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RICHARD MARTINEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RICHARD MARTINEZ, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

THOMPSON & HARVEY
TRANSPORTATION, INC., a California
corporation; THOMPSON HARVEY
HOLDINGS, LLC, a California limited
liability company; and DOES 1 through 100,
Inclusive,

Defendants.

FILED
Superior Court of California
County of Los Angeles

04/10/2025

David W. Stoyan, Executive Officer / Clerk of Court

By: R. Lozano Deputy

Case No. 25STCV01525

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 204, 1182.12, 1194,
1194.2, 1197, 1198);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 1198);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 1198);**
- (5) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (6) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR
CODE §§ 2802, 2804);**
- (8) UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*); and**
- (9) PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Richard Martinez (“Plaintiff”), on behalf of himself and all others similarly
2 situated, and as a private attorney general on behalf of the State of California and other aggrieved
3 employees, brings this Complaint against Thompson & Harvey Transportation, Inc.; Thompson
4 Harvey Holdings, LLC; Thompson & Harvey LLC; and Does 2 through 100, inclusive
5 (collectively, “Defendants”), and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, and as a private
8 attorney general on behalf of the State of California and other aggrieved employees, hereby brings
9 this class and representative action for recovery of unpaid wages and penalties under California
10 Business and Professions Code section 17200, *et. seq.*; Labor Code sections 201-204, 226, 226.7,
11 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802, and 2804; and
12 Industrial Welfare Commission Wage Order No. 9 (“Wage Order 9”), in addition to seeking
13 declaratory relief and restitution. This class action is brought pursuant to California Code of Civil
14 Procedure section 382. This Court has jurisdiction over Defendants’ violations of the California
15 Labor Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

16 **VENUE**

17 2. Venue is proper in this judicial district pursuant to California Code of Civil
18 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
19 occurred in Los Angeles County. Defendants own, maintain offices, transact business, have an
20 agent or agents within Los Angeles County, and/or otherwise are found within Los Angeles
21 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

22 **PARTIES**

23 3. Plaintiff is over the age of eighteen (18). At all relevant times, Plaintiff was, and
24 currently is, a California resident. During the four years immediately preceding the filing of this
25 action and within the statute of limitations applicable to each cause of action herein, Plaintiff was
26 employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants’
27 policies and/or practices complained of herein, lost money and/or property, and has been deprived
28 of rights guaranteed by Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194,

1 1194.2, 1197, 1198, 2698 *et seq.*, 2802, and 2804; Business & Professions Code § 17200, *et seq.*,
2 and Wage Order 9, which sets employment standards for the transportation industry.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
5 business as a transportation trucking company, transporting goods such as fuel throughout the
6 state of California, including to destinations in Los Angeles County, and that they employed
7 Plaintiff and other similarly situated non-exempt employees within the State of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,
9 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
12 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
14 and proximately caused Plaintiff and the Classes (as defined in Paragraph 22) to be subject to the
15 unlawful employment practices, wrongs, injuries, and damages complained of herein.

16 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
17 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

18 7. At all times herein mentioned, each of said Defendants participated in the acts
19 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
20 each of them, were the agents, servants, and employees of each of the other Defendants, as well
21 as the agents of all Defendants, and at all times herein mentioned were acting within the course
22 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
23 and/or otherwise ratified each of the acts or omissions alleged herein.

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
28 members of the Classes (as defined in Paragraph 22).

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff worked for Defendants as a driver from in or about November 2021 until on or about August 11, 2024.

10. During Plaintiff's employment with Defendants, Plaintiff and many other drivers were paid on an hourly basis, and were generally divided into a day shift and a night shift. Plaintiff generally worked for Defendants as a night shift driver, immediately following the shift of a day shift driver. Likewise, day shift drivers immediately follow night shift drivers. Before Plaintiff's and other drivers' shifts, dispatch will text each driver their route information, the truck they will be driving, and who was driving that truck on the preceding shift. Plaintiff typically received such texts between 2:00PM and 6:00PM. Plaintiff was then required to contact the driver on the preceding shift to get an idea of where the preceding driver was and when they would arrive at Defendants' yard in Santa Maria. Plaintiff would then typically receive a call from the driver on the preceding shift approximately one hour before that driver expected to arrive at Santa Maria, so that Plaintiff would know when to arrive at Santa Maria to begin his shift and take over driving the truck. On information and belief, this same general system has been in place for Defendants' other drivers as well throughout the relevant time period.

