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FRANKIE PACHECO

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

FRANKIE PACHECO, an individual,

Plaintiff,

vs.

SWIFT TRANSPORTATION
SERVICES, LLC, a Delaware limited
liability company; RUSSELL PETTIS;
an individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CVME2501424

COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM OVERTIME/DOUBLE TIME WAGES (Cal. Labor Code §§ 510, 511, 1194, 1198; IWC Wage Order No. 9);**
- 2. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 9);**
- 3. FAILURE TO PROVIDE MEAL PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 9);**
- 4. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 9);**
- 5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226);**
- 6. FAILURE TO PAY ALL WAGES DUE ON TERMINATION (Cal. Labor Code §203);**
- 7. FAILURE TO PAY SEPARATELY AND HOURLY FOR NON-PRODUCTIVE ACTIVITIES (Cal. Labor Code §§ 1194, 1194.2, 1197; 226.2, IWC Wage Order No. 9);**
- 8. FAILURE TO PAY THE PROMISED AND STATED PIECE-RATE (Cal. Labor Code §§ 222-223; IWC Wage Order No. 9);**

- 1 9. FAILURE TO REIMBURSE BUSINESS
2 EXPENSES (Cal. *Labor Code* §2802);
3 10. FAILURE TO PAY UNIFORM
4 MAINTENANCE ALLOWANCE (Cal.
5 *Labor Code* § 2802);
6 11. FAILURE TO ALLOW INSPECTION OF
7 EMPLOYMENT RECORDS (Cal. *Labor*
8 *Code* §1198.5);
9 12. UNFAIR COMPETITION (Cal. *Bus. & Prof.*
10 *Code* §§17200 *et seq.*;
11 13. WRONGFUL TERMINATION IN
12 VIOLATION OF CAL. LABOR CODE
13 §98.6;
14 14. VIOLATION OF *Cal. Lab. Code* §1102.5
15 (WHISTLEBLOWER STATUTE); AND
16 15. WRONGFUL TERMINATION IN
17 VIOLATION OF PUBLIC POLICY.

18 **DEMAND FOR A JURY TRIAL**

19 Frankie Pacheco (“Plaintiff”) alleges the following:

20 **PARTIES**

21 1. Plaintiff was, at all times relevant to the matters alleged herein, over age 18 and
22 a resident of Moreno Valley, California.

23 2. Plaintiff is informed and believes, and based on that information and belief,
24 alleges, Defendant Swift Transportation Services, LLC (“SWIFT”) is, and at all times
25 mentioned herein was, a Delaware limited liability company, with a principal place of business
26 at 2200 South 75th Avenue, Phoenix, Arizona 85043. SWIFT has been authorized to do
27 business and has been doing business in the County of Riverside.

28 3. Plaintiff is informed and believes and thereon alleges that Defendant Russell
Pettis (“Russell”) (collectively with SWIFT “Defendants”) is an individual, who at all times

1 relevant herein, was a resident of Riverside County. Russell is an employee at SWIFT and he is
2 the Driver Leader at SWIFT.

3 4. Starting in or about October 2022, and continuing until March 4, 2024,
4 Defendant SWIFT employed Plaintiff as a CDL Driver. Plaintiff picked up trailers and
5 transported them to their locations, loaded trucks and returned trailers to the distribution center.

6 5. Plaintiff is ignorant of the true names and capacities of the defendants sued
7 herein as DOES 1 through 100, inclusive, and therefore Plaintiff sues these defendants by such
8 fictitious names and capacities. Plaintiff will amend her Complaint to show their true names
9 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
10 alleges that at all times relevant, each of these fictitiously named DOE Defendants was an
11 individual person who owned, controlled, or managed the business for which Plaintiff worked
12 and/or who directly or indirectly exercised operational control over the wages, hours, and
13 working conditions of Plaintiff. These DOE Defendants held ownership, officer, director and/or
14 executive positions with the remaining Defendants, and acted on behalf of the remaining
15 Defendants, which included decision-making responsibility for, and establishment of, illegal
16 payroll practices and policies for Defendants which have damaged Plaintiff and others similarly
17 situated. Therefore, DOES 1 through 100, in addition to the remaining Defendants, are
18 "employers" as a matter of law and personally liable on the causes of action alleged herein
19 pursuant to Labor Code §558, as well as other California wage and hour laws and regulations
20 as alleged herein.

21 6. Plaintiff is informed and believes and thereon alleges that at least some of the
22 Defendant DOES 1 through 100 are, and at all times relevant hereto were, persons,
23 corporations or other business entities organized and existing under and by virtue of the laws
24 of the State of California, and are/were qualified to transact and conduct business in the State
25 of California, and did transact and conduct business in the State of California, and are thus
26 subject to the jurisdiction of the State of California. Specifically, said DOES 1 through 100
27 maintain offices, operate businesses, employ persons, and conduct business in, and illegally
28 pay employees by illegal payroll practices and policies in the County of Riverside.

7. Plaintiff is informed and believes and thereon alleges, that at all times relevant herein, the named defendants and at least some of DOES 1 through 100 were the agents, employees, and/or servants, masters, or employers of the remaining DOES 1 through 100, and in doing the things herein alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other defendants.

8. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, directly employed or exercised control over his wages, hours, or working conditions.

9. Plaintiff is further informed and believes, and thereon alleges, that each of the fictitiously named Defendants aided and assisted the named Defendants in committing the wrongful acts alleged herein, and that Plaintiff's damages were proximately caused by each defendant.

10. At all times relevant herein, each of the named defendants was the agent of the other named defendants and in doing the things alleged herein, was acting within the course and scope of said agency.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this Complaint under Code of Civil Procedure §410.10, *Business & Professions Code* §§ 17200 *et seq.* and Cal. Labor Code §§ 98.6 and 1102.5.

12. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of Riverside and because Defendant SWIFT owned and operated their business in the County of Riverside.

Defendants Did Not Properly Compensate Plaintiff

13. While employed by Defendant SWIFT, Plaintiff was paid on a piece rate basis. He was paid .62 cents per mile. Plaintiff worked 13 or more hours per day, 5 days per week. He worked about 60 hours per week.

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1 14. The employment by Defendant SWIFT of Plaintiff is governed by Industrial
2 Welfare Commission Wage Order No. 9, which covers those persons employed in the
3 transportation industry.

4 15. Under California law, non-exempt employees as defined by Wage Order No. 9,
5 are entitled to premium wages for overtime/double time worked.

