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22 Attorneys for Plaintiffs
23 Bill Barker, Tab Bachman, William Yingling
24 And others similarly situated

25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
26 **COUNTY OF SACRAMENTO**

27 **BILL BARKER, TAB BACHMAN, and**
28 **WILLIAM YINGLING, individually and on**
behalf of others similarly situated,

Plaintiffs,

v.

SWIFT TRANSPORTATION COMPANY
OF ARIZONA, LLC, and DOES 1 - 10,
Inclusive,

Case No.: 34-2016-00192492-CU-OE-GDS
CLASS ACTION
Action Filed: April 1, 2016
Hon. Gerrit W. Wood

FIRST AMENDED COMPLAINT FOR
DAMAGES

- 1) **FAIR LABOR STANDARDS ACT** (29 U.S.C. §§207; 211(c), 215(a), 216(b), 255(a)); 29 C.F.R. §516, *et seq.*;
- 2) **FAILURE TO PAY OVERTIME WAGES** (CAL. LAB. CODE §§ 204, 510, 1194 and I.W.C. WAGE ORDERS NO. 9-2001, 17-

BY FAX

Defendants.

- 2001);
- 3) FAILURE TO PAY MINIMUM WAGE (CAL. LAB. CODE §§ 1194, 1197, 1197.1 and I.W.C. WAGE ORDERS NO. 9-2001, 17-2001);
 - 4) FAILURE TO REIMBURSE REQUIRED BUSINESS EXPENSES (CAL. LAB. CODE §2802);
 - 5) FAILURE TO PROVIDE MEAL PERIODS (CAL. LAB. CODE §§226.7, 512 and I.W.C. WAGE ORDER NO. 9-2001, 17-2001);
 - 6) FAILURE TO PROVIDE REST PERIODS (CAL. LAB. CODE §226.7 and I.W.C. WAGE ORDER NO. 9-2001, 17-2001);
 - 7) FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS (CAL. LAB. CODE § 226);
 - 8) FAILURE TO PAY EARNED WAGES UPON DISCHARGE (CAL. LAB. CODE §§ 201-203);
 - 9) UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES (CAL. BUS. & PROF. CODE §§ 17200-17208 and CAL. LAB. CODE § 1199, 2699.5);
 - 10) VIOLATION OF PRIVATE ATTORNEY GENERAL ACT (Labor Code §2698, *et seq.*)

JURY TRIAL DEMANDED

Plaintiffs Bill Barker, Tab Bachman, and William Yingling (collectively referred to as the "Plaintiffs"), on behalf of themselves and all other persons similarly situated complain and allege as follows:

**I.
INTRODUCTION**

1. Plaintiffs bring claims for payment of overtime, liquidated damages, interest, and attorneys' fees and costs under the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* ("FLSA") on behalf of similarly situated individuals who have worked for Defendants Swift Transportation Company Arizona, LLC ("Swift" or "Defendants") in California as Hostlers (collectively, "FLSA

1 Collective Action Members”). These claims are brought on behalf of Plaintiffs and all FLSA
2 Collective Action Members during the period commencing three years prior to the filing of their
3 respective consents to be included in this collective action (the “Collective Action Period”).

4 2. This action further invokes claims arising under California law for unpaid overtime
5 compensation and minimum wages, restitution, statutory penalties, civil penalties, liquidated
6 damages, meal and rest break premium payments, business expenses reimbursements (e.g. Title 8
7 of the California Code of Regulations, Labor Code §§ 200-203, inclusive, 216-218.6, 226, 226.7,
8 510, 558, 1174, 1194, 1194.2, 1197 and 2802, Business and Professions Code § 17200 et seq. and
9 Code of Civil Procedure § 1021.5). Plaintiff assert these California claims pursuant to California
10 Code of Civil Procedure section 382 on behalf of themselves and all other person who worked for
11 Defendants as Hostlers in California (collectively, “California Class Members”) at any time during
the period commencing four years prior to the filing of this action (the “Class Period”).

12 3. The California Class Members and FLSA Collective Action Class Members shall be
13 collectively referred to as “Class and Collective Action Members.”

14 4. Swift violates California and federal law by its failure to compensate Class and
15 Collective Action Members for all hours worked, including overtime. Swift also violates
16 California law by its failure to provide California Class Members with meal and rest periods, by its
17 failure to pay all earned wages at the conclusion of employment, by its failure to adequately
18 reimburse California Class Members for business expenditures incurred and required by their jobs,
19 and by its failure to furnish timely statements accurately showing, among other things, the total
20 hours California Class Members worked during each pay period. Plaintiffs also allege that these
21 acts, which violate the California Labor Code, constitute predicate unlawful and unfair business
practices in violation of the California Unfair Competition Laws.