11. Plaintiff typically arrived at Defendants' Santa Maria yard between 5:30PM and 7:00PM, aiming to time his arrival for after the day shift driver had arrived at the Santa Maria yard and was finishing up the process of fueling and washing the truck and preparing it for Plaintiff to drive. Plaintiff would gather his equipment and gear and then clock in after the day shift driver clocked out. However, it was also fairly common that Plaintiff would arrive at the Santa Maria yard and have to wait for the day shift driver to arrive and/or finish their job duties before Plaintiff was able to clock in. Plaintiff regularly had to wait periods ranging from approximately 15 minutes to over an hour at the Santa Maria yard before he was able to clock in. This waiting time was typically caused by Defendants' changing the truck that Plaintiff was assigned to drive without informing Plaintiff, so Plaintiff would coordinate his arrival at the truck yard with the arrival of the wrong day shift driver and would then have to stay on site and wait for the correct driver to arrive and complete their job duties before Plaintiff was able to clock in.

Thus, Plaintiff spent this waiting time unpaid as he was not permitted (or able) to clock in until after the day shift driver clocked out. On information and belief, this same issue affected Defendants' other drivers as well, where they would be required to report to Defendants' yard to meet a driver on the preceding shift and would not learn until after their arrival at the yard that they had been reassigned to a different truck, forcing them to wait for the arrival of a completely different driver, spending that waiting time stuck at Defendants' yard without pay. As such, this policy or practice resulted in unpaid minimum wages for Defendants' non-exempt employees, as well as underpaid overtime and/or double-time wages.

12. Additionally, Plaintiff and Defendants' other drivers were supposed to have 10 hours off duty between shifts. However, Plaintiff would often be contacted by dispatch during those 10 hours, receiving work-related messages and questions to which Plaintiff was expected to respond and phone calls that Plaintiff was expected to answer. The time that Plaintiff and Defendants' other non-exempt employees spent responding to work-related communications between shifts went uncompensated, resulting in further unpaid minimum wages and/or overtime wages.

13. Defendants have also failed to authorize and permit off-duty 10-minute rest periods to Plaintiff and other non-exempt employees. Once Plaintiff clocked in, he was expected to perform a walk-around inspection of the truck, trailer, and equipment, making sure that everything was safe and ready to drive, and input that inspection into the logbook. After the inspection, Plaintiff would get on the road and drive his assigned route. Plaintiff was expected to perform all of these duties and leave the yard no later than 30 minutes after he clocked in. Then, Plaintiff was typically assigned to drive to refineries that took approximately 3.5 to 4 hours to drive to. At the refinery, Plaintiff would need to immediately get in line, and once it was his turn, he would perform job duties such as loading fuel into tanks he was transporting, obtaining his Bill of Lading, performing another walk-around inspection of his vehicle, and filling out his logbook and preparing various paperwork. Once Plaintiff finished his job duties at the refinery, Plaintiff was expected to begin immediately driving again, delivering the product and completing more paperwork, before driving back to Santa Maria where he finished his shift by performing a post-

trip inspection and documenting it before clocking out and handing off the truck to the driver on the next shift. Defendants expected each of their drivers to follow this same general routine for each of their shifts. While Plaintiff was told that he had two break periods per shift, it was typically not possible for Plaintiff and other drivers to take a 10-minute, off-duty rest period during their shifts, and certainly not in the middle of each work period. Defendants did not schedule rest periods, and Defendants did not do anything else to ensure that Plaintiff and other non-exempt employees were afforded the ability to take 10-minute, off-duty rest periods.

14. Indeed, Defendants prohibited Plaintiff and other drivers from leaving their trucks unattended at any time during their shifts. Thus, even if they could take a “break,” it would need to be taken in or immediately adjacent to the truck, and thus they would not be off-duty. Moreover, and as explained above, Plaintiff and other drivers were required to work at least 4 hours or more without taking breaks at the beginning of their shifts, between performing their pre-trip inspections and driving from the yard to the refinery. The back-to-back nature of Plaintiff’s and other drivers’ work, and the “go-go-go” manner in which Defendants expected Plaintiff and the other drivers to perform their job duties, made it so that Plaintiff and Defendants’ other drivers rarely, if ever, were able to take a 10-minute off-duty rest period, much less were they able to take one for every four hours worked (or major fraction thereof). What’s more, although Plaintiff and other non-exempt employees frequently worked more than 10 hours per shift, Defendants never mentioned (much less authorized and permitted) a third rest period to Plaintiff.

