

Arnold C. Wang (CSB #204431)
arnold@aswtlawyers.com
Craig S. Momita (SBN 163347)
craig@aswtlawyers.com
**ARIAS SANGUINETTI WANG
& TORRIJOS LLP**
6701 Center Drive West, Suite 1400
Los Angeles, CA 90045
Telephone: (310) 844-9696
Facsimile: (310) 861-0168

Sidney Sohn (CSB # 227662)
ssohn@venerablelaw.com
Alexander Tsao (CSB # 227643)
atsao@venerablelaw.com
VENERABLE INJURY LAW
3700 Wilshire Blvd, Suite 1000
Los Angeles, CA 90010
Telephone: (213) 383-2332
Facsimile: (213) 383-3542

Attorneys for Plaintiffs and the Putative Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN**

ALEXIS MARTINEZ, an individual, on behalf of himself and all others similarly situated; JAY NEILSON, an individual, on behalf of himself and all others similarly situated; ERIC MALDONADO, an individual, on behalf of himself and all others similarly situated; MANUEL GONZALEZ, an individual, on behalf of himself and all others similarly situated; TYLER NICHOLS, an individual, on behalf of himself and all others similarly situated; ANDREW HO, an individual, on behalf of himself and all others similarly situated; DELIA JOSEPH, an individual, on behalf of himself and all others similarly situated; TERRILL LEWIS, an individual, on behalf of himself and all others similarly situated; RALPH RODRIGUEZ, an individual, on behalf of himself and all others similarly situated; STEVEN ROY DAVES, an individual, on behalf of himself and all others similarly situated; KEITH WASHINGTON, an individual, on behalf of himself and all others similarly situated; DERRICK MASSEY, an individual, on behalf of himself and all others similarly situated; and, BILL COOK, an individual, on behalf of himself

CASE NO.

CLASS ACTION

COMPLAINT AND DEMAND FOR JURY TRIAL FOR:

- 1. FAILURE TO PAY MINIMUM WAGES (LAB. CODE §§ LABOR CODE §§ 558, 558.1, 1182.12, 1194, 1197, 1197.1, IWC WAGE ORDER NO. 9-2001, § 4)**
- 2. FAILURE TO COMPENSATE FOR ALL HOURS WORKED INCLUDING STRAIGHT TIME (LAB. CODE §§ 200, 226, 500, 1197.1, 1198 and IWC Wage Order No. 9-2001)**
- 3. FAILURE TO FURNISH ACCURATE ITEMIZED WAGE AND HOUR STATEMENTS (LABOR CODE §§ 226, 226.3, 226.6, 558, ET SEQ., 1174, 1174.5, 1198)**

and all others similarly situated

Plaintiffs,

vs.

TS TRANSPORTING, INC., a California Corporation; TRAVIS SMITH; STACY SMITH; CHRIS RHODES; and, DOES 1 through 100, inclusive,

Defendants.

4. FAILURE TO PAY WAGES UPON DISCHARGE (LAB. CODE §§ 201, 203)

5. FAILURE TO REIMBURSE EMPLOYEE EXPENSES [LAB. CODE § 2802]

6. UNFAIR AND UNLAWFUL BUSINESS ACTS AND PRACTICES (BUS. & PROF. CODE §§ 17200, ET SEQ.)

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Article 6, §10 of the California Constitution and Code of Civ. Proc. § 410.10 because Plaintiffs Alexis Martinez, Jay Neilson, Eric Maldonado, Manuel Gonzalez, Tyler Nichols, Andrew Ho, Delia Joseph, Terrill Lewis, Ralph Rodriguez, Steven Roy Daves, Keith Washington, Derrick Massey and Bill Cook (collectively “Plaintiffs”) are residents of the State of California, and Defendants Travis Smith, Stacy Smith and Chris Rhodes are residents of the State of California, and Defendant TS Transporting, Inc., a California corporation, and DOES 1 through 100 (hereinafter collectively “Defendants”) are qualified to do business in California and regularly conduct business in California.

2. Venue is proper in this court pursuant to Code of Civ. Proc. §§ 395 and 395.5 because Plaintiffs, and other persons similarly situated, performed work for Defendants in the County of Kern, Defendants maintain offices and facilities and transact business in the County of Kern, and because Defendants’ unlawful policies and practices that are the subject of this action were applied, at least in part, to Plaintiffs, and other persons similarly situated, in the County of Kern.

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PLAINTIFFS

3. The Hourly Driver Class (“Subclass 1”) comprises the following persons: All current and former drivers employed by Defendants throughout California whose job responsibilities, during the period four (4) years prior to the filing of the instant complaint to the present, included delivering or moving mail and parcel packages by driving on road.

4. The Misclassified Driver Class (“Subclass 2”) comprises the following persons: All current and former drivers misclassified as independent contractors employed by Defendants throughout California whose job responsibilities, during the period four (4) years prior to the filing of the instant complaint to the present, included delivering or moving mail and parcel packages by driving on road.

5. At all relevant times herein mentioned, Plaintiff Alexis Martinez is an individual residing in the State of California, is or was employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

6. At all relevant times herein mentioned, Plaintiff Jay Neilson is an individual residing in the State of California, is or was employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

7. At all relevant times herein mentioned, Plaintiff Eric Maldonado is an individual residing in the State of California, is or was employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

8. At all relevant times herein mentioned, Plaintiff Manuel Gonzalez is an individual residing in the State of California, is or was employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

9. At all relevant times herein mentioned, Plaintiff Tyler Nichols is an individual residing in the State of California, is or was employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

10. At all relevant times herein mentioned, Plaintiff Andrew Ho is an individual residing in the State of California, is or was employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

11. At all relevant times herein mentioned, Plaintiff Delia Joseph is an individual residing in the State of California, is or was employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

12. At all relevant times herein mentioned, Plaintiff Terrill Lewis is an individual residing in the State of California, is or was employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

13. At all relevant times herein mentioned, Plaintiff Ralph Rodriguez is an individual residing in the State of California, is or was employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

14. At all relevant times herein mentioned, Plaintiff Steven Roy Daves is an individual residing in the State of California, is or was employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

15. At all relevant times herein mentioned, Plaintiff Keith Washington is an individual residing in the State of California, is or was employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

16. At all relevant times herein mentioned, Plaintiff Derrick Massey is an individual residing in the State of California, is or was employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

17. At all relevant times herein mentioned, Plaintiff Bill Cook is an individual residing in the State of California, is or was employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

DEFENDANTS

18. Plaintiffs are informed and believe, and based on that information and belief allege, that Defendant TS Transporting, Inc. (sometimes hereinafter referred to as “TST” or “Defendant”), is, and at all relevant times herein mentioned:

- a. Was a duly organized California corporation.
- b. Was duly qualified to conduct business, and was conducting business, in the State of California, including the County of Kern; and

c. Has its principal place of business in Bakersfield, California.

19. Plaintiffs are informed and believe, and based on that information and belief allege, that Defendant Travis Smith (“Smith”) is an individual residing in the State of California and is employed by Defendants in California.

20. On information and belief, Smith is a person who violated or caused the violations of the California Labor Code and provisions regulating hours and days of works as detailed in the applicable Industrial Welfare Commission Order. At all relevant times, Smith has been the owner and CEO of Defendant; he has had complete control and authority over all labor policies and practices, including those resulting in violations as described in this complaint; and he has actively violated or caused the violations alleged herein.

21. Plaintiffs are informed and believe, and based on that information and belief allege, that Defendant Stacy Smith (“Ms. Smith”) is an individual residing in the State of California and is employed by Defendants in California.

On information and belief, Ms. Smith is a person who violated or caused the violations of the California Labor Code and provisions regulating hours and days of works as detailed in the applicable Industrial Welfare Commission Order. On information and belief, at all relevant times, Ms. Smith has been an officer, director or managing agent of Defendant; she has had complete control and authority over all labor policies and practices, including those resulting in violations as described in this complaint; and she has actively violated or caused the violations alleged herein.

22. Plaintiffs are informed and believe, and based on that information and belief allege, that Defendant Chris Rhodes (“Rhodes”) is an individual residing in the State of California and is employed by Defendants in California.