6 16. At all times relevant herein, Plaintiff routinely worked overtime/double time
7 hours such that he was due pay at overtime/double time rates. Monies for unpaid
8 overtime/double time remain due and owing.

9 17. Under California law, an employee is entitled to be paid a minimum wage.
10 Labor Code Section 1197 states the California requirement that employees must be paid at least
11 the minimum wage fixed by the Commission or by any applicable state or local law, and any
12 payment of less than the minimum wage is unlawful. Similarly, Labor Code Section 1194
13 entitles “any employee receiving less than the legal minimum wage...is entitled to recover in a
14 civil action the unpaid balance of the full amount of this minimum wage.” The applicable IWC
15 Wage Order(s), including IWC Wage Order No. 9-2001, obligates employers to pay each
16 employee minimum wages for all hours worked.

17 18. These minimum wage standards apply to each hour employees worked or were
18 subject to control by the employer for which they were not paid. Therefore, an employer’s
19 failure to pay for any particular hour of time worked by an employee or subject to the
20 employer’s control is unlawful, even if averaging an employee’s total pay over all hours
21 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
22 *Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

23 19. Defendants paid Plaintiff less than minimum wage rates due to the failure to
24 afford complaint meal/rest breaks. Monies for these underpaid amounts remain due and owing.

25 20. Defendants failed to provide Plaintiff with any wage statements.

26 21. Defendants failed to afford Plaintiff compliant meal breaks. His meal breaks
27 were at times not afforded, afforded late and/or interrupted.

28 22. Defendants failed to afford Plaintiff any rest breaks.

- 1 23. Defendants failed to pay Plaintiff all wages on termination.
- 2 24. Defendants failed to pay Plaintiff separate and hourly wages for non-productive
- 3 activities.
- 4 25. Defendants failed to pay the promised and stated piece rate.
- 5 26. Defendants failed to reimburse Plaintiff's necessary business expenses.
- 6 27. Defendants failed to provide Plaintiff with a uniform maintenance allowance.
- 7 28. Defendants failed to provide Plaintiff with his requested employment records.

8 **Whistleblowing, Retaliation and Wrongful Termination**

9 29. On or about February 5, 2024, Plaintiff complained in a forum/chat that was

10 visible to other employees that his supervisor, Russell, assigned him unpaid, off the clock work

11 tasks. Plaintiff was required by Defendants to take trucks to be swapped out, detailed and/or

12 repaired. These tasks were on drives that did not earn Plaintiff any mileage payments as he was

13 paid on a piece rate basis.

14 30. Russell called Plaintiff and told him he was upset because Plaintiff refused to

15 take a truck to get detailed after Plaintiff had finished his loads. Plaintiff told Russell that he

16 would take the truck for detailing the next day.

17 31. The next day, Russell told Plaintiff that the work had slowed down and that he

18 was being transferred to the Job Placement Department to see if there were other contracts that

19 had work available that Plaintiff could be assigned. However, when Plaintiff called the Job

20 Placement Department, he was told that Russell had not sent any paperwork concerning

21 Plaintiff's reassignment and that Plaintiff should wait until they get in touch with him.

22 32. Plaintiff waited 3 weeks and never heard back from SWIFT.

23 33. Plaintiff applied for other employment. However, the offer at the other trucking

24 group was rescinded when they contacted SWIFT and were told that Plaintiff was terminated

25 for failing to do what he was told.

26 34. On or about March 4, 2024, Plaintiff received a separation notice from SWIFT.

27 35. SWIFT retaliated against Plaintiff in violation of Cal. Lab. Code section 1102.5.

28

1 36. SWIFT retaliated and wrongfully terminated Plaintiff in violation of Cal. Lab.
2 Code section 98.6.

3 37. Pursuant to the California Labor Code, on or about January 30, 2025, Plaintiff
4 filed a notice with the Labor and Workforce Development Agency (LWDA) of his intent to
5 pursue claims against Defendants under the Private Attorney General Act (PAGA). As such,
6 Plaintiff reserves the right to amend this Complaint. Plaintiff intends to amend this Complaint
7 to add a cause of action pursuant to PAGA under Labor Code §§2699 et seq.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME/DOUBLE TIME WAGES**

10 **(Labor Code §§510, 558, 1194, 1194.3, 1198 and Wage Order No. 9 By Plaintiff Against**
11 **all Defendants and Does 1-100)**

12 38. Plaintiff realleges and incorporates by reference all of the allegations set forth in
13 this Complaint.

14 39. During Plaintiff's entire employment with Defendants, pursuant to Cal. Lab.
15 Code §§200, 510, 1194, and 1198, and IWC Wage Order No. 9, Defendants were required to
16 compensate Plaintiff with premium pay for all overtime work performed, for hours worked in
17 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
18 hours on the seventh (7th) consecutive day of any work week. Further, Defendants were
19 required to compensate Plaintiff with premium pay for all double-time performed, for hours
20 worked in excess of twelve (12) hours per workday and for work in excess of eight hours on
21 any seventh day of a workweek.

22 40. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
23 who had not been paid overtime compensation could recover the unpaid balance of the full
24 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
25 fees and costs of suit.

26 41. California Labor Code section 510, subdivision (a), states in relevant part:

27 Any work in excess of 12 hours in one day shall be compensated at the rate of
28 no less than twice the regular rate of pay for an employee. In addition, any work

1 in excess of eight hours on any seventh day of a workweek shall be compensated
2 at the rate of no less than twice the regular rate of pay of an employee.

3 42. California Labor Code section 1198 provides,

4 The maximum hours of work and the standard conditions of labor fixed by the
5 commission shall be the maximum hours of work and the standard conditions
6 of labor for employees. The employment of any employee for longer hours than
7 those fixed by the order or under conditions of labor prohibited by the order is
8 unlawful.

9 43. Pursuant to IWC Wage Order No. 9-2001, § 3, "Employment beyond eight (8)
10 hours in any workday is permissible provided the employee is compensated for such overtime
11 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
12 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
13 workday..."

14 44. California Labor Code section 558 provides in pertinent part:

15 (a) Any employer or other person acting on behalf of an employer who
16 violates, or causes to be violated, a section of this chapter or any
17 provision regulating hours and days of work in any order of the
18 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

19 (1) For any initial violation, fifty dollars (\$50) for each underpaid
20 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

21 (2) For each subsequent violation, one hundred dollars (\$100) for each
22 underpaid employee for each pay period for which the employee was
23 underpaid in addition to an amount sufficient to recover underpaid
wages.