15. Despite failing to authorize and permit compliant rest periods to Plaintiff and other non-exempt employees, Defendants have failed to pay the rest period premiums required by Labor Code § 226.7. Upon information or belief, during at least a portion of the putative class period, Defendants have maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to authorize and permit a legally compliant rest period.

16. Defendants have also failed to provide their non-exempt employees, including Plaintiff, with off-duty, 30-minute meal periods before the end of their fifth hour of work. As described herein above, Plaintiff and Defendants’ other drivers were expected to continue performing job duties from the start of their shifts until the time they clocked out, with little to no

1 opportunity to take an off-duty break. They also were instructed to remain with their trucks at all
2 times, making it impossible for them to take an off-duty meal period.

3 17. Defendants instructed Plaintiff and other drivers to document a meal period in their
4 logbooks before the sixth hour of work, regardless of whether each driver was actually able to
5 take a 30-minute off-duty meal period during their shift or in that time frame. There were
6 numerous occasions on which Plaintiff was not given a thirty-minute meal period at all, but would
7 still be required to clock out for a thirty-minute meal period, resulting, on information and belief,
8 in additional unpaid minimum wages and/or overtime wages. Additionally, and as noted above,
9 Plaintiff and other drivers were required to stay in their trucks and could not leave their trucks
10 unattended. Thus, Plaintiff was never provided an off-duty meal period during his shifts.
11 Additionally, when Plaintiff or other non-exempt employees worked a shift in excess of 10 hours,
12 they were not provided a second 30-minute meal period.

13 18. Despite failing to provide Plaintiff and other non-exempt employees with legally
14 compliant meal periods, Defendants have failed to pay the meal period premiums required by
15 Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class
16 period, Defendants have maintained no payroll code or other mechanism for paying meal period
17 premiums when Defendants failed to provide a legally compliant meal period.

18 19. Defendants' failure to pay all owed minimum wages, failure to pay all owed
19 overtime wages, and failure to pay meal period and rest period premium wages have resulted in
20 Defendants' maintaining inaccurate payroll records and issuing inaccurate wage statements to
21 Plaintiff and other non-exempt employees.

22 20. As a further result of Defendants' failure to pay all minimum wages and overtime
23 wages, as well as Defendants' failure to pay meal period and rest period premium wages,
24 Defendants failed to pay all wages to Plaintiff and other formerly employed non-exempt
25 employees at the separation of their employment.

26 21. Defendants have also failed to reimburse Plaintiff and other employees for all
27 business expenses incurred in the course of their employment. Specifically, Defendants have
28 required Plaintiff and other employees to use their personal cell phones for work purposes. For

1 example, and as described above, Defendants contacted Plaintiff for each shift by texting
2 Plaintiff's personal cellphone, sending Plaintiff important information such as his route, the truck
3 number Plaintiff was assigned for each shift, and who was driving that truck during the shift
4 preceding Plaintiff's. Plaintiff would then need to use his personal cell phone to contact the driver
5 working the preceding shift to find out where that driver was and when that driver would arrive
6 at Santa Maria, where Plaintiff would meet that driver to take over driving the truck for Plaintiff's
7 own shift. Additionally, Defendant would contact Plaintiff via Plaintiff's personal cell phone with
8 information regarding any "hiccup" or delay that may occur in performing his job duties, or with
9 questions such as Plaintiff's estimated arrival time or other work-related questions or issues.
10 Accordingly, Plaintiff and other employees used their personal cell phones constantly to
11 communicate with Defendants, other drivers, and dispatch for work. Despite requiring Plaintiff
12 and other employees to use their personal cell phones for work purposes, Defendants have failed
13 to reimburse them for any portion of their personal cell phone bill, as required under California
14 law, including but not limited to Labor Code § 2802 and *Cochran v. Schwan's Home Service, Inc.*
15 (2014) 228 Cal.App.4th 1137.

