

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2 Norman B. Blumenthal (State Bar #068687)

3 Kyle R. Nordrehaug (State Bar #205975)

4 Aparajit Bhowmik (State Bar #248066)

5 Nicholas J. De Blouw (State Bar #280922)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Website: www.bamlawca.com

11 Attorneys for Plaintiffs

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

04/19/2022

Clerk of the Court

BY: LAURA SIMMONS

Deputy Clerk

CGC-22-599234

10 FELIX GUNAWAN, TAJE FLEMING, and
11 TOMA STAVREV, on behalf of the State
12 of California, as private attorney generals,

13 Plaintiffs,

14 vs.

15 TRANSDEV ALTERNATIVE SERVICES,
16 INC., a Corporation; and DOES 1 through 50,
17 inclusive,

18 Defendants.

Case No. _____

REPRESENTATIVE ACTION COMPLAINT
FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
221, 226(a), 226.7, 227.3, 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B), and the applicable Wage Order(s).

1 Plaintiffs Felix Gunawan, Taje Fleming, and Toma Stavrev (“PLAINTIFFS”) on behalf
2 of the people of the State of California and as “aggrieved employees” acting as private attorney
3 generals under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”)
4 only, allege on information and belief, except for their own acts and knowledge which are based
5 on personal knowledge, the following:

6 7 INTRODUCTION

8 1. PLAINTIFFS bring this action against Transdev Alternative Services, Inc.
9 (“DEFENDANT”) seeking only to recover PAGA civil penalties for themselves, and on behalf
10 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFFS
11 do **not seek to recover anything other than penalties as permitted by California Labor**
12 **Code § 2699**. To the extent that statutory violations are mentioned for wage violations,
13 PLAINTIFFS do not seek underlying general and/or special damages for those violations, but
14 simply the civil penalties permitted by California Labor Code § 2699.

15 2. California has enacted the PAGA to permit individuals to bring an action on
16 behalf of themselves and on behalf of others for PAGA penalties *only*, which is the precise and
17 sole nature of this action.

18 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

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THE PARTIES

4. DEFENDANT is a corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California. DEFENDANT is a leader in employing individuals to operate autonomous vehicles.

5. Plaintiff Gunawan was employed by DEFENDANT from March of 2020 to December of 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

6. Plaintiff Fleming was employed by DEFENDANT from August of 2021 December of 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

7. Plaintiff Stavrev was employed by DEFENDANT from August of 2021 to January 16, 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

8. PLAINTIFFS, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by DEFENDANT in California and who were classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of January 3, 2021 until a date as determined by the Court (the "PAGA PERIOD").

9. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES presently or formerly employed by DEFENDANT during the PAGA PERIOD, bring this representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California

1 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
2 Order(s). Based upon the foregoing, PLAINTIFFS and all AGGRIEVED EMPLOYEES are
3 aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

4 10. The true names and capacities, whether individual, corporate, subsidiary,
5 partnership, associate or otherwise of Defendants DOES 1 through 50, inclusive, are presently
6 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names
7 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
8 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
9 ascertained. PLAINTIFFS are informed and believe, and based upon that information and belief
10 allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive,
11 are responsible in some manner for one or more of the events and happenings that proximately
12 caused the injuries and damages hereinafter alleged.

13 11. The agents, servants and/or employees of the Defendants and each of them acting
14 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
15 agent, servant and/or employee of the Defendants, and personally participated in the conduct
16 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
17 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
18 all Defendants are jointly and severally liable to PLAINTIFFS and the other AGGRIEVED
19 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
20 agents, servants and/or employees.