24 (3) Wages recovered pursuant to this section shall be paid to the affected
25 employee...

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

28 45. Pursuant to Cal. Labor Code §558.1:

1 (a) Any employer or other person acting on behalf of an employer, who
2 violates, or causes to be violated, any provision regulating...hours and days of work in any
3 order of the Industrial Welfare Commission, or violates, or causes to be violated Sections 203,
4 226, 226.7...may be held liable as the employer for such violation.

5 (b) For purposes of this section, the term "other person acting on behalf of an
6 employer" is limited to a natural person who is an owner, director, officer, or managing agent
7 of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of
8 Section 3294 of the Civil Code.

9 (c) Nothing in this section shall be construed to limit the definition of employer
10 under existing law.

11 46. Russell is a person acting on behalf of SWIFT and is therefore liable to Plaintiff
12 as an employer. Russell caused the laws relating to overtime/double time to be violated.

13 47. Employers must compensate non-exempt employees for "off-the-clock" work
14 (before punching in or after punching out on a time clock) if the employers knew or should
15 have known that the employees were working those hours. *Morillion v. Royal Packing Co.*
16 (2000) 22 Cal. 4th 575, 585.

17 48. Plaintiff was required by Defendants to take trucks to be swapped out, detailed
18 and/or repaired. These tasks were on drives that did not earn Plaintiff any mileage payments as
19 he was paid on a piece rate basis.

20 49. Plaintiff worked 13 or more hours per day, 5 days per week. Throughout
21 Plaintiff's employment, Defendants failed and refused to pay and properly pay overtime/double
22 time compensation to Plaintiff as required by law. When Plaintiff worked overtime/double
23 time, he was not paid time and one half and/or double time.

24 50. Further, Defendants expected Plaintiff to engage in off the clock work every
25 day. Plaintiff was not paid for his off the clock work.

26 51. Plaintiff worked approximately 20 hours per week of overtime/double time. At
27 times, Plaintiff was required to work in excess of 12 hours per day. However, Plaintiff was at
28

1 times not paid for the hours he worked double time. Plaintiff was not paid overtime/double time
2 that was due to him.

3 52. The foregoing overtime/double time compensation is owed and unpaid. As a
4 direct and proximate result of Defendants' failure and refusal to pay overtime/double time,
5 Plaintiff suffered damages in an amount within the jurisdiction of this Court, according to be
6 proof at trial.

7 53. *Labor Code* § 558(a) mandates a civil penalty for failure to pay overtime/double
8 time wages against employers and those individuals acting in their behalf. Plaintiff requests
9 that this Court assess said penalty against Defendants in an amount to be proven at trial.

10 54. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
11 counsel in order to enforce Plaintiff's rights to overtime/double time pay, is entitled to recover
12 his attorneys' fees, costs and interest.

13 **SECOND CAUSE OF ACTION**

14 **FOR FAILURE TO PAY MINIMUM WAGES**

15 **(Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order No. 9 By Plaintiff**
16 **Against all Defendants and Does 1 through 100)**

17 55. Plaintiff realleges and incorporates by reference all of the allegations set forth in
18 this Complaint.

19 56. *Labor Code* § 1197 states the California requirement that employees must be
20 paid at least the minimum wage fixed by the Commission, and any payment of less than the
21 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles "any employee receiving
22 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
23 the full amount of this minimum wage." IWC Wage Order No. 9-2001 also obligates employers
24 to pay each employee minimum wages for all hours worked. These minimum wage standards
25 apply to each hour employees worked for which they were not paid. Therefore, an employer's
26 failure to pay for any particular hour of time worked by an employee is unlawful, even if
27 averaging an employee's total pay over all hours worked, paid or not, results in an average
28

1 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
2 (2005).

3 57. California Labor Code section 558 provides in pertinent part:

4 (a) Any employer or other person acting on behalf of an employer who
5 violates, or causes to be violated, a section of this chapter or any
6 provision regulating hours and days of work in any order of the
7 Industrial Welfare Commission shall be subject to a civil penalty as
8 follows:

9 (1) For any initial violation, fifty dollars (\$50) for each underpaid
10 employee for each pay period for which the employee was underpaid in
11 addition to an amount sufficient to recover underpaid wages.

12 (2) For each subsequent violation, one hundred dollars (\$100) for each
13 underpaid employee for each pay period for which the employee was
14 underpaid in addition to an amount sufficient to recover underpaid
15 wages.

16 (3) Wages recovered pursuant to this section shall be paid to the affected
17 employee...

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

20 58. Pursuant to Cal. Labor Code §558.1:

21 (a) Any employer or other person acting on behalf of an employer, who
22 violates, or causes to be violated, any provision regulating...hours and days of work in any
23 order of the Industrial Welfare Commission, or violates, or causes to be violated Sections 203,
24 226, 226.7...may be held liable as the employer for such violation.

25 (b) For purposes of this section, the term "other person acting on behalf of an
26 employer" is limited to a natural person who is an owner, director, officer, or managing agent
27 of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of
28 Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer
under existing law.

1 59. Russell is a person acting on behalf of SWIFT and is therefore liable to Plaintiff
2 as an employer. Russell caused the laws relating to minimum wages to be violated.

3 60. Here, Plaintiff's meal breaks were interrupted, not afforded and/or afforded late
4 and he was never afforded any rest breaks. As a result, he was paid less than minimum wage.

5 61. *Labor Code* § 1194 provides, in part, that any employee receiving less than the
6 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
7 wage, including interest thereon, reasonable attorneys' fees, and costs of suit.

8 62. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
9 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
10 *Code* § 1194. Where an employee, such as Plaintiff is not paid for all hours worked under
11 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with
12 the overtime for which they received no compensation. *See Sillah v. Command Int'l Sec. Servs.*,
13 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime
14 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
15 minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
16 (N.D. Cal. 2016).

17 63. Plaintiff suffered and continues to suffer losses related to the use and enjoyment
18 of compensation due and owing to him as a direct result of Defendants' unlawful acts and
19 Labor Code violations in an amount within the jurisdiction of this Court, to be shown according
20 to proof at trial.

21 64. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
22 wages against employers and those individuals acting in their behalf. Plaintiff requests that this
23 Court assess said penalty against Defendants, in an amount to be proven at trial.

24 65. Therefore, pursuant to Labor Code §§200, 218.5, 226, 558,1194 and 1194.2,
25 Plaintiff is entitled to recover the unpaid balances of the minimum wages Defendants owe him,
26 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to
27 proof.