23. On information and belief, Rhodes is a person who violated or caused the violations of the California Labor Code and provisions regulating hours and days of works as detailed in the applicable Industrial Welfare Commission Order. On information and belief, at all relevant times, Rhodes has been a supervisor, officer, director or managing

1 agent of Defendant; he has had complete control and authority over all labor policies and
2 practices, including those resulting in violations as described in this complaint; and he has
3 actively violated or caused the violations alleged herein.

4 24. The true names and capacities, whether individual, corporate, partnership,
5 associate, or otherwise, of Defendants Does 1 through 100, inclusive (“Doe Defendants”),
6 are unknown to Plaintiffs who therefore sue these Doe Defendants by such fictitious names
7 pursuant to *Code of Civ. Proc.* § 474. Plaintiffs will seek leave to amend this complaint to
8 allege their true names and capacities when they are ascertained.

9 25. Plaintiffs are informed and believe, and based on that information and belief
10 alleges, that each of the Defendants named in this complaint, including each of the Doe
11 Defendants, is responsible in some manner for one or more of the events and happenings,
12 and proximately caused the injuries and damages, hereinafter alleged.

13 26. Plaintiffs are informed and believe, and based on that information and belief
14 allege, that each of the Defendants named in this complaint, including each of the Doe
15 Defendants, is, and at all relevant times herein mentioned was, the agent, servant, and/or
16 employee of each of the other Defendants, and that each Defendant was acting within the
17 course and scope of his, her, or its authority as the agent, servant, and/or employee of each
18 of the other Defendants. Consequently, each Defendant is jointly and severally liable to
19 Plaintiffs and the other members of the Class for the damages sustained as a proximate
20 result of their conduct.

21 27. Under California law, Defendants are jointly and severally liable as
22 employers for the violations alleged herein because they have each exercised sufficient
23 control over the wages, hours, working conditions, and employment status of Plaintiffs and
24 other non-party aggrieved employees. Each Defendant had the power to hire and fire
25 Plaintiffs, supervised, and controlled their work schedule and/or conditions of employment,
26 determined their rate of pay, and maintained their employment records. Defendants
27 suffered or permitted Plaintiffs to work and/or “engaged” Plaintiffs so as to create a
28 common-law employment relationship. As joint employers of Plaintiffs, Defendants are

jointly and severally liable for the civil penalties and all other relief available to Plaintiffs under the law.

CLASS ALLEGATIONS

28. The persons who comprise the Class are so numerous that joinder with all such persons is impracticable and the disposition of these claims will benefit the parties and the Court. The claims of Plaintiffs are typical of the claims of the Class. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs do not have any interests that are antagonistic to the Class. Counsel for Plaintiffs are experienced, qualified, and generally able to conduct complex class action litigation.

29. This Court should permit this action to be maintained as a class action pursuant to *Code of Civ. Proc.* § 382 for the following reasons:

a. The questions of law and fact common to the Class predominate over any question affecting only individual members;

b. A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;

c. The members of the Class are so numerous that it is impractical to bring all members of the Class before the Court;

d. Plaintiffs and the other members of the Class will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;

e. There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties alleged herein, as well as in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;

f. Without class certification, the prosecution of separate actions by individual members of the Class would create a substantial risk of the following:

i. Inconsistent or varying adjudications with respect to individual

1 members of the Class that would establish incompatible standards of conduct for
2 Defendants, and/or

3 ii. Adjudications with respect to the individual members that
4 would, as a practical matter, be dispositive of the interests of other members not parties to
5 the adjudications, or would substantially impair or impede their ability to protect their
6 interests, including but not limited to the potential for exhausting the funds available from
7 those parties who are, or may be, responsible Defendants; and

8 g. Defendants have acted, or refused to act, on grounds that are generally
9 applicable to the Class, thereby making final relief appropriate with respect to the Class as
10 a whole.

11 NATURE OF ACTION

12 30. This case involves Defendants deliberate scheme to misclassify their truck
13 drivers as independent contractors, thereby denying them the fundamental protections due
14 to employees under California law. Subsequently, Defendants made all their truck drivers
15 W-2 employees, while continuing to violate California's wage hour laws and protections
16 for employees. The result of Defendants' schemes is that Plaintiffs and other similarly
17 situated truck drivers were, and are, routinely denied payment of all earned wages.
18 Defendants have sought to avoid various duties and obligations owed to its employees
19 (whether as "independent contractors" or W-2 employees) under California's Labor Code
20 and Industrial Welfare Commission ("IWC") wage orders, including: the duty to pay
21 California minimum wage for all hours worked (Cal. Labor Code §§ 558, 558.1, 1182.11,
22 1182.12, 1194, 1197, 1197.1; Minimum Wage Order; IWC Wage Order No. 9, § 4); the
23 duty to compensate for all hours worked including straight time (Cal. Labor Code §§ 200,
24 226, 500, 1197.1, 1198); the duty to furnish accurate itemized wage and hour statements
25 (Cal. Labor Code §§ 226, 226.3, 226.6, 558, et seq., 1174, 1174.5, 1198); the duty to timely
26 pay wages due upon discharge (Cal. Labor Code §§ 201, 203); the duty to indemnify
27 employees for all expenses and losses necessarily incurred in connection with their
28 employment (Cal. Labor Code §2802; IWC Wage Order No. 9, §§ 8-9); the duty to provide

workers' compensation coverage (Cal. Labor Code § 3200 et seq.); and other legal obligations.

FACTUAL ALLEGATIONS

31. From the four (4) years prior to the filing of the complaint until January 2020, TST misclassified its drivers as “independent contractors” and issued them 1099s. From about January 2020 to the present, TST classified its drivers as employees and issued them W-2s.

32. TS Transporting, Inc. is a licensed and bonded freight shipping and trucking company running a freight hauling business from Bakersfield, California. The cargo hauled by TS Transporting, Inc. is US Mail.

33. TST’s place of business is located at 3143 Petrol Rd, Bakersfield, CA 93308 (sometimes hereinafter referred to as the “yard”). The yard is where TST’s Class A, B and C commercial vehicles and its company layover cars (such as Toyota Camrys, Toyota Corollas, etc.) are kept and maintained.

34. Plaintiffs carry Commercial Driver's Licenses (“CDL”) Class A, B and/or C. Plaintiffs typically drive CDL A, CDL B and CDL C class trucks. The type of class trucks driven depends on the route Plaintiffs are assigned by TST.

35. There are approximately 40 routes which TST assigns to its drivers. TST only pays the plaintiff drivers for a pre-set number of hours it has artificially established for each route. Plaintiffs are not paid for the actual time they spend driving routes.

36. For example, Route # 29 pays a total of 5.25 hours, with respect to a workday which starts before 5:15 a.m. and ends after 7:00 p.m. In contrast, according to Defendants, Route # 29 only pays for pre-set formulated times, that are spread over three shifts in one day as follows:

Shift One: Start BPO 5:15 a.m., leave BPO 5:30 a.m., arrive Arvin 6:00 a.m., leave Arvin 6:05 a.m., arrive Lamont 6:15 a.m., leave Lamont 6:20 a.m., arrive Edison 6:35 a.m., and end first shift Edison 6:45 a.m.

Shift Two: Start BPO 12:45 p.m., leave BPO 1:00 p.m., arrive Camino 1:25 p.m., leave Camino 1:45 p.m., arrive BPO 2:10 p.m. and end first shift BPO 2:25 p.m.

Shift Three: Start Edison 5:10 p.m., leave Edison 5:20 p.m., arrive Lamont 5:35 p.m., leave Lamont 5:40 p.m., arrive Arvin 5:50 p.m., leave Arvin 5:55 p.m., arrive Pumpkin Center 6:10 p.m., leave Pumpkin Center 6:15 p.m., arrive BPO 6:45 p.m., and end first shift BPO 7:00 p.m.