21 **THE CONDUCT**

22
23 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
24 required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. DEFENDANT required
27 PLAINTIFFS and the AGGRIEVED EMPLOYEES to work without paying them for all the
28 time they were under DEFENDANT's control. Specifically, DEFENDANT required

1 PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-
2 duty meal break. PLAINTIFFS were from time to time interrupted by work assignments.
3 PLAINTIFF and the AGGRIEVED EMPLOYEES also worked off the clock with respect to
4 time spent undergoing mandatory drug testing or any other testing and/or examination required
5 as a condition of employment. DEFENDANT also engaged in the practice of requiring
6 PLAINTIFFS and the AGGRIEVED EMPLOYEES to perform work off the clock in that
7 DEFENDANT, as a condition of employment, required these employees to submit to mandatory
8 COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the
9 workday. PLAINTIFF and the AGGRIEVED EMPLOYEES were also required by
10 DEFENDANT to set up their assigned autonomous vehicle in a parking lot and download
11 required software prior to clocking into DEFENDANT's timekeeping system. DEFENDANT
12 failed to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for their time spent performing
13 the mandatory COVID-19 checks and the mandatory pre-shift work. Further, PLAINTIFFS and
14 the AGGRIEVED EMPLOYEES from time to time were not paid wages for all time worked,
15 including overtime wages, such that in the aggregate employees were underpaid wages as a
16 result of DEFENDANT's pattern and practice of unevenly rounding time worked by its
17 employees. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited minimum
18 wage and overtime compensation by from time to time working without their time being
19 accurately recorded and without compensation at the applicable minimum wage and overtime
20 rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and the AGGRIEVED
21 EMPLOYEES for all time worked is evidenced by DEFENDANT's business records.

22 13. As a result of their rigorous work schedules, PLAINTIFFS and the AGGRIEVED
23 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
24 and were not fully relieved of duty for their meal periods. PLAINTIFFS and the AGGRIEVED
25 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
26 for more than five (5) hours during some shifts without receiving a meal break. Further,
27 DEFENDANT failed to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES with a
28 second off-duty meal period for some workdays in which these employees were required by

1 DEFENDANT to work ten (10) hours of work from time to time. DEFENDANT also engaged
2 in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFFS and
3 the AGGRIEVED EMPLOYEES. As a result, DEFENDANT's failure to provide PLAINTIFFS
4 and the AGGRIEVED EMPLOYEES with legally required meal breaks is evidenced by
5 DEFENDANT's business records. PLAINTIFFS and the AGGRIEVED EMPLOYEES
6 therefore forfeited meal breaks without additional compensation and in accordance with
7 DEFENDANT's corporate policy and practice.

8 14. During the PAGA PERIOD, PLAINTIFFS and the AGGRIEVED EMPLOYEES
9 were also required from time to time to work in excess of four (4) hours without being provided
10 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
11 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
12 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
13 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
14 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
15 PLAINTIFFS and the AGGRIEVED EMPLOYEES were also not provided with one hour
16 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and the
17 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
18 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
19 Order requires employers to provide employees with off-duty rest periods, which the California
20 Supreme Court defined as time during which an employee is relieved from all work related
21 duties and free from employer control. In so doing, the Court held that the requirement under
22 California law that employers authorize and permit all employees to take rest periods means that
23 employers must relieve employees of all duties and relinquish control over how employees
24 spend their time which includes control over the locations where employees may take their rest
25 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
26 five minutes out, five minutes back. Here, DEFENDANT's policy restricts PLAINTIFFS and
27 the AGGRIEVED EMPLOYEES from unconstrained walks and requires these employees to
28 remain with DEFENDANT's vehicles under DEFENDANT's control during what should be

1 their paid, off duty rest periods.

2 15. State law provides that employees must be paid overtime and meal and rest break
3 premium pay at one-and-one-half times their “regular rate of pay.” PLAINTIFFS and the
4 AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was
5 tied to specific elements of an employee’s performance.