16 **CLASS ACTION ALLEGATIONS**

17 22. Class Definitions: Plaintiff brings this action on behalf of himself and the
18 following Classes pursuant to Section 382 of the Code of Civil Procedure:

19 a. The Overtime Class consists of all of Defendants' current and former non-exempt
20 employees in California who worked more than 8.0 hours in a workday and/or over 40.0
21 hours in a workweek, and were subject to Defendants' timekeeping and payroll practices,
22 at any time from four years prior to the filing of this action through the present.

23 b. The Minimum Wage Class consists of all of the Defendants' current and former
24 non-exempt employees in California who were subject to Defendants' timekeeping and
25 payroll practices, at any time from four years prior to the filing of this action to the present.

26 c. The Rest Period Class consists of all of the Defendants' current and former non-
27 exempt employees in California who worked at least one shift of 3.5 hours or more, at any
28 time from four years prior to the filing of this action through the present.

d. The Meal Period Class consists of all of the Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours, and/or at least one shift in excess of 10.0 hours, at any time from four years prior to the filing of this action through the present.

e. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Rest Period Class, and/or Meal Period Class, at any time from one year prior to the filing of this action through the present.

f. The Waiting Time Class consists of all members of the Overtime Class, Minimum Wage Class, Rest Period Class, and/or Meal Period Class, whose employment with Defendants ended at any time from three years prior to the filing of this action to the present.

g. The Expense Reimbursement Class consists of all of Defendants' employees in California who were required to use their personal property, including but not limited to personal cellular phones, for work-related purposes, at any time from four years prior to the filing of this action through the present.

23. **Numerosity/Ascertainability:** The Classes are so numerous that joinder of all members would be impracticable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals each. The identity of such membership is readily ascertainable via Defendants' employment records.

24. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation:

- i. Whether Defendants' timekeeping and payroll practices violate the applicable Labor Code provisions including, but not limited to, Sections 510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to California's overtime laws;

- ii. Whether Defendants paid at least the legal minimum wage for all hours worked by the members of the Minimum Wage Class;
- iii. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;
- iv. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;
- v. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;
- vi. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment; and
- vii. Whether Defendants properly reimbursed expenses incurred by members of the Expense Reimbursement Class.

25. **Predominance of Common Questions:** Common questions predominate over questions that affect only individual Class members. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each Class member, such as Defendants' wage payment, wage statement, rest period, meal period, and expense reimbursement policies/practices. Thus, common questions predominate over individual questions concerning each Class member.

26. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of earned minimum wages and overtime wages, was subject to Defendants' rest period policies/practices and meal period policies/practices, was furnished with inaccurate wage statements, and was not reimbursed for all expenses he incurred in carrying out his job duties for Defendants.

27. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of

the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

28. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by individual class members would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants. Further, the claims of individual Class members are not large enough to warrant individual prosecution considering all of the concomitant costs and expenses attending thereto. Thus, the Classes are maintainable under Section 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

29. Plaintiff re-alleges and incorporates by reference all prior paragraphs.

///

30. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198 which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked, and which provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

31. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay an employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on the seventh consecutive workday in a workweek. Wage Order 9, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours in a workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek.

32. As alleged herein, Defendants caused Plaintiff and Overtime Class members to work overtime and double-time hours but did not compensate them at one and one-half times (or two times) their regular rate of pay for such hours.

33. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid overtime wages, interest thereon, statutory penalties, and attorneys’ fees and costs of suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

34. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

35. Wage Order 9, § 4 and Labor Code §§ 1197 and 1182.12 establish employees’ right to be paid minimum wages for all hours worked in amounts set by state law. Labor Code § 226.2 provides that rest periods and non-productive time must be paid separately for employees paid on a piece rate. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid

balance together with attorneys' fees, costs of suit, liquidated damages in an amount equal to the unpaid wages, and interest.

36. At all relevant times, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours actually worked including, but not limited to, all hours they were subject to Defendants' control and/or suffered or permitted to work under the Labor Code and Wage Order 9.

37. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

38. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 9.

39. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, interest, statutory penalties, and attorneys' fees and costs of suit, per Labor Code §§ 204, 218.6, 558, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

40. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

41. As alleged herein, Defendants failed in their affirmative obligation to provide all their hourly non-exempt employees, including Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with the mandates of the California Labor Code and

Wage Order 9, and have failed to pay meal period premiums at Plaintiff's and Meal Period Class members' regular rate of compensation as required under Labor Code § 226.7.