37. At the beginning of each shift, when Plaintiffs arrive to the yard, or other cities and waypoints, they are required to perform a pre-inspection on their vehicle. Per TST policy, at minimum, the following must be inspected: service brakes, including trailer brake connections, parking (hand) brake, steering mechanism, lighting devices and reflectors, tires, horn, windshield wipers, rear vision mirrors, coupling devices and proper warm-up of all trucks. The pre-inspection takes approximately 15-20 minutes. This is unpaid time. Plaintiffs must perform a separate pre-inspection at the start of each shift, up to several times a day. For example, at the beginning of their second and third shifts, etc., drivers must perform another pre-inspection on their vehicles which again takes 15-20 minutes per inspection. The time each Plaintiff spent performing these pre-inspections each day was unpaid time.

38. At the end of each shift, when Plaintiffs arrive to the yard, or other cities and waypoints, they are also required to perform a post-inspection on their vehicle which takes about 20-30 minutes to complete. The time Plaintiff(s) spent performing post-inspections each day was unpaid time.

39. As a generic example, at the beginning of a route, after the first pre-inspection, drivers drive their vehicles or rigs to the United States Postal Service ("USPS") Post Office located at 3400 Pegasus Dr, Bakersfield, CA 93380 (hereinafter "Bakersfield PO"). The drive to and from the Bakersfield PO usually takes about five to ten minutes. This is unpaid time. At the Bakersfield PO, the drivers pick up mail and from there drive to other cities to deliver the mail loads on route. For the drivers, there are numerous other

1 time intervals occurring within in each workday, on every shift, and on every route which
2 are also unpaid as set forth in further detail below.

3 40. At the Bakersfield PO, the drivers load beamers, hampers, totes, and other
4 equipment holding US Mail. They then transport loads to USPS annexes, hubs, and
5 distribution centers. They drive to locations outside of Bakersfield takes anywhere from 30
6 minutes to 1.5 hours or longer. For example, the drive to Kettleman takes 1.40 hours, the
7 drive to Lenore takes 1.50 hrs., and the drive to Santa Clarita, the furthest destination, takes
8 much longer.

9 41. There are approximately 20 loading docks at the Bakersfield PO, where
10 different companies and their trucks load US Mail. TST is assigned and uses dock numbers
11 2-15. TST shares docks 14-15 in the morning with other trucking companies. In the
12 evening, all trucking companies including TST share docks 10-15.

13 42. If drivers arrive late at the Bakersfield PO to pick up mail because of bad
14 traffic, roadway accidents, weather conditions, or their truck is having mechanical
15 problems, or if another driver's truck in front at the dock is stuck or broken down, or if
16 there is any congestion caused by drivers or their vehicles but arguably not caused by
17 USPS, USPS will not issue a late slip and TST will not pay for the extra time worked. As
18 an example, if another driver oversleeps 30 minutes, and a TST driver is waiting behind
19 that driver in line, TST will not pay for that extra time.

20 43. At the Bakersfield PO, per TST, drivers are allotted ten to 15 minutes to load
21 up their vehicle. The drivers, however, must wait for postal employees to finish preparing
22 mail for loading and the wait time may vary from as little as 15 minutes up to two to three
23 hours. If USPS is late, it will usually provide the drivers with a late slip. TST, however,
24 will not always pay drivers for all the extra wait time they incur caused by USPS.

25 44. Upon leaving Bakersfield PO, if Plaintiffs do not have a USPS late slip, then
26 again TST will not pay for the extra time worked. For example, when Plaintiff Jay Neilson
27 was returning from Lindsey, one time his truck got a flat tire. He was told by TST that he
28 had two options, 1) wait there for four hours (without pay) or 2) drive his truck back with

1 the flat tire, which was a directive made in conscious disregard for the health and safety of
2 Neilson and roadway drivers. On this day, Plaintiff Neilson waited, and his extra wait time
3 was not paid.

4 45. At the next stop or destination, the drivers are allotted five to 15 minutes to
5 unload, and then they drive to the next stop, and so on. Each of the 40 routes has anywhere
6 from about one to six stops. President and Owner of TST Defendant Travis Smith instructs
7 the drivers that if they do not secure a late slip from the USPS, TST will not pay for the
8 extra time worked. In particular, he says, “they don’t pay me for that, so I don’t pay you.”
9 As a result, all delays without a USPS late slip result in daily unpaid time worked by
10 Plaintiffs.

11 46. Each route contains a multitude of shifts, or trips and legs, both to and from
12 various waypoints and cities. On each route shift, trip or leg, a driver is frequently delayed
13 due to bad traffic, weather conditions, vehicle break down, and other unforeseen
14 circumstances, and again that extra time is unpaid. These, and other factors as outlined
15 herein, are not considered by TST when it artificially determines the set number of hours it
16 will pay for the routes driven. The set number has no factual relationship to actual time
17 worked including hours driven on assigned routes. As a result of this uniform route
18 payment policy, Defendants shave time from actual hours Plaintiffs work, and, in so doing,
19 commit wage theft.

20 47. TST also does not pay for the work time Plaintiffs spend ferrying other
21 drivers to and from the yard to other locations, or vice versa, to work. Using one route as
22 an example, i.e., Route 10, this route starts at 4:15 a.m. and does not include the drive time
23 to the Bakersfield PO. After the first stop, the driver then drives to the next stop in Lindsey
24 and has five-15 minutes to unload. As another typical delay, at times an Amazon truck is
25 blocking the way, and the driver will not get paid for the wait for the Amazon truck to
26 clear. After unloading, the TST driver must then drive to the Lindsey 76 Gas Station for a
27 “layover”. Upon parking his commercial vehicle at the 76 Gas Station, TST stops paying
28

1 for further his time worked. At this point, however, the drivers are not on their own free
2 will and must continue to work under TST direction and control.

3 48. The Route 10 driver then must pick up the company “layover” car. He then
4 fills-up the company “layover” car with gasoline at the 76 Gas Station. He must then drive
5 30 minutes to Springville to pick up another TST driver, but at that stop, must usually wait
6 ten to 45 minutes until that other driver arrives. The Route 10 driver must then often help
7 the other driver unload his truck so the two can depart Springville expeditiously.
8 Springville is up in Mountains, so there is mostly no phone service depending on cell
9 carrier. The two must then drive back to the yard which takes about an hour, arriving back
10 in Bakersfield anywhere from 7:45 to 9:00 a.m.

11 49. After parking the “layover” car at the yard, the two drivers then take their
12 own cars home and return back to the yard at 2:00 p.m. for the second leg of Route 10.

13 50. After the Route 10 driver stops at the Lindsey 76 Gas Station, the clock
14 stops for payment of wages. On Route 10, all time spent between the driver parking the
15 commercial vehicle at the 76 Gas Station up to the time both drivers arrive back to the yard
16 in the “layover” car is unpaid by TST.

17 51. As indicated, however, the driver continues to spend up to multiple hours to
18 pick up the company “layover” car, fill it with gas at the 76 Gas Station, then drive to
19 Springville to pick-up the other TST driver and at times help unload, and then together
20 drive back to the TST yard in Bakersfield. This is all unpaid time worked.

21 52. The same day again on Route 10, at 2:00 p.m., the same two drivers get in
22 the company “layover” car, and drive from the Bakersfield yard back to the Springville PO
23 to drop off one driver. There, this driver picks up his commercial vehicle and completes
24 his route. The Route 10 driver then drives the company “layover” car back to Lindsey to
25 drop it off at the 76 Gas Station, and then pick up his commercial vehicle. He then
26 performs another pre-inspection which takes from 15-20 minutes. The second leg of the
27 paid Lindsey trip starts at 4:00 p.m. Thus, from approximately 2:00 p.m. to 4:00 p.m., or
28

1 about two hours of this leg, the Route 10 driver is not getting paid. This is unpaid time
2 worked.

3 53. In one day, on Route 10, there are up to multiple hours of total unpaid time,
4 where the Route 10 driver works a as “taxi driver” which includes time spent ferrying the
5 other driver from Springville to the yard, then again from the yard to Springville. This time
6 does not include pre-inspection time, post-inspection time, or time to fuel the company car,
7 etc.