6 16. The second component of PLAINTIFFS’ and other AGGRIEVED EMPLOYEES’
7 compensation was DEFENDANT’s non-discretionary incentive program that paid
8 PLAINTIFFS and the AGGRIEVED EMPLOYEES incentive wages based on their
9 performance for DEFENDANT. The non-discretionary incentive program provided all
10 employees paid on an hourly basis with incentive compensation when the employees met the
11 various performance goals set by DEFENDANT. However, when calculating the regular rate
12 of pay in order to pay overtime and premiums for meal and rest break violations to
13 PLAINTIFFS and the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the
14 incentive compensation as part of the employees’ “regular rate of pay” for purposes of
15 calculating overtime pay and premium pay for meal and rest break violations. Management and
16 supervisors described the incentive program to potential and new employees as part of the
17 compensation package. As a matter of law, the incentive compensation received by
18 PLAINTIFFS and the AGGRIEVED EMPLOYEES must be included in the “regular rate of
19 pay.” The failure to do so has resulted in an underpayment of overtime compensation and meal
20 and rest break premium pay to PLAINTIFFS and the AGGRIEVED EMPLOYEES by
21 DEFENDANT.

22 17. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
23 employment are due and payable twice during each calendar month, on days designated in
24 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
25 requires employers to pay employees all wages owed within seven (7) days of the close of the
26 payroll period. DEFENDANT from time to time failed to pay PLAINTIFFS and the
27 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
28 payroll period.

1 18. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
2 to collect or receive from an employee any part of wages theretofore paid by said employer to
3 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFFS and the
4 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
5 PLAINTIFFS and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
6 deductions from compensation payable to PLAINTIFFS and the AGGRIEVED EMPLOYEES,
7 and thereby failed to pay these employees all wages due at each applicable pay period and upon
8 termination.

9 19. DEFENDANT underpaid sick pay wages to PLAINTIFFS and the AGGRIEVED
10 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
11 Code Section 246. Specifically, PLAINTIFFS and other non-exempt employees earn non-
12 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
13 underpaid sick pay to PLAINTIFFS and other AGGRIEVED EMPLOYEES at their base rates
14 of pay.

15 20. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
16 employees be calculated by dividing the employee’s total wages, not including overtime
17 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
18 of employment.

19 21. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
20 the regular rate of pay. PLAINTIFFS and the AGGRIEVED EMPLOYEES routinely earned
21 non-discretionary incentive wages which increased their regular rate of pay. However, when
22 sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and the AGGRIEVED
23 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
24 Code Section 246.

25 22. As a pattern and practice, DEFENDANT failed to pay PLAINTIFFS and the
26 AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time penalties
27 pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and believe and
28 based thereon alleges that such failure to pay sick pay at regular rate was willful, such that

1 PLAINTIFFS and the AGGRIEVED EMPLOYEES whose employment has separated are
2 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

3 23. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
4 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
5 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
6 provides that every employer shall furnish each of his or her employees with an accurate
7 itemized wage statement in writing showing, among other things, gross wages earned and all
8 applicable hourly rates in effect during the pay period and the corresponding amount of time
9 worked at each hourly rate. DEFENDANT also violated Cal. Lab. Code Section 226 (a)(9) by
10 failing to list the correct hours worked and rates of pay for the "Retro" payment. Aside, from
11 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an
12 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
13 As a result, DEFENDANT from time to time provided PLAINTIFFS and the AGGRIEVED
14 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

15 24. DEFENDANT failed to reimburse and indemnify PLAINTIFFS and the
16 AGGRIEVED EMPLOYEES for required business expenses incurred by PLAINTIFFS and the
17 AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of
18 DEFENDANT. Under California Labor Code Section 2802, employers are required to
19 indemnify employees for all expenses incurred in the course and scope of their employment.
20 Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee
21 for all necessary expenditures or losses incurred by the employee in direct consequence of the
22 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
23 though unlawful, unless the employee, at the time of obeying the directions, believed them to
24 be unlawful."

25 25. In the course of their employment PLAINTIFFS and the AGGRIEVED
26 EMPLOYEES as a business expense, were required by DEFENDANT to use personal cellular
27 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but
28 were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of

1 the personal cellular phones for DEFENDANT's benefit. As a result, in the course of their
2 employment with DEFENDANT, PLAINTIFFS and the AGGRIEVED EMPLOYEES incurred
3 unreimbursed business expenses which included, but were not limited to, costs related to the use
4 of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

5
6 26. In violation of the applicable sections of the California Labor Code and the
7 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
8 intentionally and knowingly failed to compensate PLAINTIFFS and the AGGRIEVED
9 EMPLOYEES for missed meal and rest periods and all time worked. This policy and practice
10 of DEFENDANT was intended to purposefully avoid the payment for all time worked as
11 required by California law which allows DEFENDANT to illegally profit and gain an unfair
12 advantage over competitors who complied with the law. To the extent equitable tolling operates
13 to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD
14 should be adjusted accordingly.