28

1 66. Under *Labor Code* § 1194.2, Plaintiff is entitled to recover as liquidated
2 damages, amounts equal to the wages unlawfully unpaid and interest thereon.

3 **THIRD CAUSE OF ACTION**

4 **FOR FAILURE TO PAY FOR MEAL PERIODS NOT PROVIDED**

5 **(Labor Code §§ 226.7, 512, IWC Wage Order No. 9 By Plaintiff Against all Defendants**
6 **and Does 1 through 100)**

7 67. Plaintiff realleges and incorporates by reference all of the allegations set forth in
8 this Complaint.

9 68. California Labor Code §226.7(a) prohibits an employer from requiring an
10 employee to work during any meal period mandated by an applicable Industrial Wage Order.
11 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
12 employee to work during a meal or rest break or recovery period mandated pursuant to an
13 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
14 Commission..."

15 69. California Labor Code §1198 makes unlawful the employment of an employee
16 under conditions the IWC prohibits.

17 70. IWC Wage Order No. 9 provides, in relevant part: "No employer shall employ
18 any person for a work period of more than five (5) hours without a meal period of not less than
19 30-minutes, except that when a work period of not more than six (6) hours will complete the
20 day's work the meal period may be waived by mutual consent of the employer and the
21 employee."

22 71. IWC Wage Order No. 9 further provides, in relevant part: "Unless the employee
23 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an
24 'on duty' meal period and counted as time worked."

25 72. Section 512(a) of the California Labor Code provides, in relevant part, that:
26 An employer may not employ an employee for a work period of more than five
27 hours per day without providing the employee with a meal period of not less
28 than 30-minutes, except that if the total work period per day of the employee is

1 no more than six hours, the meal period may be waived by mutual consent of
2 both the employer and employee. An employer may not employ an employee for
3 a work period of more than 10 hours per day without providing the employee
4 with a second meal period of not less than 30-minutes, except that if the total
5 hours worked is no more than 12 hours, the second meal period may be waived
6 by mutual consent of the employer and the employee only if the first meal
7 period was not waived.

8 73. The Labor Code and Wage Order provisions cited above require California
9 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
10 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
11 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
12 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
13 the fifth hour of their shifts.

14 74. California Labor Code section 558 provides in pertinent part:

15 (a) Any employer or other person acting on behalf of an employer who
16 violates, or causes to be violated, a section of this chapter or any
17 provision regulating hours and days of work in any order of the
18 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

19 (1) For any initial violation, fifty dollars (\$50) for each underpaid
20 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

21 (2) For each subsequent violation, one hundred dollars (\$100) for each
22 underpaid employee for each pay period for which the employee was
23 underpaid in addition to an amount sufficient to recover underpaid
wages.

24 (3) Wages recovered pursuant to this section shall be paid to the affected
25 employee...

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

28 75. Pursuant to Cal. Labor Code §558.1:

1 (a) Any employer or other person acting on behalf of an employer, who
2 violates, or causes to be violated, any provision regulating...hours and days of work in any
3 order of the Industrial Welfare Commission, or violates, or causes to be violated Sections 203,
4 226, 226.7...may be held liable as the employer for such violation.

5 (b) For purposes of this section, the term "other person acting on behalf of an
6 employer" is limited to a natural person who is an owner, director, officer, or managing agent
7 of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of
8 Section 3294 of the Civil Code.

9 (c) Nothing in this section shall be construed to limit the definition of employer
10 under existing law.

11 76. Russell is a person acting on behalf of SWIFT and is therefore liable to Plaintiff
12 as an employer. Russell caused the laws relating to meal periods to be violated.

13 77. Defendants violated Labor Code § 512 and IWC Wage Order No. 9 by failing to
14 provide Plaintiff the requisite 30-minute meal periods, required by law. Plaintiff's meal breaks
15 were at times interrupted, afforded late and/or not afforded. Further, at times Plaintiff was
16 restricted from leaving his work area during his meal breaks.

17 78. Defendants further violated IWC Wage Order No. 9 and Labor Code
18 § 226.7 by failing to pay one hour of compensation to Plaintiff at his individual and regular rate
19 of pay for each work day that the meal period was not provided, in an amount within the
20 jurisdiction of this Court, according to proof. This amount remains owed and unpaid.

21 79. Cal. Labor Code § 218 authorizes Plaintiff to bring a private right of action to
22 recover wages due based on the deprivation of timely meal periods under Cal. Labor Code
23 § 226.7(b).

24 80. As a direct and proximate result of Defendants' unlawful conduct as alleged
25 herein, Plaintiff has sustained economic damages, including but not limited to unpaid wages
26 and lost interest, in an amount to be established at trial, and is entitled to recover economic and
27 statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendants'
28 violations of the California Labor Code and IWC Wage Order No. 9.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST BREAKS**

3 **(Labor Code §226.7 and IWC Wage Order No. 16 – By Plaintiff Against all Defendants**

4 **Does 1 through 100)**

5 81. Plaintiff realleges and incorporates by reference all of the allegations set forth in
6 this Complaint.

7 82. Labor Code § 226.7 and IWC Wage Order No. 9 provide that employers shall
8 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
9 per four hours of work, or major fraction thereof.

10 83. Labor Code § 226.7 and IWC Wage Order No. 9 provide that if an employer
11 fails to provide an employee with rest periods in accordance with those provisions, the
12 employer shall pay the employee one hour of pay at the employee's regular rate of
13 compensation for each workday that the rest periods were not so provided.

14 84. California Labor Code section 558 provides in pertinent part:

15 (a) Any employer or other person acting on behalf of an employer who
16 violates, or causes to be violated, a section of this chapter or any
17 provision regulating hours and days of work in any order of the
18 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

19 (1) For any initial violation, fifty dollars (\$50) for each underpaid
20 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

21 (2) For each subsequent violation, one hundred dollars (\$100) for each
22 underpaid employee for each pay period for which the employee was
23 underpaid in addition to an amount sufficient to recover underpaid
wages.

24 (3) Wages recovered pursuant to this section shall be paid to the affected
25 employee...

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

28 85. Pursuant to Cal. Labor Code §558.1:

1 (a) Any employer or other person acting on behalf of an employer, who
2 violates, or causes to be violated, any provision regulating...hours and days of work in any
3 order of the Industrial Welfare Commission, or violates, or causes to be violated Sections 203,
4 226, 226.7...may be held liable as the employer for such violation.