8 54. Using one Route, or Route 10 as an example (out of 40 routes), Plaintiffs
9 were not paid for their time spent performing: 1) pre-inspection on the company truck at
10 the yard, 2) drive time from yard to Bakersfield PO in company truck, 3) “layover” time at
11 the 76 Station to pick-up company “layover” car, 4) filling company “layover” car with
12 gas, 5) driving to another city, e.g., Springville, to pick up other driver, 6) driving from
13 other city, Springville, back to yard with other driver, 7) performing post-inspection on
14 vehicle, 8) then performing the reverse trip on Route 10 in the afternoon – driving company
15 “layover” car from the yard to Springville PO to drop off other driver, 9) then drive
16 company “layover” car back to Lindsey to drop it off at the 76 station, and then to pick-up
17 commercial vehicle, and perform 10) pre-inspection of vehicle.

18 55. If there is a company “layover” car involved, one driver usually must pick
19 up another driver. On some routes, the driver is required to drive the “layover” car to drop
20 off fellow employees at various work locations but must continue to standby until his and
21 or their departure time. These are just a few examples of many scenarios where drivers are
22 not paid for all time worked involving use of the TST “layover” car.

23 56. From the four (4) years prior to the filing of the complaint to present, TST
24 conducted approximately eight to ten company meetings with the drivers. These meetings
25 lasted from about 30-60 minutes. The time spent by the drivers to attend these meetings
26 was not compensated.

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1 FIRST CAUSE OF ACTION

2 FAILURE TO PAY MINIMUM WAGES

3 (By Plaintiffs Against all Defendants)

4 (Labor Code §§ 558, 558.1, Labor Code 1182.12, 1194, 1197, 1197.1, IWC Wage

5 Order No. 9-2001, § 4)

6 57. Plaintiffs reallege and incorporate by reference, as though fully set forth
7 herein, all the paragraphs of the complaint.

8 58. California Labor Code §1197, entitled “Pay of Less Than Minimum Wage”
9 states:

10 The minimum wage for employees fixed by the commission or by any
11 applicable state or local law, is the minimum wage to be paid to employees,
12 and the payment of a lower wage than the minimum so fixed is unlawful.

13 59. California Labor Code §558 (a) provides:

14 Any employer **or other person acting on behalf of an employer** who
15 violates, or causes to be violated, a section of this chapter or any provision
16 regulating hours and days of work in any order of the Industrial Welfare
Commission shall be subject to a civil penalty.... [Emphasis added.]

17 60. California Labor Code §558.1 provides:

18 (a) Any employer **or other person acting on behalf of an employer**, who
19 violates, or causes to be violated, any provision regulating **minimum wages**
20 or hours and days of work in any order of the Industrial Welfare
Commission, or violates, or causes to be violated, Sections 203, 226, 226.7,
21 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

22 (b) For purposes of this section, the term “other person acting on behalf of an
23 employer” is limited to a natural person who is an owner, director, officer, or
24 **managing agent** of the employer, and the term “managing agent” has the
same meaning as in subdivision (b) of Section 3294 of the Civil Code.
[Emphasis added.]

25 61. California Labor Code §1197.1 (a) provides:

26 Any employer **or other person acting either individually or as an officer,**
27 **agent, or employee of another person**, who pays or causes to be paid to any
28 employee a wage less than the minimum fixed by an applicable state or local
law, or by an order of the commission, shall be subject to a civil penalty,

1 restitution of wages, liquidated damages payable to the employee, and any
2 applicable penalties.... [Emphasis added.]

3 62. As held by the Court in *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809:

4 With regard to violations of the state's minimum wage laws, “[a]ny ... person
5 acting **either individually** or as an officer, agent, **or employee** of another
6 person, who pays or causes to be paid to any employee” less than the
7 minimum wage “shall be subject to a civil penalty, restitution of wages,
8 liquidated damages payable to the employee, and any applicable penalties
9 imposed pursuant to Section 203” as set forth elsewhere in the statute. (§
10 1197.1, subd. (a), italics added.) Thus, . . . whereas for violations of
11 minimum wage laws, there is no requirement that the “other person” liable
12 for the civil penalties have any relationship to the employer, so long as that
13 person pays or causes to be paid less than the prescribed minimum wage (§
14 1197.1(a)). [Emphasis added.] (*Atempa v. Pedrazzani* (2018) 27 Cal.App.5th
15 809.)

16 63. Effective January 1, 2020, the applicable minimum wage fixed by the
17 commission for the Plaintiffs (IWC Wage Order 9) was set at not less than thirteen dollars
18 (\$13.00) per hour for employers with 26 employees or more. (Labor Code 1182.12, IWC
19 Wage Order No. 9-2001, § 4.) Effective January 1, 2021, the minimum wage for employers
20 with 26 employees or more was set at \$14.00 per hour. (Labor Code 1182.12, IWC Wage
21 Order No. 9-2001, § 4.)

22 64. The minimum wage is an obligation of the employer and cannot be waived
23 by any agreement, including collective bargaining agreements. Any remedial legislation
24 written for the protection of employees may not be violated by agreement between the
25 employer and employee. (Civil Code §§ 1668 and 3513.).

26 65. The Employers in California must pay at least minimum wages to employees
27 for all hours worked, 8 Cal. Code Regs. § 11090, including all the time in which an
28 employer exercises control over the employee, *Morillion v. Royal Packing Co.*, 22 Cal.4th
575, 94 Cal.Rptr.2d 3, 995 P.2d 139, 143–45 (Cal. 2000). An employee “does not have to
be working during that time to be compensated.” *Id.*, 94 Cal.Rptr.2d 3, 995 P.2d at 143.
California courts construe worker-protection laws liberally “with an eye to promoting such
protection.” *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 139 Cal.Rptr.3d

1 315, 273 P.3d 513, 527 (Cal. 2012). (See *Ridgeway v. Walmart*, 946 F.3d 1066, 1086 (9th
2 Cir. 2020).)

3 66. In *Morillion*, employees were required to meet at a designated departure
4 point at a set time to ride the employer's buses to work. 94 Cal.Rptr.2d 3, 995 P.2d at 147.
5 Employees were prohibited from using their own cars and were subjected to verbal
6 warnings and lost wages if they used personal vehicles to travel to work. *Id.* The California
7 Supreme Court found that control existed because—even if the employers could engage in
8 limited activities like sleeping or reading while on the bus—employees “were foreclosed
9 from numerous activities in which they might otherwise engage if they were permitted to
10 travel to the fields by their own transportation.” *Id.*, 94 Cal.Rptr.2d 3, 995 P.2d at 146. The
11 Defendants failed to pay minimum wages to Plaintiffs for all hours they worked. (See also
12 *Ridgeway v. Walmart Inc.*, 946 F.3d 1066 (2020), *Rutti v. Lojack Corp., Inc.*, 596 F.3d
13 1046 (2010).)

14 67. In *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680, 66 S.Ct. 1187,
15 90 L.Ed. 1515, the principal question was whether the employees should be compensated
16 for the time spent walking to and from their workstations and engaging in certain
17 preliminary and postliminary activities. The United States Supreme Court held that
18 generally such time is compensable: “Since the statutory workweek includes all time during
19 which an employee is necessarily required to be on the employer's premises, on duty or at a
20 prescribed workplace, the time spent in these activities must be accorded appropriate
21 compensation.” (*Id.* at pp. 690–691, 66 S.Ct. 1187.)

22 68. Within the four (4) years of the filing of the instant complaint, TST directors,
23 supervisors, managers, agents, and employees have intentionally failed to maintain, and, in
24 so doing, have altered and modified Plaintiffs’ “timecards” to reduce the hours they worked
25 and have committed wage theft. Defendants have paid, or caused to be paid, less than
26 minimum wage to Plaintiffs. Defendants failed to pay Plaintiffs for the following
27 preliminary, postliminary, and other activities performed during each shift, leg, trip, and/or
28 per route on each day worked as set forth below:

- ▶ Pre-inspection.
- ▶ Post-inspection.
- ▶ Travel from yard to Bakersfield PO, or other cities/waypoints, at beginning of each shift in company truck or “layover” car.
- ▶ Travel from Bakersfield PO, or other cities/waypoints, to yard at the end of each shift in company truck or “layover” car.
- ▶ Travel in company “layover” car to pick up and ferry other drivers.
- ▶ Filling the “layover” car with gasoline at TST selected gas stations.
- ▶ Wait and delay time on routes due to bad traffic, roadway accidents, weather conditions, truck mechanical problems, other driver at dock delay, or other delays not caused by driver or USPS.
- ▶ Wait and delay time caused by the USPS but not reimbursed by TST is stuck or broken down, or if there is any congestion caused by drivers or their vehicles but not caused by USPS.

