18 one (30) minute meal period. This meal period frequently occurred in excess of five (5) hours
19 from the beginning of their shift. Accordingly, Plaintiff and Non-Exempt Employees worked in
20 excess of 10 hours without receiving two compliant meal periods and were not compensated one
21 (1) hour of pay at their regular rate of compensation for each workday that compliant meal periods
22 were not provided.

23 14. During the liability period, due to the demands of work shifts, Plaintiff and Non-
24 Exempt Employees did not receive a lawful minimum ten (10) minute rest period for every four
25 hours worked or major fraction thereof. Nor were they compensated one (1) hour of pay at their
26 regular rate of compensation for each workday that rest periods were not provided, in violation of
27 California labor laws, regulations, and IWC Wage Orders.

28 15. Defendants failed to pay Plaintiff and Non-Exempt Employees all earned wages in

1 a timely manner; nor have they paid, upon or after termination, all compensation due, including
2 but not limited to all wages owed and compensation for having failed to properly provide rest
3 periods and meal periods.

4 16. Defendants also failed to maintain accurate itemized records reflecting total hours
5 worked and have failed to provide Plaintiff and Non-Exempt Employees with accurate itemized
6 wage statements reflecting total hours worked and appropriate rates of pay. Here, for example,
7 Defendants provided wage statements indicating “mileage rates,” however, the number of miles
8 are not listed.

9 17. During the liability period, Plaintiff and Non-Exempt Employees were required to
10 use their personal cell phones in the performance of their job duties. They used their personal cell
11 phones for approximately a minimum three (3) hours a day during their shifts. They would call
12 dispatch, payroll, administration, the receiver regarding load arrival, use for navigation when truck
13 navigation malfunctioned. Plaintiff and Non-Exempt Employees maintained additional service
14 plans to accommodate such needs. .

15 18. During the liability period, Plaintiff and Non-Exempt employees received wages on
16 their pay card [Comdata], supplied by Defendants, and when withdrawing money they incurred a
17 fee for such transaction.

18 19. Upon information and belief, during the relevant period, Defendants employed over
19 one hundred (100) such employees in California as truck drivers.

20 20. Plaintiff and Class Members all times pertinent hereto, have
21 been non-exempt employees within the meaning of the California Labor Code, and the
22 implementing rules and regulations of the IWC California Wage Orders.

23 V.

24 **CLASS ACTION ALLEGATIONS**

25 21. Plaintiff seeks to represent a Class comprised of and defined as: All persons who
26 are or were employed by Defendants in the state of California as non-exempt employees and who
27 occupied positions of truck drivers and similar position within four (4) years prior to the date this
28 lawsuit is filed (“liability period”) until resolution of this lawsuit (collectively referred to as the

1 “Class” or “Class Members”).

2 22. Plaintiff also seeks to represent Subclasses comprised of and defined as:

3 a. All Non-Exempt Employees employed by Defendants in California as
4 truck drivers within the liability period who were not accurately paid all lawful wages, including
5 minimum wages, for all hours worked;

6 b. All Non-Exempt Employees employed by Defendants in California as
7 truck drivers within the statutory liability period who were not provided a compliant thirty (30)
8 minute uninterrupted meal period by the end of the fifth hour when they worked over five hours
9 in a shift and who were not provided a similar second uninterrupted meal period by the end of
10 the tenth when they worked over ten hours in a shift;

11 c. All Non-Exempt Employees employed by Defendants in California as
12 truck drivers within the liability period who were not provided a minimum ten (10) minute rest
13 period for every four (4) hours, or major fraction thereof, worked per day and not provided
14 compensation in lieu thereof;

15 d. All Non-Exempt Employees employed by Defendants in California as
16 truck drivers within the liability period who were not timely paid all wages owed during and/or
17 upon the termination of their employment;

18 e. All Non-Exempt Employees employed by Defendants in California as
19 truck drivers within the liability period who were not provided with accurate and complete
20 itemized wage statements; and

21 f. All Non-Exempt Employees employed by Defendants in California as
22 truck drivers within the liability period and were not indemnified for expenses incurred in direct
23 consequence of the discharge of their duty.