5 (b) For purposes of this section, the term "other person acting on behalf of
6 an employer" is limited to a natural person who is an owner, director, officer, or managing
7 agent of the employer, and the term "managing agent" has the same meaning as in subdivision
8 (b) of Section 3294 of the Civil Code.

9 (c) Nothing in this section shall be construed to limit the definition of
10 employer under existing law.

11 86. Russell is a person acting on behalf of SWIFT and is therefore liable to Plaintiff
12 as an employer. Russell caused the laws relating to rest breaks to be violated.

13 87. Defendants have intentionally and improperly denied any rest periods to
14 Plaintiff in violation of Labor Code § 226.7 and IWC Wage Order No. 9.

15 88. At all times relevant hereto, Plaintiff has worked 13 or more hours daily.

16 89. At all times relevant hereto, Defendants failed to provide rest periods as required
17 by Labor Code § 226.7 and IWC Wage Order No. 9.

18 90. By virtue of Defendants' unlawful failure to provide rest periods to the Plaintiff,
19 Plaintiff has suffered, and will continue to suffer, damages an amount within the jurisdiction of
20 this Court, according to proof at trial.

21 **FIFTH CAUSE OF ACTION**

22 **(Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab. Code**
23 **§226 – By Plaintiff Against all Defendants and Does 1 through 100)**

24 91. Plaintiff realleges and incorporates by reference all of the allegations set forth in
25 this Complaint.

26 92. At all times relevant hereto, Defendants failed to issue any payroll statements to
27 Plaintiff which complied with *Labor Code* § 226. Thus, Plaintiff did not receive wage
28 statements that properly and accurately itemized the number of hours Plaintiff worked at the

1 effective regular rates of pay and the effective overtime/double time rates of pay, minimum
2 wages, for meal/rest breaks not compliant, payment separately and hourly for non-productive
3 activities and payment of the promised and stated piece rate.

4 93. Defendants knowingly and intentionally failed to comply with *Labor Code*
5 §226(a), causing damage to Plaintiff. These damages, including but not limited to, costs
6 expended calculating the actual hours worked and the amount of employment taxes which were
7 not properly paid to state and federal tax authorities, are difficult to estimate. Therefore,
8 Plaintiff elects to recover liquidated damages of \$50.00 for the initial pay period in which the
9 violations occurred, and \$100.00 for each violation in subsequent pay periods, pursuant to
10 *Labor Code* § 226(e), in the amount of \$4,000.00 plus reasonable attorneys' fees and costs.

11 94. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus
12 attorneys' fees and costs in obtaining the injunction, pursuant to *Labor Code* § 226(g).

13 **SIXTH CAUSE OF ACTION**

14 **(Failure to Pay All Wages Due on Termination in violation of Cal. Lab. Code §203– By** 15 **Plaintiff Against all Defendants and Does 1 through 100)**

16 95. Plaintiff realleges and incorporates by reference all of the allegations set forth in
17 this Complaint.

18 96. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
19 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
20 from employment, unpaid wages are due and payable within 72 hours of resignation.

21 97. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
22 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
23 paid, not to exceed thirty days.

24 98. Plaintiff was wrongfully discharged from Defendants' employ and Defendants
25 willfully failed to pay Plaintiff wages due to him.

26 99. Under Labor Code § 203(a), Plaintiff is entitled to one day's wages for each day
27 he was not timely paid, not to exceed 30 days' wages.

1 100. By willfully failing to pay Plaintiff for overtime/double time, minimum wages,
2 separate amounts owed for meal/rest periods not provided, pay separately and hourly for non-
3 productive activities, pay the promised and stated piece rate, as set forth above, in a timely
4 manner as required by Cal. Lab. Code §§ 201 & 202, Defendants are liable to him for penalties
5 pursuant to Cal. Lab. Code § 203, in an amount equal to 30 days of his per diem wage rate in an
6 amount according to proof.

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO PAY SEPARATELY AND HOURLY FOR NON-PRODUCTIVE**
9 **ACTIVITIES**

10 **(Labor Code §§ 1194, 1194.2, 1197; 226.2, IWC Wage Order No. 9 by Plaintiffs Against**
11 **all Defendants and Does 1-100)**

12 101. Plaintiff realleges and incorporates by reference all of the allegations set forth in
13 this Complaint.

14 102. Cal. Labor Code section 226.2 requires employers who compensate workers on
15 a piece-rate basis to provide separate compensation for rest and recovery periods and separate
16 compensation for “other nonproductive time.” Nonproductive time is defined as “time under
17 the employer's control, exclusive of rest and recovery periods, that is not directly related to the
18 activity being compensated on a piece-rate basis.” Failure to pay separately for rest and
19 recovery periods and for other nonproductive time constitutes a violation of the minimum
20 wage. *Bluford v. Safeway Stores, Inc.* (rest periods).

21 103. Failure to compensate separately for other nonproductive time also constitutes a
22 violation of California Labor Code §§ 221 and 223. These provisions prohibit payment of
23 wages below the amount designated by contract and the employer collecting wages belonging
24 to the employee.

25 104. The Minimum Wage provisions of California Labor Code are enforceable by
26 private civil action pursuant to California Labor Code section 1194(a), which states:

27 Notwithstanding any agreement to work for a lesser wage, any employee
28 receiving less than the legal minimum wage or the legal overtime compensation
 applicable to the employee is entitled to recover in a civil action the unpaid

1 balance of the full amount of this minimum wage or overtime compensation,
2 including interest thereon, reasonable attorney's fees and costs of suit.

3 105. Plaintiff was paid on a piece rate basis, but Defendants did not sufficiently
4 compensate Plaintiff for tasks such a taking trucks to be get swapped out, detailed and/or
5 repaired. Those tasks did not earn Plaintiff any mileage payments.

6 106. As such, Plaintiff may bring this action for minimum wages, interest, costs of
7 suit and attorneys' fees pursuant to California Labor Code section 1194(a).

8 107. Section 1194.2 of the Labor Code provides, in relevant part:

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

13 108. Plaintiff did not receive sufficient payment for the hours worked while he was
14 engaged in off the clock activities.

15 109. Accordingly, pursuant to §§1194 and 218 of the California Labor Code, Plaintiff
16 is entitled to recover minimum wages for all hours worked while engaged in off the clock
17 activities.

18 110. Furthermore, pursuant to §§ 1194.2 and 218 of the California Labor Code,
19 Plaintiff is entitled to recover liquidated damages in an additional amount equal to the amount
20 they are entitled to under § 1194.