15 27. All of the conduct and violations alleged herein occurred during the PAGA
16 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
17 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that
18 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
19 AJDAR 12157 (Certified for Publication 12/19/18).

20 **JURISDICTION AND VENUE**

21 28. This Court has jurisdiction over this Action pursuant to California Code of Civil
22 Procedure, Section 410.10.

23 29. Venue is proper in this Court pursuant to California Code of Civil Procedure,
24 Sections 395 and 395.5, because DEFENDANT(i) currently maintains and at all relevant times
25 maintained offices and facilities in this County and/or conducts substantial business in this
26 County, and (ii) committed the wrongful conduct herein alleged in this County against
27 PLAINTIFFS and other AGGRIEVED EMPLOYEES.

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1 **FIRST CAUSE OF ACTION**

2 **For Violation of the Private Attorneys General Act**

3 **[Cal. Lab. Code §§ 2698, *et seq.*]**

4 **(By PLAINTIFFS and Against All Defendants)**

5 30. PLAINTIFFS reallege and incorporate by this reference, as though fully set
6 forth herein, the prior paragraphs of this Complaint.

7 31. PAGA is a mechanism by which the State of California itself can enforce state
8 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
9 the state's labor law enforcement agencies. An action to recover civil penalties under
10 PAGA is fundamentally a law enforcement action designed to protect the public and not to
11 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
12 but to create a means of "deputizing" citizens as private attorneys general to enforce the
13 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
14 public interest to allow aggrieved employees, acting as private attorneys general to recover
15 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
16 claims cannot be subject to arbitration.

17 32. PLAINTIFFS, and such persons that may be added from time to time who
18 satisfy the requirements and exhaust the administrative procedures under the Private
19 Attorney General Act, bring this Representative Action on behalf of the State of California
20 with respect to themselves and all individuals who are or previously were employed by
21 DEFENDANT in California and who were classified as non-exempt employees
22 ("AGGRIEVED EMPLOYEES") during the time period of January 3, 2021 until a date as
23 determined by the Court (the "PAGA PERIOD").

24 33. On January 3, 2022, PLAINTIFFS gave written notice by electronic mail to
25 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
26 employer of the specific provisions of this code alleged to have been violated as required by
27 Labor Code § 2699.3. The statutory waiting period for PLAINTIFFS to add these
28 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,

1 PLAINTIFFS may now commence a representative civil action under PAGA pursuant to
2 Section 2699 as the proxies of the State of California with respect to all AGGRIEVED
3 EMPLOYEES as herein defined.

4 34. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
6 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
7 properly record and provide legally required meal and rest periods, (c) failed to pay
8 minimum wages, (d) failed to pay overtime and sick pay wages, (e) failed to reimburse
9 employees for required expenses, and (f) failed to provide wages when due, all in violation
10 of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*,
11 210, 221, 226(a), 226.7, 227.3, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
12 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
13 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
14 conduct.¹ PLAINTIFFS hereby seek recovery of only civil penalties as prescribed by the
15 Labor Code Private Attorney General Act of 2004 as the representatives of the State of
16 California for the illegal conduct perpetrated on PLAINTIFFS and the other AGGRIEVED
17 EMPLOYEES.

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
21 severally, as follows:

22 1. On behalf of the State of California and with respect to all AGGRIEVED
23 EMPLOYEES:

24 A) Recovery of civil penalties as prescribed by the Labor Code Private
25 Attorneys General Act of 2004; and,

26
27 _____
28 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
Code §558(a)(3).

B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699.

Dated: April 19, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: /s/ Nicholas De Blouw
Nicholas J. De Blouw
Attorneys for Plaintiffs