24 23. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
25 or modify the class description with greater specificity or further division into subclasses or
26 limitation to particular issues.

27 24. This action has been brought and may properly be maintained as a class action
28 under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined

community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity

25. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Non-Exempt Employees has not been determined at this time, Plaintiff is informed and believes that Defendants currently employ, and/or during the relevant time period employed, approximately over 100 Non-Exempt Employees in California who are or have been affected by Defendants' unlawful practices as alleged herein.

B. Commonality

26. There are questions of law and fact common to the Class predominating over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- i. Whether Defendants violated Labor Codes sections 200, 1194, and 1197 applicable IWC Wage Orders by failing to pay all earned wages, including minimum wages to for time spent in non-driving duties during each work shift;
- ii. Whether Defendants violated sections 226.7, 512 of the Labor Code and applicable IWC Wage Order by failing to provide the statutory thirty (30) minute meal periods to Non-Exempt Employees on days in which they worked in excess of five (5) hours and failing to compensate said employees one hour wages in lieu of meal periods and failing to provide similar statutory meal period and compensation when they worked in excess of ten (10) hours in a shift;
- iii. Whether Defendants violated Labor Code section 226.7 and applicable IWC Wage Orders by failing to authorize and permit minimum ten (10) minute rest periods to Non-Exempt Employees for every four hours or major fraction thereof worked and failing to compensate said employees one (1) hours wages in lieu of rest periods;
- iv. Whether Defendants violated sections 201-203 of the Labor Code and applicable IWC Wage Orders by failing to pay all earned wages and/or premium wages due and

1 owed at the time that any Non-Exempt Employees' employment with Defendants
2 terminated;

3 v. Whether Defendants violated section 204 of the Labor Code and applicable IWC
4 Wage Orders by failing to timely pay all earned wages and/or premium wages due to
5 and owed during the Non-Exempt Employees' employment with Defendants;

6 vi. Whether Defendants violated section 226 of the Labor Code and applicable IWC
7 Wage Orders by failing to, among other violations, maintain accurate records of, among
8 others, Non-Exempt Employees' earned wages, work periods, meal periods and
9 deductions;

10 vii. Whether Defendants violated section 2802 of the Labor Code and applicable IWC
11 Wage Orders by failing to indemnified Non-Exempt Employees for expenses incurred in
12 direct consequence of the discharge of their duty; and

13 viii. Whether Defendants violated sections 212, 213... re debit card.

14 **C. Typicality**

15 27. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff
16 and all members of the Class sustained injuries and damages arising out of and caused by
17 Defendants' common course of conduct in violation of California laws, regulations, and statutes as
18 alleged herein.

19 **D. Adequacy of Representation**

20 28. Plaintiff will fairly and adequately represent and protect the interests of the
21 members of the Class. Counsel who represents Plaintiff is competent and experienced in litigating
22 large employment class actions.

23 **E. Superiority of Class Action**

24 29. A class action is superior to other available means for the fair and efficient
25 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
26 questions of law and fact common to the Class predominate over any questions affecting only
27 individual members of the Class. Each member of the Class has been damaged and is entitled to
28 recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

30. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VI. CAUSES OF ACTION

First Cause of Action

Failure to Pay Lawful Wages Owed
(Lab. Code §§ 1194, 1197, IWC Wage Orders)
(Against All Defendants)

31. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

32. Defendants violated California wage and hour law by failing to pay Plaintiff and Class Members for all time spent working under their control.

33. As alleged herein, Defendants failed to pay Plaintiff and Class Members for the approximately 30-45 minutes they spent on pre and post-inspections of their trucks before each trip.