21 111. Pursuant to § 1194 of the Labor Code, Plaintiff is also entitled to recover
22 interest, costs, and attorneys' fees associated with this cause of action.

23 **EIGHTH CAUSE OF ACTION**

24 **FAILURE TO PAY THE PROMISED AND STATED PIECE RATE**

25 **(Cal. Labor Code §§ 222, 223– By Plaintiff Against all Defendants and Does 1 through**
26 **100)**

27 112. Plaintiff realleges and incorporates by reference all of the allegations set forth in
28 this Complaint.

113. Defendants' contractual "per mile" piece-rate system of pay applied to Plaintiff.

1 114. Section 223 of the Labor Code provides: “Where any statute or contract requires
2 an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower
3 wage while purporting to pay the wage designated by statute or by contract.”

4 115. As set forth above, Plaintiff was required by Defendants to engage in off the
5 clock activities every day, but was not paid for his driving miles relating to those off the clock
6 activities.

7 116. If Defendants contend that the “per mile” piece-rate somehow includes those off
8 the clock activities, then they paid Plaintiff less than the applicable and stated contractual
9 piece-rates.

10 117. Accordingly, as to Plaintiff, Defendants violated § 223 of the Labor Code.
11 Therefore, Defendants are liable for the difference between the stated piece rate and the rate
12 actually paid, plus interest and attorney’s fees.¹

13 **NINTH CAUSE OF ACTION**

14 **(For Failure to Reimburse Business Expenses in Violation of Cal. Labor Code §2802 By**
15 **Plaintiff Against Defendant SWIFT and Does 1 through 100)**

16 118. Plaintiff realleges and incorporates by reference all of the allegations set forth in
17 this Complaint.

18 119. Labor Code §2802 requires employers to indemnify employees for all necessary
19 expenditures incurred by employees in the discharge of her duties.

20 120. At all times relevant herein, SWIFT was aware that Plaintiff was using
21 purchasing tools for business, but failed to indemnify Plaintiff for all his business-related
22 expenses, in accordance with Labor Code §2802.

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26 ¹ Plaintiff concedes that this cause of action is plead in the alternative to the extent that Defend-
27 ants can prove it somehow legally averaged out its piece rate to include time spent on off the
28 clock activities, and non-paid work-related activities as mentioned above. However, Defend-
ants never informed Plaintiff of this intent. Moreover, Defendants never communicated that it
intended to average the stated piece rate to include time spent on off the clock activities.

1 121. As a result of SWIFT's conduct, Plaintiff suffered damages in an amount,
2 subject to proof, to the extent he was not reimbursed for all of his business-related expenses
3 incurred in the discharge of his duties.

4 122. Pursuant to Labor Code §2802, Plaintiff is entitled to recover the full amount of
5 his unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

6 **TENTH CAUSE OF ACTION**

7 **(Failure to Pay Uniform Maintenance Allowance in Violation of Cal. Labor Code §2802**
8 **By Plaintiff Against Defendant SWIFT and Does 1 through 100)**

9 123. Plaintiff realleges and incorporates by reference all of the allegations set forth in
10 this Complaint.

11 124. Under California law, if an employer requires non-exempt employees to wear a
12 uniform, the employer must pay for and maintain the uniform for the employee. Labor Code
13 §2802.

14 125. In addition to the cost of the uniform, the employer must provide non-exempt
15 employees with reasonable maintenance of the uniforms. The employer can either maintain the
16 uniform itself, or pay the employee a weekly maintenance allowance.

17 126. An employer may never impose a financial burden on employees, with respect
18 to purchasing or maintaining clothing, which would reduce the employees' wage rate below the
19 minimum wage.

20 127. Here, Plaintiff purchased safety gloves and vests for his work, but was not
21 reimbursed therefor.

22 128. Defendants failed to reimburse Plaintiff for the necessary uniforms he purchased
23 for work nor pay Plaintiff a weekly maintenance allowance.

24 129. As a proximate result of the aforementioned violations of § 2802, Plaintiff is
25 entitled to recovery from SWIFT for reimbursement of necessary expenditures including
26 interest and attorneys' fees.

27 130. As a proximate result of the aforementioned violations of Labor Code § 2802,
28 Plaintiff has been damaged in an amount according to proof at the time of trial.

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ELEVENTH CAUSE OF ACTION

FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS

(Cal. Labor Code §1198.5 By Plaintiff Against all Defendants and Does 1 through 100)

131. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

132. California Labor Code Section 1198.5 provides:

(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

(b) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request to inspect the records. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records,... later than 30 calendar days from the date the employer receives the request...

(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section... the current or former employee may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

(l) A current or former employee may also bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney's fees in such an action.

1 133. Additionally, pursuant to Wage Order No. 9, at section 7 re: Records, employers
2 are required to keep accurate payroll records on each employee, and such records must be made
3 readily available for inspection by the employee upon reasonable request. The employer must
4 also maintain accurate production records.

5 134. On or about January 30, 2025, Plaintiff's counsel issued a written request to
6 Defendants for copies of his personnel records.

7 135. Under California Labor Code Sections 226, 432 and 1198.5, such records were
8 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
9 Plaintiff's counsel and Defendants did not enter into an agreement to enlarge the time for
10 Defendants' compliance, and Defendants have failed and refused to permit Plaintiff copies of
11 his records.

12 136. As a direct result and consequence of Defendants' failure and refusal to permit
13 Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or
14 decree mandating Defendants' compliance. Plaintiff has suffered and will suffer harm as a
15 result of Defendants' ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
16 penalty of \$750 based upon Defendants' violation of §1198.5.

17 **TWELFTH CAUSE OF ACTION**

18 **FOR UNFAIR COMPETITION**

19 **(Business & Professions Code §§ 17200 et seq. By Plaintiff Against all Defendants and**
20 **Does 1 through 100)**

21 137. Plaintiff realleges and incorporates by reference all of the allegations set forth in
22 this Complaint.

23 138. *Business & Professions Code §§ 17200 et seq.* prohibit acts of unfair
24 competition, which mean and include "unlawful and unfair business practices."

25 139. Defendants' conduct as alleged herein has been and continues to be unfair,
26 unlawful, and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights
27 affecting the public interest within the meaning of *Code of Civil Procedure* § 1021.5. Plaintiff
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1 is a “person” within the meaning of *Business and Professions Code* § 17204 and therefore has
2 standing to bring this suit for restitution.