69. As a result of Defendants’ violations of minimum wage laws, by failing to record and pay minimum wage for all hours worked, Defendants violated California Labor Code §226(a), inaccurately stating gross wages earned, total hours worked, deductions, net wages and other issues as described in this complaint.

70. Defendants have the ability to pay minimum wages for all time worked but have willfully refused to pay such wages, intending to secure instead a discount upon their indebtedness to Plaintiffs for all hours worked, and intending to annoy, oppress, hinder, delay or defraud Plaintiffs, in violation of California Labor Code §226.6.

71. California Labor Code §226.6 states:

Any employer who knowingly and intentionally violates the provisions of Section 226, **or any officer, agent, employee, fiduciary, or other person** who has the control, receipt, custody, or disposal of, or pays, the wages due any employee, and who knowingly and intentionally participates or aids in the violation of any provision of Section 226 **is guilty of a misdemeanor** and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or be imprisoned not to exceed one year, or both, at the

1 discretion of the court. That fine or imprisonment, or both, shall be in
2 addition to any other penalty provided by law. [Emphasis added.]

3 72. Defendants' violation of §226 also constitutes a crime, pursuant to §226.6, a
4 predicate violation of California Business & Professions Code §§17200, et seq., and a
5 predicate violation of Labor Code §§2698-2699.5, i.e., the Private Attorneys General Act
6 (PAGA).

7 73. The Minimum Wage provisions of California Labor Code are enforceable by
8 private civil action pursuant to California Labor Code §1194(a), which states:

9 Notwithstanding any agreement to work for a lesser wage, any employee
10 receiving less than the legal **minimum wage** or the legal overtime
11 compensation applicable to the employee is entitled to recover in a civil
12 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. [Emphasis added.]

13 74. As such, Plaintiffs may bring this action for minimum wages, interest, costs
14 of suit and attorney fees pursuant to California Labor Code §1194(a).

15 75. As described herein, this is an action under California Labor Code §1194 to
16 recover wages on account of Defendants' failure to pay minimum wages as described in
17 California Labor Code §§1197, 1194(a), and all applicable wage orders, including IWC
18 Wage Order No. 9-2001, § 4.

19 76. In California, "wage and hour claims are today governed by two
20 complementary and occasionally overlapping sources of authority: the provisions of the
21 Labor Code, enacted by the Legislature, and a series of 18 wage orders, adopted by the
22 IWC." (*Brinker Restaurant Corp. v. Superior Court* (2012) 1004, 1026, 139 Cal.Rptr.3d
23 315, 273 P.3d 513.) "The IWC is the state agency empowered to promulgate wage orders,
24 which are legislative regulations specifying minimum requirements with respect to wages,
25 hours, and working conditions." (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th
26 257, 262, fn. 5.) "The IWC's wage orders are to be accorded the same dignity as statutes.
27 They are 'presumptively valid' legislative regulations of the employment relationship
28

[citation], regulations that must be given ‘independent effect’ separate and apart from any statutory enactments [citation].” (*Brinker Restaurant Corp. v. Superior Court* (2012), 53 Cal.4th at p. 1027, 139 Cal.Rptr.3d 315, 273 P.3d 513.)

77. “When construing the Labor Code and wage orders, we adopt the construction that best gives effect to the purpose of the Legislature and the IWC. [Citations.] Time and again, we have characterized that purpose as the protection of employees—particularly given the extent of Legislative concern about working conditions, wages, and hours when the Legislature enacted key portions of the Labor Code. [Citations.] In furtherance of that purpose, we liberally construe the Labor Code and wage orders to favor the protection of employees.” (*ABM Security*, supra, 2 Cal.5th at p. 262.)

78. In violation of California law, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiffs for minimum wages earned for hours worked. As a proximate result, have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such minimum wages, lost interest on such minimum wages, and expenses and attorneys’ fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damages in amounts according to proof at time of trial, and within the jurisdiction of this Court.

79. Wherefore, Plaintiffs request relief as described herein and below.

SECOND CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED INCLUDING

STRAIGHT TIME

(By Plaintiffs Against all Defendants)

(Labor Code §§ 200, 226, 500, 1197.1, 1198 and IWC Wage Order No. 9-2001)

80. Plaintiffs reallege and incorporate by reference, as though fully set forth herein, all of the paragraphs of the complaint as though fully set forth herein.

81. Plaintiffs are current and former employees entitled to the protections of California Labor Code §§ 200, 226, 500, 1197.1, 1198 and IWC Wage Order No. 9-2001. During the class period, Defendants failed to compensate Plaintiffs for all overtime hours

1 worked, and minimum wages, as required under the foregoing provisions of the California
 2 Labor Code and IWC Wage Order by, among other things: failing to pay compensate
 3 Plaintiffs for all hours worked including straight time, illegally and inaccurately recording
 4 time in which Plaintiffs worked; failing to properly maintain Plaintiffs' records; failing to
 5 provide accurate itemized wage statements to Plaintiffs for each pay period; and other
 6 methods and violations to be discovered.

7 82. In particular, Defendants failed to pay Plaintiffs for time spent during the
 8 following preliminary, postliminary, and other activities performed each shift, leg, trip,
 9 and/or per route on each workday as set forth below:

- 10 ▶ Pre-inspection.
- 11 ▶ Post-inspection.
- 12 ▶ Travel from yard to Bakersfield PO, or other cities/waypoints, at beginning
 13 of each shift in company truck or "layover" car.
- 14 ▶ Travel from Bakersfield PO, or other cities/waypoints, to yard at the end of
 15 each shift in company truck or "layover" car.
- 16 ▶ Travel in company "layover" car to pick up and ferry other drivers.
- 17 ▶ Filling the "layover" car with gasoline at TST selected gas stations.
- 18 ▶ Wait and delay time on routes due to bad traffic, roadway accidents, weather
 19 conditions, truck mechanical problems, other driver at dock delay, or other
 20 delays not caused by driver or USPS.
- 21 ▶ Wait and delay time caused by the USPS but not reimbursed by TST is stuck
 22 or broken down, or if there is any congestion caused by drivers or their
 23 vehicles but not caused by USPS.

24 83. In violation of California law, Defendants have knowingly and willfully
 25 refused to perform their obligations to compensate Plaintiffs for all wages earned and all
 26 hours worked. As a proximate result, Plaintiffs have suffered, and continue to suffer,
 27 substantial losses related to the use and enjoyment of such wages, lost interest on such
 28 wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform

1 their obligations under state law, all to their respective damages in amounts according to
2 proof at time of trial, and within the jurisdiction of this Court.

3 84. Therefore, pursuant to California Labor Code and IWC Wage Orders,
4 Plaintiffs and the Hourly Class are entitled to recover the unpaid balance of wages owed to
5 them by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE AND HOUR**

8 **STATEMENTS**

9 **(By Plaintiffs Against all Defendants)**

10 **(Labor Code §§ 226, 226.3, 226.6, 558 et seq., 1174, 1174.5, 1198,**

11 **IWC Wage Order No. 9-2001, §7)**

12 85. Plaintiffs reallege and incorporate by reference, as though fully set forth
13 herein, all the paragraphs of the complaint.

14 86. California Labor Code section 226 (a) requires specific information be
15 provided to employees on the wage statements which must be available with their periodic
16 wage payment. This section requires that employers issue itemized wage statements with
17 every paycheck, to show all of the following: (1) gross wages earned, (2) total hours
18 worked by the employee, (3) the number of piece-rate units earned (for piece-rate workers),
19 (4) all deductions taken, (5) net wages earned, (6) the inclusive dates of the period for
20 which the employee is paid, (7) the name of the employee and either an employee ID
21 number or the last four digits of the employee's social security number, (8) the name and
22 address of the employer, and (9) all applicable hourly rates in effect during the pay period
23 and the corresponding number of hours worked at each hourly rate. Failure to record any
24 of these items could violate Section 226(a). (See, e.g., *Zavala v. Scott Bros. Dairy, Inc.*,
25 143 Cal. App. 4th 585 (2006).)