34. As alleged herein, Defendants failed to pay Plaintiff and Class Members for time spent fueling their trucks.

35. As alleged herein, Defendants failed to pay Plaintiff and Class Members for time spent waiting for their truck to be loaded and unloaded.

36. As alleged herein, Defendants failed to pay Plaintiff and Class Members for all miles traveled between destinations.

37. As a result of Defendants unlawful acts, Plaintiff and Class Members were deprived of compensation for all earned wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code section 1194.

38. WHEREFORE, Plaintiff and Class Members request relief as described herein and below.

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Second Cause of Action
Failure to Provide Lawful Meal Periods
Or Compensation in Lieu Thereof
(Lab. Code §§512, 226.7, IWC Wage Orders)
(Against All Defendants)

39. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

40. As alleged herein, Defendants' failure to provide thirty (30) minute uninterrupted meal periods by the end of the fifth hour for days which Plaintiff and Class Members worked in excess of five (5) hours and similar meal periods for days Plaintiff and Class Members worked in excess of ten (10) hours and failing to provide compensation for such statutorily non-compliance, they violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

41. As a result of Defendants unlawful acts, Plaintiff and Class Members were deprived of premium wages and are entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code §226.7.

42. WHEREFORE, Plaintiff and Class Members request relief as described herein and below.

Third Cause of Action
Failure to Provide Rest Periods
Or Compensation in Lieu Thereof
(Lab. Code §§226.7, IWC Wage Orders)
(Against All Defendants)

43. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

44. As alleged herein, Defendants' failure to authorize and permit a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked per day by Plaintiff and Class Members, and failing to provide compensation for such non-provided rest periods, as alleged above, they willfully violated the provisions of Labor Code section 226.7 and IWC applicable Wage Orders.

45. As a result of Defendants unlawful acts, Plaintiff and Class Members were deprived of premium wages, and are entitled to recovery of such amounts, plus interest and penalties thereon

1 under Labor Code §226.7.

2 46. WHEREFORE, Plaintiff and Class Members request relief as described herein and
3 below.

4 **Fourth Cause of Action**

5 Failure to Timely Pay Wages Due at Termination
6 Lab. Code §§ 201-203, IWC Wage Orders)
(Against All Defendants)

7 47. Plaintiff incorporates by reference and realleges every allegation contained above,
8 as though fully set forth herein.

9 48. Sections 201 and 202 of the California Labor Code require Defendants to pay its
10 employees all wages due within 72 hours of termination of employment. Section 203 of the Labor
11 Code provides that if an employer willfully fails to timely pay such wages the employer must, as
12 a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an
13 action is commenced. The penalty cannot exceed 30 days of wages.

14 49. Plaintiff and Class Members are entitled to compensation for all forms of wages
15 earned, including compensation for all hours worked and for non-provided rest and meal periods,
16 but to date have not received such compensation therefore entitling them Labor Code section 203
17 penalties.

18 50. More than 30 days have passed since Plaintiff and Class Members have left
19 Defendants' employ, and on information and belief, have not received payment pursuant to Labor
20 Code §203. As a consequence of Defendants' willful conduct in not paying all earned wages,
21 Plaintiff and Class Members are entitled to 30 days' wages as a penalty under Labor Code section
22 203 for failure to pay legal wages.

23 51. WHEREFORE, Plaintiff and Class Members request relief as described herein and
24 below.

25 **Fifth Cause of Action**

26 Knowing and Intentional Failure to Comply with Itemized Employee
27 Wage Statement Provisions
(Lab. Code § 226, IWC Wage Orders)
(Against All Defendants)

28 52. Plaintiff repeats and incorporates herein by reference every allegation set forth

1 above, as though fully set forth herein.

2 53. Section 226(a) of the California Labor Code requires Defendants to itemize in
3 wage statements and to accurately report total hours worked by Plaintiff and Class Members. IWC
4 Wage Orders require Defendants to maintain time records showing, amongst other things, when
5 the employee begins and ends each work period, meal periods, split shift intervals and total daily
6 hours worked in an itemized wage statement, and must show all deductions and reimbursements
7 from payment of wages, and accurately report total hours worked by Plaintiff and Class Members.
8 On information and belief, Defendants have failed to record all or some of the items delineated in
9 Industrial Wage Orders and Labor Code §226.