3 140. The prompt payment of overtime/double time, minimum wages, affording of
4 meal/rest breaks, payment separately and hourly for non-productive activities, payment of the
5 promised and stated piece rate, are fundamental public policies of California. It also is the
6 public policy of California to enforce minimum labor standards to ensure that employees are
7 not required to or permitted to work under substandard and unlawful conditions and to protect
8 those employers who comply with the law from losing competitive advantage to other
9 employers who fail to comply with labor standards and requirements.

10 141. Through the conduct alleged herein, Defendants acted contrary to these public
11 policies and have thus engaged in unlawful and/or unfair business practices in violation of
12 *Business & Professions Code* §§ 17200 *et seq.*, depriving Plaintiff of the rights, benefits and
13 privileges guaranteed to employees under California law.

14 142. Defendants regularly and routinely violated the following statutes and
15 regulations with respect to Plaintiff:

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- 17 (a) *Labor Code* §§ 510, 511, 558, 1194 and 1198 and IWC Wage Order No.
18 16 as amended (failure to pay overtime/double time);
 - 19 (b) *Labor Code* §§ 1194, 1197, 1197.1, 1198, 119 and IWC Wage Order No.
20 16 (failure to pay minimum wages);
 - 21 (c) *Labor Code* §226 (failure to afford meal breaks);
 - 22 (d) *Labor Code* §226 (failure to afford rest breaks);
 - 23 (e) *Labor Code* § 226 (failure to provide accurate wage statements to
24 employees at the time of payment of wages);
 - 25 (f) *Labor Code* §§ 201-203 (failure to pay wages on termination);
 - 26 (g) *Labor Code* §§ 1194, 1194.2, 1197; 226.2 (pay separately and hourly for
27 non-productive activities);
 - 28 (h) *Labor Code* §§ 222, 223 (pay the promised and stated piece rate);

- 1 (i) *Labor Code* § 2802 (failure to reimburse business expenses);
2 (j) *Labor Code* § 2802 (failure to provide a uniform maintenance
3 allowance); and
4 (g) *Labor Code* § 1198.5 (failure to allow inspection of employment records).
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6 143. By engaging in these business practices, which are unfair business practices
7 within the meaning of *Business & Professions Code* §§17200 *et seq.*, Defendant harmed
8 Plaintiff and gained an unfair competitive edge. Under the *Business & Professions Code* §
9 17203, Plaintiff is entitled to obtain restitution of these funds.

10 **THIRTEENTH CAUSE OF ACTION**

11 **(Wrongful Termination in Violation of Cal. Lab. §98.6– By Plaintiff Against Defendant 12 SWIFT and Does 1 through 100)**

13 144. Plaintiff realleges and incorporates by reference all of the allegations set forth in
14 this Complaint.

15 145. Labor Code §98.6 prohibits retaliation against employees or job applicants from
16 filing a claim relating to rights under the jurisdiction of the Labor Commissioner or for
17 otherwise exercising rights under the Labor Code.

18 146. This cause of action is based upon California Labor Code §98.6 which provides
19 that no person shall discharge an employee or in any manner discriminate against any employee
20 or applicant for employment for a bona fide complaint or claim as covered by the California
21 Labor Code.

22 147. In accordance with California Labor Code § 1102.5, Plaintiff exercised his right
23 to complain about SWIFT's wage and hour violations in a forum/chat.

24 148. As alleged above, Plaintiff is informed, believes and based thereon alleges that
25 Defendant SWIFT retaliated against Plaintiff in violation of California Labor Code §98.6 (a)
26 because he exercised his right to complain concerning SWIFT's wage and hour violation.

27 149. Defendant subjected Plaintiff to an adverse employment action by terminating
28 him on or about March 4, 2024, in retaliation for his complaints.

150. As a direct, foreseeable, and proximate result of the conduct of Defendant SWIFT, Plaintiff has suffered, and continues to suffer loss of earnings, plus expenses incurred in obtaining substitute employment, loss of job security, all to his damage in a sum to be ascertained according to proof.

151. As a further direct and proximate result of Defendant SWIFT's unlawful retaliation, Plaintiff has suffered severe emotional distress, in a sum within the jurisdiction of this Court, to be ascertained according to proof

152. Plaintiff is informed, believes, and based thereon, alleges that the outrageous conduct of Defendant SWIFT described above, in this cause of action, was done with oppression and malice by Defendant SWIFT and was ratified by those other individuals who were managing agents of Defendant SWIFT. These unlawful acts were further ratified by the Defendant SWIFT and done with a conscious disregard for Plaintiff's rights and with the intent, design and purpose of injuring Plaintiff. By reason thereof, Plaintiff is entitled to punitive or exemplary damages against Defendant SWIFT for its acts as described in this cause of action in a sum to be determined at the time of trial.

153. Pursuant to California Labor Code §98.6 (b)(3), SWIFT is liable for civil penalties up to \$10,000 per violation due to its violation of California Labor Code §98.6.

154. As a result of the retaliatory acts of Defendant SWIFT, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of suit as specifically provided in California Code of Civil Procedure § 1021.5.

FOURTEENTH CAUSE OF ACTION

(Violation of §1102.5 *et seq.*; Whistleblower Retaliation Statute– By Plaintiff Against Defendant SWIFT and Does 1 through 100)

155. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

156. During Plaintiff's employment, Plaintiff complained regarding wage and hour violations. Plaintiff had reasonable cause to believe he was reporting violations of law in each

1 of these instances. In fact, they were actual violations of law as detailed above, so his
2 reasonable belief was also true.

3 157. Plaintiff was a whistleblower pursuant to Cal. Labor Code § 1102.5, as Plaintiff
4 engaged in protected activities, as alleged in this Complaint.

5 158. Defendant SWIFT retaliated against Plaintiff for complaining about the
6 foregoing violations of state law by wrongfully terminating him in violation of Cal. Lab. Code
7 §1102.5. Plaintiff's complaints concerning wage and hour violations were the basis for
8 Defendant SWIFT's acts of retaliation.

9 159. By the acts herein alleged and in violation of Cal. Lab. Code §1102.5,
10 Defendant SWIFT adopted and enforced rules, regulations and policies preventing Plaintiff
11 from disclosing information to government and law enforcement agencies, when Plaintiff had
12 reasonable cause to believe that Defendant SWIFT was in violation of California law.

13 160. The aforesaid acts and conduct of Defendant SWIFT, has caused Plaintiff to
14 suffer actual damages pursuant to California Civil Code § 3333 including, but not limited to,
15 loss of earnings and future earning capacity, attorneys' fees, and other pecuniary loss according
16 to proof at trial.