26 87. "The Legislature enacted section 226 to ensure an employer documents the
27 basis of the employee compensation payments **to assist the employee in determining**
28 **whether he or she has been compensated properly.**" [Emphasis added.] (*Soto v. Motel 6*

1 *Operating, L.P.*, (2016) 4 Cal. App. 5th 385, 390.) As *Soto* recognized, however, § 226(a)
 2 contains “nine separate categories that must be included on wage statements.” *Id.* at 391.
 3 “An employee suffering injury as a result of a knowing and intentional failure by an
 4 employer to comply with subdivision (a)” may to recover the greater of actual damages or
 5 statutory penalties. (Cal. Lab. Code § 226(e)(1).).

6 88. An employee is deemed to suffer injury if the employer fails to provide
 7 accurate and complete information as required by § 226(a) and “the employee cannot
 8 promptly and easily determine” the required information from the wage statement alone.
 9 (Cal. Lab. Code § 226(e)(2)(B).) The statute defines “promptly and easily determine” to
 10 mean “a reasonable person would be able to readily ascertain the information without
 11 reference to other documents or information.” (Cal. Lab. Code § 226(e)(2)(C).) “For
 12 purposes of section 226(e), a plaintiff is ‘injured’ **if the accuracy of any of the items**
 13 **enumerated in § 226(a) cannot be ascertained from the four corners of the wage**
 14 **statement.**” [Emphasis added.] (*Raines v. Coastal Pac. Food Distributors, Inc.*, (2018) 23
 15 Cal. App. 5th 667.)

16 89. California Labor Code Labor Code § 226.6 entitled: “Violation of § 226;
 17 persons having control or disposition of wages; penalty” provides:

18 Any employer who knowingly and intentionally violates the provisions of
 19 Section 226, **or any officer, agent, employee, fiduciary, or other person**
 20 who has the control, receipt, custody, or disposal of, or pays, the wages due
 21 any employee, and who knowingly and intentionally participates or aids in
 22 the violation of any provision of Section 226 is **guilty of a misdemeanor**
 23 and, upon conviction thereof, shall be fined not more than one thousand
 24 dollars (\$1,000) or be imprisoned not to exceed one year, or both, at the
 25 discretion of the court. That fine or imprisonment, or both, shall be in
 26 addition to any other penalty provided by law. [Emphasis added.]

27 90. According to an opinion letter from the DLSE “[T]he obligation to list the
 28 total hours worked during the pay period can only be satisfied by listing the precise, actual
 number of hours worked.” (Dept. of Industrial Relations, *592 DLSE, Opinion Letter
 2002.05.17, p. 3.) “The failure to list the precise number of hours worked during the pay
 period conflicts with the express language of the statute and stands in the way of the

statutory purpose.' (Ibid.) 'If it is left to the employee to add up the daily hours shown on the time cards or other records so that the employee must perform arithmetic computations to determine the precise total hours worked during the pay period, the requirements of section 226 would not be met.'" (Id. at p. 6.) (*Zavala v. Scott Bros. Dairy, Inc.*, at 591 citing *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 955.)

91. IWC Wage Order No. 9-2001, §7, contains these requirements:

(A) Every employer shall keep accurate information with respect to each employee including the following: [¶]

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall be recorded. [¶]

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. [Emphasis added.] "The IWC's wage orders are to be accorded the same dignity as statutes. They are 'presumptively valid' legislative regulations of the employment relationship [citation], regulations that must be given 'independent effect' separate and apart from any statutory enactments [citation]." (*Brinker Restaurant Corp. v. Superior Court* (2012), 53 Cal.4th at p. 1027, 139 Cal.Rptr.3d 315, 273 P.3d 513.)

92. In 2013, the Legislature amended Section 226 to adopt a definition of "injury" for purposes of certain violations. An employee now is "deemed to suffer injury" if the employer (B) fails to provide accurate and complete information and the employee cannot promptly, without reference to other documents or information, determine the following from the wage statement alone: [¶]

(2) total hours worked; [¶]

(6) hourly rates and corresponding hours worked at each rates; [¶]

(Labor Code 226(e)(2)(B)(i).)

93. Following this amendment, an employer can no longer argue that employees must individually demonstrate that they suffered actual injury resulting from a violation of Labor Code section 226(a). It is the employer's responsibility to keep accurate records of

1 the time that employees work. If the employer fails to maintain accurate time records, the
2 employee's credible testimony or other credible evidence concerning his hours worked is
3 sufficient to prove a wage claim. The burden of proof is then on the employer to show that
4 the hours claimed by the employee were not worked. Time records must be kept whether it
5 is customary in the area or industry. (*Anderson v. Mt. Clemens Pottery* (1946) 328 U.S.
6 680; 90 L.Ed. 1515; 66 S.Ct. 1187 (rehg. den. 329 U.S. 822).) The leading California case
7 on this issue is *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, which follows the
8 rationale set out in the *Anderson*.

9 94. A violation of Labor Code section 226(a) for failure to provide accurate
10 itemized wage statements triggers PAGA civil penalties even though the plaintiff cannot
11 satisfy the "injury" or "knowing and intentional" requirements to recover statutory
12 penalties under Section 226(e). (*Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788
13 (2017) ("a plaintiff seeking civil penalties under PAGA for a violation of section 226(a)
14 does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section
15 226(e) (1)."); *Raines v. Coastal Pac. Food Distributors, Inc.*, 23 Cal. App. 5th 667 (2018)
16 (same); see also *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal.
17 2011) (judgment entered against defendant for PAGA penalties where violation under
18 Section 226 is established; injury need not be shown).

19 95. The primary remedy for violations of Labor Code section 226(a) is a penalty
20 set forth in Section 226(e). Section 226(e) provides that when an employer "knowingly and
21 intentionally" violates Section 226(a), any employee "suffering injury" may sue and collect
22 actual damages or a penalty of \$50 or \$100 (for repeat offenders), whichever is greater, up
23 to a maximum of \$4,000 per employee.

24 96. Defendants issued uniform wage statements to Plaintiffs, which fail to
25 correctly list the precise number of hours worked during the pay period, including the
26 precise total hours worked, all deductions made, net wages earned, gross wages earned, and
27 all applicable hourly rates and corresponding hours worked at each rate(s) in effect during
28 the pay period in violation of Labor Code section 226(a). Furthermore, the wage statements

and time records also reflect that Defendants failed to keep accurate information with respect to Plaintiffs, and specifically when each employee begins and ends each work period, and the precise total daily hours worked each day in violation of IWC Wage Order No. 9-2001, §7.

97. Within the four (4) years prior to the filing of the complaint to present, Defendants “knowingly and intentionally” failed to record Plaintiffs’ time spent performing the following preliminary, postliminary, and other activities performed upon each shift, leg, trip, and/or per route of each workday:

- ▶ Pre-inspection.
- ▶ Post-inspection.
- ▶ Travel from yard to Bakersfield PO, or other cities/waypoints, at beginning of each shift in company truck or “layover” car.
- ▶ Travel from Bakersfield PO, or other cities/waypoints, to yard at the end of each shift in company truck or “layover” car.
- ▶ Travel in company “layover” car to pick up and ferry other drivers.
- ▶ Filling the “layover” car with gasoline at TST selected gas stations.
- ▶ Wait and delay time on routes due to bad traffic, roadway accidents, weather conditions, truck mechanical problems, other driver at dock delay, or other delays not caused by driver or USPS.
- ▶ Wait and delay time caused by the USPS but not reimbursed by TST is stuck or broken down, or if there is any congestion caused by drivers or their vehicles but not caused by USPS.