42. As a result, Defendants owe premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 9, Labor Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. Labor Code §§ 226.7 and 516, and Wage Order 9, § 12 establish the right of employees to be authorized and permitted a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof, and that the authorized rest time shall count as hours worked for which there shall be no deduction from wages.

45. As alleged herein, Defendants have failed to authorize and permit Plaintiff and Rest Period Class members to take their legally entitled rest periods. Defendants have also failed to compensate Plaintiff and Rest Period Class members with a rest period premium for each workday they were not authorized and permitted all rest periods to which they were entitled.

46. These violations create an entitlement to recovery by Plaintiff and the Rest Period Class in a civil action for the unpaid amount of rest period premiums, interest thereon, statutory penalties, civil penalties, and costs of suit under Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

FIFTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

48. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that

1 included, among other requirements, all hours worked, all hours worked at each rate of pay, the
2 full address of Defendants, and all wages earned, in violation of Labor Code § 226.

3 49. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
4 with complete and accurate itemized wage statements resulted in injury, as said failures led to,
5 among other things, the non-payment of all their minimum wages, overtime wages, and meal and
6 rest period premium wages, and deprived them of the information necessary to identify and
7 reconcile the discrepancies in Defendants' reported data.

8 50. Defendants' failures create an entitlement to recovery by Plaintiff and members of
9 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
10 Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs
11 of suit, pursuant to Labor Code §§ 226 and 226.3.

12 **SIXTH CAUSE OF ACTION**

13 **WAITING TIME PENALTIES**

14 **(AGAINST ALL DEFENDANTS)**

15 51. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 52. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
17 an employer to pay all wages immediately at the time of separation of employment in the event
18 the employer discharges the employee, or the employee provides at least 72 hours of notice of
19 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
20 to quit, said employee's wages become due and payable not later than 72 hours upon said
21 employee's last date of employment.

22 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
24 at their separation from employment, including (but not limited to) unpaid minimum, overtime,
25 and double-time wages, unlawfully deducted wages, and unpaid meal and rest period premium
26 wages.

27 54. Additionally, Plaintiff is informed and believes, and based thereon alleges, that
28 Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages

1 due to them at their separation from employment because Defendants conditioned the payment
2 of their final paycheck upon signature of a release.

3 55. Plaintiff is informed and believes, and based thereon alleges, that as a matter of
4 uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the
5 Waiting Time Class all earned wages at the end of employment in a timely manner.

6 56. Defendants' failure to pay all final wages was willful within the meaning of Labor
7 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
8 Time Class their earned wages upon separation from employment results in a continued payment
9 of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the
10 Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable
11 attorneys' fees and costs of suit.

12 **SEVENTH CAUSE OF ACTION**

13 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

14 **(AGAINST ALL DEFENDANTS)**

15 57. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 58. At all relevant times, Defendants were subject to Labor Code § 2802, which states
17 that "an employer shall indemnify his or her employees for all necessary expenditures or losses
18 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
19 her obedience to the directions of the employer."

20 59. At all relevant times, Defendants were subject to Labor Code § 2804, which states,
21 "any contract or agreement, express or implied, made by any employee to waive the benefits of
22 this article or any part thereof, is null and void, and this article shall not deprive any employee or
23 his personal representative of any right or remedy to which he is entitled under the laws of this
24 State."

25 60. Due to Defendants' unlawful policy and practice of requiring employees to use
26 their personal property, including but not limited to personal cell phones, for work purposes, and
27 their failure to reimburse Plaintiff and members of the Expense Reimbursement Class, Defendants
28 have violated Labor Code § 2802.

61. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class have suffered damages in sums, which will be shown according to proof.

62. Plaintiff and members of the Expense Reimbursement Class are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

63. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

64. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

65. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay Plaintiff and the Classes all wages due, failing to provide compliant meal periods, failing to authorize and permit compliant rest periods, making unlawful deductions from wages, failing to reimburse business expenses, failing to furnish accurate itemized wage statements, and failing to pay all wages due at termination.

66. Defendants' utilization of these unfair and/or unlawful business practices has deprived Plaintiff and members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

67. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks full restitution of monies as necessary and according to proof, to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

1 68. Plaintiff was compelled to retain the services of counsel to file this court action to
2 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
3 of Defendants' current non-exempt employees, and to enforce important rights affecting the
4 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
5 which he is entitled to recover under Code of Civil Procedure § 1021.5.

6 69. The acts complained of herein occurred within the four years immediately
7 preceding the filing of this action.