17 161. The aforesaid acts and conduct of Defendant SWIFT has caused Plaintiff to
18 suffer special damages, including but not limited to, emotional distress, pain and suffering fear,
19 stress, anxiety and humiliation.

20 162. As a direct and proximate result of the conduct of these Defendant SWIFT,
21 Plaintiff has suffered emotional anguish and distress, loss of income and benefits, and other
22 special and general damages, according to proof at trial.

23 163. In doing the things herein alleged, the conduct of Defendant SWIFT was
24 despicable and Defendant SWIFT acted towards Plaintiff with malice, oppression, fraud, and
25 with a willful and conscious disregard of Plaintiff's rights, entitling Plaintiff to punitive
26 damages according to proof at trial.

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1 164. As a result of the retaliatory acts of Defendant SWIFT, as alleged herein,
2 Plaintiff is entitled to reasonable attorneys' fees and costs of suit as specifically provided in
3 California Code of Civil Procedure § 1021.5.

4 **FIFTEENTH CAUSE OF ACTION**

5 **(Wrongful Termination in Violation of Public Policy– By Plaintiff Against Defendant**
6 **SWIFT Does 1 through 100)**

7 165. Plaintiff realleges and incorporates by reference all of the allegations set forth in
8 this Complaint.

9 166. Pursuant to *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167 and *Hentzel*
10 *v. Singer Co.* (1982) 138 Cal. App. 3d 290, 301-02, 305, an employee or ex-employee may sue
11 his or her employer for wrongful termination in violation of public policy as a consequence of
12 that employee seeking to enforce California and federal laws, and when the employer, as a
13 consequence, terminates the employee from employment. Furthermore, Labor Code section
14 1102.5 and *Lujan v. Minagar* (2004) 124 Cal. App. 4th 1040 authorize Plaintiff to sue RBHG
15 and TZG for wrongful termination in violation of public policy as a result of the retaliatory
16 conduct undertaken by Defendant SWIFT against Plaintiff.

17 167. Labor Code § 1102.5 prohibits termination of employment in retaliation for
18 whistleblowing.

19 168. Plaintiff voiced concerns regarding wage and hour violations and was
20 terminated shortly thereafter.

21 169. SWIFT illegally terminated Plaintiff's employment because of Plaintiff's
22 complaints concerning the wage and hour violations, in violation of public policy expressed in
23 California law including, but not limited to, Cal. Lab. Code §1102.5.

24 170. As a proximate result of this wrongful termination in violation of public policy,
25 Plaintiff was caused to suffer, and continues to suffer, from humiliation, anxiety, severe
26 emotional distress, worry, fear, and special damages (to include lost wages) all to Plaintiff's
27 special and general damage according to proof at the time of trial.

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171. SWIFT did the things hereinabove alleged, intentionally, oppressively, and maliciously with an evil and malevolent motive to injure Plaintiff. These acts, which resulted in Plaintiff's wrongful termination against public policy, were obnoxious, despicable, and ought not to be suffered by any member of the community.

172. All actions of SWIFT were known, ratified and approved by the officers or managing agents of SWIFT. Therefore, Plaintiff is entitled to punitive or exemplary damages against the SWIFT, in an amount to be determined at the time of trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor and against Defendants, and each of them, as follows:

1. For compensatory damages in the amount of unpaid overtime/double time due to Plaintiff, in an amount within the jurisdiction of this Court, according to proof;

2. For compensatory damages in the amount of unpaid minimum wages due to Plaintiff, in an amount within the jurisdiction of this Court, according to proof;

3. For one (1) hour of pay at the regular rate of compensation for Plaintiff for each workday that a meal and/or rest period was not provided;

4. For payment of unpaid wages in accordance with California labor and employment law;

5. For an award of consequential damages in Plaintiff's favor and against Defendants, in an amount to be proven at trial;

6. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

7. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code* § 203, in an amount equal to her daily pay rate at the time of termination, multiplied by the total amount of days elapsed between the date of involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30 days' pay, according to proof;

8. For specific relief enforcing waiting time penalties of 30 days of per diem wages pursuant to *Cal. Bus. & Prof. Code* §17200 and *Labor Code* § 203, according to proof;

1 9. For statutory penalties pursuant to *Cal. Lab. Code* §1102.5(f)(1) in the amount
2 of at least \$10,000;

3 10. For statutory penalties pursuant to *Cal. Lab. Code* §98.6(b)(3) in the amount of
4 at least \$10,000 per each violation;

5 11. For compensatory damages for physical and emotional distress, according to
6 proof;

7 12. For compensatory damages in the amount of unpaid wages owed to Plaintiff for
8 the difference between the stated piece rate and the actual rate paid;

9 13. For compensatory damages in the amount of unpaid minimum wages owed to
10 Plaintiff for his non-productive time;

11 14. For compensatory damages in the amount of Plaintiff's out of pocket expenses
12 for purchases of tools, including wear and tear, plus interest, costs and attorneys' fees pursuant
13 to *Cal. Code Civ. Proc.* §2802(c);

14 15. For compensatory damages in the amount of Plaintiff's uniform maintenance
15 expenses, costs and attorneys' fees pursuant to *Cal. Code Civ. Proc.* §2802(c);

16 16. For prejudgment interest accrued on all due and unpaid overtime/double time
17 and minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab.*
18 *Code* §§218.6 and 1194(a), according to proof;

19 17. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, according to
20 proof;

21 18. For reasonable costs, including attorneys' fees, in an amount according to proof
22 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 218.5, 218.6, 1102.5 (j), 1198.5(1), 2802
23 and/or *Cal. Code of Civ. Proc.* §1021.5;

24 19. For an award of restitution of wages to Plaintiff in an amount equal to the
25 amount of wages owed and unpaid, according to proof;

26 20. For injunctive relief ordering the continuing unfair business acts and practices to
27 cease, as the Court deems just and proper;

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21. For other injunctive relief ordering Defendants to notify Plaintiff that he has not been paid the proper amounts in accordance with California law;

22. For injunctive relief requiring Defendants to comply with Labor Code 1198.5(b)(1);

23. For punitive and exemplary damages in a sum to be determined at trial; and

24. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Frankie Pacheco hereby respectfully requests a trial by jury for all claims and issues raised in his Complaint that may be entitled to a jury trial.

LIPELES LAW GROUP, APC

Date: January 30, 2025

By: Jasmine Badawi
Jasmine J. Badawi
Attorneys for Plaintiff
Frankie Pacheco