10 54. Defendants violated Section 226 by failing to provide Plaintiff and Class Members
11 with wage statements that accurately showed the total number of miles traveled per pay period.
12 Defendants further violated Section 226 by failing to provide Plaintiff and Class Members with
13 statements of wages that accurately showed the net wages earned for regular and overtime hours
14 worked. Defendants violated Section 226 by failing to provide Plaintiff and Class Members with
15 wage statements that accurately show the applicable hourly rates in effect during the pay period
16 and the corresponding number of hours worked at each hourly rate.

17 55. Plaintiff and Class Members have been injured by Defendants' actions by rendering
18 them unaware of the full compensation to which they were entitled under applicable provisions of
19 the California Labor Code and applicable IWC Wage Orders.

20 56. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a
21 maximum of \$4,000.00 each for record-keeping violations.

22 57. WHEREFORE, Plaintiff and Class Members request relief as described herein and
23 below.

24 **Sixth Cause of Action**
25 Failure to Indemnify Employees for Expenditures
(Lab. Code § 2802)
26 (Against All Defendants)

27 58. Plaintiff repeats and incorporates herein by reference each and every allegation
28 set forth above, as though fully set forth herein.

1 59. As set forth above, Section 2802 of the California Labor Code requires
2 Defendants to indemnify employees for all necessary expenditures incurred in direct consequence
3 of the discharge of his duties.

4 60. Defendants violated Section 2802 by, among other things, failing to indemnify
5 Plaintiff and Class Members for expenditures incurred for using personal cellular phone in the
6 performance of job duties

7 61. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
8 incurred expenditures in amounts to be determined at trial.

9 62. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as
10 described herein and below.

11 **Seventh Cause of Action**
12 Violation of Unfair Competition Law
13 (Bus. & Prof. Code, §§ 17200-17208)
14 (Against All Defendants)

15 63. Business & Professions Code Section 17200 provides:

16 As used in this chapter, unfair competition shall mean and include any **unlawful, unfair**
17 or fraudulent business act or practice and unfair, deceptive, untrue or misleading
18 advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of
19 Part 3 of Division 7 of the Business and Professions Code.) (Emphasis added.)

20 64. Defendants' violations of the Labor Code and Wage Order provisions set forth above
21 constitute unlawful and/or unfair business acts or practices.

22 65. The actions of Defendants, as alleged within this Complaint, constitute false,
23 fraudulent, unlawful, unfair, and deceptive business practices, within the meaning of Business and
24 Professions Code section 17200, *et seq.*

25 66. Plaintiff and Class Members have been personally aggrieved by Defendants'
26 unlawful and unfair business acts and practices alleged herein.

27 67. As a direct and proximate result of the unfair business practices of Defendants, and
28 each of them, Plaintiff and Class Members are entitled to restitution of all wages which have been
unlawfully withheld as a result of the business acts and practices described herein.

WHEREFORE, Plaintiff and Class Members request relief as described herein and below.

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VII.

PRAYER

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages in an amount according to proof with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. For premium wages pursuant to Labor Code §§226.7 and 512;
5. For premium pay and penalties pursuant to Labor Code §§203, 226;
6. For pay, penalties, and the like for violating Labor Code §2802;
7. For attorneys' fees, interests, and costs of suit under Labor Code §§226, 1194, 2802; and
8. For further justifiable relief the Court deems proper.

DEMAND FOR JURY TRIAL

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

Dated: December 22, 2020

JAMES HAWKINS, APLC



James R. Hawkins, Esq.

Isandra Y. Fernandez, Esq.

Richard Barnwell, Esq.

Attorneys for Plaintiff

WESLEY MAAS