8 **NINTH CAUSE OF ACTION**

9 **PRIVATE ATTORNEYS GENERAL ACT**

10 **(AGAINST ALL DEFENDANTS)**

11 70. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 71. Defendants have committed several Labor Code violations against Plaintiff and
13 other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor
14 Code § 2698 *et seq.* Plaintiff, acting on behalf of himself, the State of California, and other
15 aggrieved employees, brings this representative action against Defendants to recover the civil
16 penalties due to Plaintiff, other aggrieved employees, and the State of California according to
17 proof, as well as for injunctive relief, as provided under the Private Attorneys General Act, based
18 on the following violations:

- 19 a. Failing to pay Plaintiff and other aggrieved employees at least the applicable minimum
20 wage for all hours worked, in violation of Labor Code §§ 204, 1182.12, 1194, 1194.2,
21 1197, and 1198;
- 22 b. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-
23 time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and
24 1198;
- 25 c. Failing to provide meal periods and failing to pay meal periods premiums at the
26 employees' respective regular rate of compensation, to Plaintiff and other aggrieved
27 employees, in violation of Labor Code §§ 226.7, 512, 516, 558, and 1198;

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- d. Failing to authorize and permit rest periods and failing to pay rest period premiums at employees' respective regular rates of compensation, to Plaintiff and other aggrieved employees, in violation of Labor Code §§ 226.2, 226.7, 516, 558, and 1198;
- e. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses, in violation of Labor Code §§ 2802, 2804, and 1198;
- f. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198;
- g. Failing to timely pay all final wages to Plaintiff and other aggrieved employees, in violation of Labor Code §§ 201-203;
- h. Failing to maintain accurate records, including but not limited to accurate records of the hours worked and meal periods taken, for Plaintiff and other aggrieved employees, in violation of Labor Code §§ 1174, 1198, and 1199.

72. Plaintiff notified Defendants Thompson & Harvey Transportation, Inc. and Thompson Harvey Holdings, LLC via certified mail on or about January 30, 2025, and notified the California Labor and Workforce Development Agency ("LWDA") via its website on or about February 3, 2025, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in paragraph 71 (a)-(h) above. On or about April 7, 2025, Plaintiff sent the same notice to Defendant Thompson & Havey LLC without modifying any of his material allegations. Now that sixty-five days have passed from Plaintiff's notifying the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

73. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants and to seek injunctive relief under the PAGA. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under Labor Code § 2699(k).

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1 **PRAYER**

2 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
3 this suit is brought against Defendants, as follows:

4 1. For an order certifying the proposed Classes;
5 2. For an order appointing Plaintiff as representative of the Classes;
6 3. For an order appointing counsel for Plaintiff as counsel for the Classes;
7 4. Upon the First Cause of Action, for compensatory, consequential, general, and
8 special damages according to proof pursuant to Labor Code §§ 204, 510, 511, 558, 1194, and
9 1198;

10 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
11 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2,
12 1197, and 1198;

13 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
14 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;

15 7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
16 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;

17 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
18 226, *et seq.*;

19 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
20 Labor Code §§ 201-203;

21 10. Upon the Seventh Cause of Action, for compensatory, consequential, general, and
22 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

23 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
24 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
25 practices declared by this Court to be in violation of Bus. & Prof. Code § 17200, *et seq.*;

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12. Upon the Ninth Cause of Action, for any and all civil penalties available to Plaintiff, the State of California, and other aggrieved employees under the Private Attorneys General Act, as well as injunctive relief under the Private Attorneys General Act prohibiting Defendants from engaging in the unlawful conduct alleged herein;

13. Prejudgment interest on all due and unpaid wages and other damages pursuant to Cal. Labor Code §§ 218.6, 1194(a); Civil Code § 3287; and Art. XV, § 1 of the California Constitution;

14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226(e), 1194 *et seq.*, 2699(k), 2802(c), and Code of Civil Procedure § 1021.5, and all other relevant statutes; and

15. For such other and further relief the Court may deem just and proper.

Date: April 10, 2025

Respectfully submitted,
MARQUEE LAW GROUP, A.P.C.

By:


Tuvia Korobkin
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: April 10, 2025

Respectfully submitted,
MARQUEE LAW GROUP, A.P.C.

By:


Tuvia Korobkin
Attorneys for Plaintiff