98. Therefore, within the four (4) years of the filing of the complaint to present, Defendants failed to keep and record accurate information (as well as maintain accurate itemized wage statements) with respect to Plaintiffs’ start times, stop times, total daily hours worked, gross wages earned, net wages earned, applicable rates of pay, inter alia, with respect to each of the following unlawful wage payment practices causing injury to Plaintiffs:

- ▶ Defendants intentionally altered and modified “timecards” to reflect fabricated late start times.
- ▶ Defendants intentionally altered and modified “timecards” to reflect fabricated late stop times.
- ▶ Defendants intentionally altered and modified “timecards” to reduce hours worked.
- ▶ Defendants intentionally altered and modified “timecards” to reflect fabricated total hours worked.

99. Separately, because Defendants did not record the time Plaintiffs spent working off-the-clock, Defendants did not list the correct amount of gross wages and net wages earned by Plaintiffs, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the total number of the hours worked by Plaintiffs in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

100. California Labor Code Section 1174 provides inter alia, “Every person employing labor in this state shall: (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records **showing the hours worked daily** by and the wages paid to . . . employees employed at the respective plants or establishments.” [Emphasis added.] At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain payroll records for Plaintiffs, showing the hours worked daily, and the wages paid thereto, which occurred because of its failing to record the precise hours that Plaintiffs actually worked.

101. Pursuant to Labor Code 1174.5, “Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

1 Defendants' violation of Labor Code Section 1174 further supports Plaintiffs PAGA claim
2 set forth below.

3 102. California Labor Code section 1198 provides that the maximum hours of
4 work and the standard conditions of labor shall be those fixed by the Labor Commissioner
5 and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that
6 "[t]he employment of any employee for longer hours than those fixed by the order or under
7 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
8 Wage Order, employers are required to keep accurate time records showing when the
9 employee begins and ends each work period and meal period. At all relevant times,
10 Defendants failed to keep accurate records of shift start and end times, and precise total
11 hours worked, for Plaintiffs and other putative class members in violation of section 1198.

12 103. Defendants' payroll records, paycheck stubs and wage statements for its
13 Plaintiffs knowingly and intentionally failed to accurately list the precise total number of
14 the hours worked by Plaintiffs in violation of section 226(a)(2) and IWC Wage Order 7
15 (A)(3).

16 104. From four (4) years prior to the filing of the complaint to the present,
17 Defendants were aware that their wage statements were not in compliance with Labor Code
18 Section 226 and have done nothing to remedy the problem. Defendants have knowingly
19 and intentionally failed to comply with the itemized wage statement requirements of Labor
20 Code Section 226 and IWC Wage Order 7 (A)(3) with respect to Plaintiffs.

21 105. As a direct result of this willful conduct, Plaintiffs' wage statements did not
22 accurately set forth the precise daily and precise weekly total hours worked, all to
23 Plaintiffs' presumed injury, damage and detriment in violation of Labor Code §§ 226, 1174
24 and 1198. Had Defendants accurately recorded the precise daily and precise total actual
25 hours worked pursuant to its obligations under California law, Plaintiffs would not have to
26 present evidence in this case to support their hours worked and their minimum wage
27 claims. Defendants' failure to do so gives rise to an inference of injury. The precise daily
28 and precise total hours worked, the hourly rates and corresponding hours worked at each

1 rate(s), and the amount of minimum wage owed to Plaintiffs cannot be ascertained from the
2 four corners of the wage statements and without performing arithmetic computations.

3 106. During the period covered by this lawsuit Defendants failed to provide the
4 Plaintiffs, with timely and accurate itemized wage statements showing gross wages earned,
5 precise total hours worked, all deductions made, net wages earned, and the corresponding
6 number of hours worked at each hourly rate in violation of Labor Code § 226(a).
7 Additionally, during the period covered by this lawsuit, Defendants failed to maintain
8 accurate and complete payroll records in violation of Labor Code § 1174. Damages are
9 presumed pursuant to Labor Code Section 226(e)(2)(B)(i).

10 107. Because Defendants' violations of 226(a) and 1174(d) were committed
11 against Plaintiffs they are entitled to recover civil penalties pursuant to Labor Code
12 sections 226.3, 558, 1174.5, 1198, and/or 2699(a), (f), and (g), and other applicable
13 provisions of California law.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES UPON DISCHARGE**

16 **(By Plaintiffs Against all Defendants)**

17 **(Labor Code §§ 201, 203)**

18 108. Plaintiffs reallege and incorporate by reference, as though fully set forth
19 herein, all of the paragraphs of the complaint as though fully set forth herein.

20 109. Pursuant to Labor Code §§ 201 and 202, for Plaintiffs who are former
21 employees of Defendants, upon his/her respective termination dates, Defendants were
22 required to pay former employee Plaintiffs all earned wages. At the time of all former
23 employee Plaintiffs' respective termination dates, former employee Plaintiffs had unpaid
24 wages. In violation of Labor Code § 201, Defendants failed to pay each former employee
25 Plaintiffs any of the amount of wages due and owing, in amounts to be established at the
26 time of trial, but which are in excess of the Court's jurisdictional requirements.

27 110. In *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680, 66 S.Ct. 1187,
28 90 L.Ed. 1515, the principal question was whether the employees should be compensated

1 for the time spent walking to and from their workstations and engaging in certain
2 preliminary and postliminary activities. The high Court held that generally such time is
3 compensable: “Since the statutory workweek includes all time during which an employee is
4 necessarily required to be on the employer's premises, on duty or at a prescribed workplace,
5 the time spent in these activities must be accorded appropriate compensation.” (Id. at pp.
6 690–691, 66 S.Ct. 1187.)

7 111. From four (4) years prior to the filing of the complaint to the present,
8 Defendants willfully failed to promptly pay wages due on discharge to Plaintiffs and the
9 Hourly Class.

10 **FIFTH CAUSE OF ACTION**
11 **FAILURE TO REIMBURSE EMPLOYEE EXPENSES**
12 **(By Plaintiffs Against all Defendants)**

13 **[Labor Code § 2802]**

14 112. Plaintiffs reallege and incorporate by reference, as though fully set forth
15 herein, all of the paragraphs of the complaint as though fully set forth herein.

16 113. Pursuant to California Labor Code section 2802, Defendants are required to
17 reimburse Plaintiffs and the other members of the Class for expenses incurred by them in
18 the performance of their job duties (which may include but are not limited to the following
19 expenses: cell phone usage and vehicle usage and mileage).

20 114. At all times relevant herein mentioned, Defendants had a policy and
21 procedure whereby Plaintiffs and the other members of the Class were required to
22 personally incur and pay for said cellular expenses during the performance of their
23 employment duties, all without reimbursement from Defendants.

24 115. Plaintiffs were required but not reimbursed for their cellular phone usage and
25 Defendants were clearly aware of this fact. At times, Plaintiffs requested reimbursement
26 which was denied by Defendants and/or their agents.

27 116. Plaintiffs were required to use their personal cell phones for navigation
28 purposes, to call the Bakersfield PO, or smaller post offices, or other USPS hubs and

1 facilities, as well as their supervisors and other drivers, to receive text messages, schedules,
2 assigned routes, map addresses, and so forth, all without reimbursement from Defendants in
3 violation of Labor Code section 2802.

4 117. As a proximate result of the aforementioned violations, Plaintiffs and the
5 other members of the Class have suffered damages in amounts presently unknown to them,
6 but which exceed the jurisdictional limits of this Court, and which will be ascertained
7 according to proof at trial.

8 118. Pursuant to Labor Code section 2802, Plaintiffs and the other members of the
9 Class are further entitled to recover from Defendants, in addition to the full amount of the
10 expenses they incurred in the course of their job duties, interest thereon and reasonable
11 attorney's fees and costs.

12 **SIXTH CAUSE OF ACTION**

13 **UNFAIR AND UNLAWFUL BUSINESS ACTS AND PRACTICES**

14 **(By Plaintiffs Against all Defendants)**

15 **(Bus. and Prof. Code § 17200, et seq.)**

16 119. Plaintiffs reallege and incorporate by reference, as though fully set forth
17 herein, all the paragraphs of the complaint.

18 120. Plaintiffs are suing Defendants pursuant to Business and Professions Code §
19 17200 et seq., on behalf of themselves as individuals.

20 121. By violating the statutes and regulations as alleged herein, Defendants' acts
21 constitute unlawful business practices under California Business and Professions Code §§
22 17200, et. seq. Within four (4) years prior to the filing of the complaint, until the present,
23 Defendants violated and continue to violate the law, as expressed in Labor Code §§ 558,
24 558.1, 1194, 1197, 1197.1 with respect to the Plaintiffs, the minimum wage class; Labor
25 Code §§200, 226, 500, 1197.1, 1198 and IWC Wage Order No. 9-2001 with respect to
26 failing to pay Plaintiffs all earned wages; Labor Code §§ 226, 226.3, 226.6, 558 et seq.,
27 1174, 1174.5, 1198 with respect to the Wage Statement Class; Labor Code §§ 201, 203 for
28 failure to pay earned wages due on discharge, the applicable IWC Wage Order 9 and,

1 Business & Professions Code §§ 17200, et seq., by failing to pay minimum wages, failing
2 to keep proper records and accurate itemized wage statements, and other violations alleged
3 herein and thereby deprived Plaintiffs of valuable rights and benefits guaranteed by law, all
4 to their detriment.

5 122. Defendants' violations of the statutes and regulations as alleged herein are
6 business practices done repeatedly over a significant period of time throughout California
7 and done in a systematic manner to the detriment of Plaintiffs.

8 123. The harm to Plaintiffs outweighs any utility of Defendants' policies and
9 practices, as alleged herein, and consequently constitute unfair business acts or practices
10 within the meaning of Business and Professions Code §§ 17200 et seq. Defendants'
11 utilization of such unfair business practices constitutes unfair competition and provides an
12 unfair advantage over Defendants' competitors.

13 124. As a direct and proximate result of the aforementioned acts by Defendants,
14 Defendants wrongfully retained and continues to retain funds earned by Plaintiffs, and
15 profits obtained as a result of Defendants' unlawful and unfair business acts and practices,
16 according to proof from Plaintiffs.

17 125. The unfair and unlawful business acts and practices described herein present
18 a continuing threat to Plaintiffs. Plaintiffs are informed and believes that Defendants has
19 engaged in such practices over a number of years and has failed to indicate, in any way,
20 that it plans to cease such activities any time in the future.

21 126. Within four (4) years prior to the filing of the complaint to present, Plaintiffs
22 have suffered damages and request damages and/or restitution of all monies and profits to
23 be disgorged from Defendants in an amount according to proof at time of trial, and that
24 Defendants be ordered to disgorge all profits resulting from its unlawful and unfair
25 business acts and practices, but in excess of the Court's jurisdiction requirement.

26 127. Pursuant to Business and Professions Code §§ 17200 et seq., and pursuant to
27 the equitable powers of this court, Defendants should be preliminarily and permanently
28 enjoined from its unfair and unlawful business acts and practices.

128. Pursuant to Business and Professions Code §§ 17200 et seq., and pursuant to the equitable powers of this court, Defendants should be ordered to restore to Plaintiffs all funds Defendants retained by means of the unfair and unlawful business acts and practices alleged herein.

129. Pursuant to Business and Professions Code §§ 17200 et seq., and pursuant to the equitable powers of this court, Defendants should be ordered to disgorge all funds and profits Defendants obtained and retained by means of the unfair and unlawful business acts and practices alleged herein.

130. Plaintiffs also seek interest pursuant to Business & Professions Code § 17203; *Ballard v. Equifax Check Servs., Inc.* (ED CA 2001) 158 F. Supp. 2d 1163, 1176-1177; and *Irwin v. Mascott* (ND CA 2000) 112 F. Supp. 2d 937, 956 and costs of suit pursuant to Code of Civil Procedure § 1032.

131. Pursuant to Labor Code § 218.6, in any action brought for the nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per annum], which shall accrue from the date that the wages were due and payable[.]” Plaintiffs are entitled to said interest.

PRAYER

WHEREFORE, Plaintiffs and the other members of the Class pray for judgment as follows:

FIRST CAUSE OF ACTION

1. That Defendants be ordered to pay Plaintiffs for all hours worked, including minimum wages, but for which Plaintiffs were unpaid, according to proof; plus penalties and interest;
2. For interest pursuant to Labor Code § 218.6; and,
3. For reasonable attorney’s fees as provided by Code of Civil Procedure §1021.5 and attorney’s fees, interest, and costs of suit pursuant to Labor Code § 1194.

SECOND CAUSE OF ACTION

4. That Defendants be ordered to pay Plaintiffs all unearned wages including straight time pursuant to the Labor Code and IWC Wage Order 9 as alleged herein according to proof, plus penalties and interest;
5. For penalties set forth in Labor Code § 558 for violations of § 510 in an amount according to proof;
6. For interest pursuant to Labor Code § 218.6; and,
7. For reasonable attorney's fees as provided by Code of Civil Procedure §1021.5 and attorney's fees, interest, and costs of suit pursuant to Labor Code § 1194.

THIRD CAUSE OF ACTION

8. For general damages, including interest, according to proof;
9. For all statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code §§ 226(e) and 2698-2699.5;
10. For statutory damages as set forth in the applicable Labor Code sections;
11. For all appropriate declaratory and equitable relief; and,
12. For all such other relief as is just and necessary under the circumstances.

FOURTH CAUSE OF ACTION

13. For statutory waiting time penalties under Labor Code § 203, according to proof for Plaintiffs, plus interest thereon at the maximum legal rate accruing from the 31st day following the separation each such Plaintiffs' employment from Defendants;
14. For interest pursuant to Labor Code § 218.6;
15. For reasonable attorney's fee, penalties, and costs pursuant to Labor Code §203, and 226; and
16. For reasonable attorney's fees and costs as provided by Labor Code § 2699(g).

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FIFTH CAUSE OF ACTION

17. For damages; and
18. For all applicable penalties.

SIXTH CAUSE OF ACTION

19. For restitution of all monies due to Plaintiffs;
20. For reasonable attorney's fees as provided by Code of Civil Procedure §1021.5;
21. That Defendants be ordered to restore to Plaintiffs all funds Defendants retained by means of the unfair and unlawful business acts and practices alleged herein;
22. For appointment of a receiver to receive, manage and distribute any and all funds disgorged from the Defendants determined to have been wrongfully acquired by Defendants as a result of violations of Business and Professions Code §§17200 et seq.;
23. That Defendants disgorge all profits in an amount according to proof at the time of trial.
24. For enforcement of the civil penalties imposed by the Labor Code pursuant to Business & Professions Code § 17202;
25. For interest pursuant to Business & Professions Code § 17203; *Ballard v. Equifax Check Servs., Inc.* (ED CA 2001) 158 F. Supp. 2d 1163, 1176-1177; and *Irwin v. Mascott* (ND CA 2000) 112 F. Supp. 2d 937, 956;
26. For interest pursuant to Labor Code § 218.6;
27. For declaratory relief; and,
28. For reasonable attorney's fees and costs as provided by Labor Code § 1194.

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ON ALL CAUSES OF ACTION

29. For compensatory damages in an amount to be ascertained at trial;
30. For penalties and interest as allowed by law;
31. For costs of suit herein alleged; and,
32. For such other and further relief as the court deems just and proper.

Dated: July 14, 2021

ARIAS SANGUINETTI WANG & TORRIJOS LLP

By:

ARNOLD C. WANG
CRAIG S. MOMITA

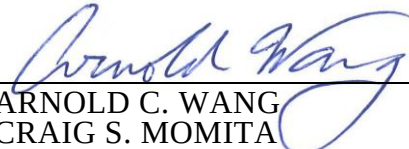
Attorneys for Plaintiffs and the Putative
Class

DEMAND FOR JURY TRIAL

Plaintiffs and the other members of the Class hereby demand a trial by jury on all claims so triable.

Dated: July 14, 2021

ARIAS SANGUINETTI WANG & TORRIJOS LLP

By: 
ARNOLD C. WANG
CRAIG S. MOMITA

Attorneys for Plaintiffs and the Putative
Class