22 5. In this action, Plaintiffs, on behalf of themselves and all Class and Collective Class
23 Members seek unpaid overtime compensation, unpaid minimum wages, wages for missed meal and
24 rest periods, reimbursement for required business expenses, statutory penalties, restitution,
25 declaratory and injunctive relief, attorneys’ fees and costs, prejudgment interest, and other relief
under applicable California and federal laws.

26 6. During the Class Period, Swift has had a consistent policy and/or practice of: (1)
27 misclassifying Hostlers as “delivery truck drivers” instead of properly classifying them as non-
28 exempt Hostlers; (2) permitting, encouraging, and/or requiring Hostlers to work in excess of eight

1 hours per day and/or in excess of forty hours per week without paying them overtime
2 compensation as required by California state and federal wage and hour laws; (3) failing to pay
3 Hostlers a minimum wage for all hours worked, (4) failing to provide Hostlers with adequate off-
4 duty rest periods of at least ten minutes for every four hours or major fraction thereof worked; (6)
5 willfully failing to pay compensation owed (including unpaid overtime and meal and rest period
6 compensation) in a prompt and timely manner to Plaintiffs and other Class Members whose
7 employment with Swift terminated; (7) requiring Plaintiffs and Class Members to incur business-
8 related expenses as Hostlers, but failing to fully reimburse them for these costs, and (8) knowingly
9 and intentionally failing to furnish timely itemized statements accurately showing the total hours
10 worked by or hourly rate paid to Plaintiffs and Class Members.

11 7. Swift has deliberately misclassified all of its Hostlers as "exempt truck drivers"
12 whose hours of service are regulated by the United States Department of Transportation, Code of
13 Federal Regulations, Title 49, Sections 395.1 to 395.13, Hours of Service of Drivers, or Title 13 of
14 the California Code of Regulations, Subchapter 6.5, Section 1200 and following sections
15 regulating hours of drivers exempt from the overtime provisions of the wage order, when they are,
16 in fact, non-exempt employees.

17 8. Swift has treated all of its Hostlers as "exempt" from the California overtime pay
18 requirements and has refused to pay Class Members overtime pay for overtime work,
19 notwithstanding the fact that all such Hostlers are non-exempt employees and entitled to overtime
20 pay under California's wage and hour laws, including Labor Code §§ 510 and 1194 and applicable
21 Wage Orders.

22 9. During the class period, Swift has failed to maintain a policy that compensates Swift
23 Hostlers an amount equal to or greater than the minimum wage for all hours worked, as required by
24 California Labor Code §§ 1194, 1197, 1197.1 and the applicable Wage Orders. All hours must be
25 paid at the statutory or agreed rate and no part of this rate may be used as a credit against a
26 minimum wage obligation. For example, Swift does not compensate the Hostlers for time spent
27 driving between jobs. Swift only paid its Hostlers for time spent at each job site. As a result of
28 violations of California Labor Code §§ 1194, 1197, 1197.1 and the applicable Wage Orders for
failure to pay minimum wage, Swift is liable for civil penalties pursuant to California Labor Code
§§ 558 and 1197.1.

10. During the Class Period, Swift has failed to provide Hostlers with an uninterrupted, off/duty thirty (30) minute meal break for each five (5) hours a day worked as required by Labor Code §§ 226.7 and 512 and the applicable Wage Order(s).

11. During the Class Period, Swift has failed to provide Hostlers with an uninterrupted paid ten (10) minute rest break for each four (4) hours or major fraction thereof worked per day as required by Labor Code § 226.7 and the applicable Wage Order(s).

12. During the Class Period, Swift has willfully failed and refused to timely pay wages to former Hostlers at the conclusion of their employment, in violation of Labor Code §§ 201-203.

13. During the Class Period, Swift has required its Hostlers to incur reasonable and necessary business expenses in the course of completing their job duties, but has refused to completely reimburse Hostlers for these work costs, in violation of Labor Code § 2802.

14. During the Class Period, Swift knowingly and intentionally has not furnished each of its Hostlers with timely itemized wage statements accurately showing, among other things, total hours worked at the applicable hourly rate paid, as required by Labor Code § 226. Each Hostler is owed the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which Swift failed to provide a statement showing total hours worked and one hundred dollars (\$100) for each subsequent pay period, up to a total of four thousand dollars (\$4000).

15. All of the acts described above are violations of, among other things, the California Labor Code and IWC Wage Orders and are unlawful and in violation of public policy. In addition, such acts are immoral, unethical, oppressive, fraudulent, and unscrupulous, and thereby constitute unfair, unlawful, or fraudulent business practices in violation of California Business and Professions Code section 17200, *et seq.*

II.

JURISDICTION

16. This Court has jurisdiction over this action pursuant to Code of Civil Procedure §410.10.

17. This Court has jurisdiction over Plaintiffs' FLSA claims pursuant to 29 U.S.C. §§207 and 216(b).

18. Court has jurisdiction over Defendants because Defendants regularly conduct business in California.

24. In 2014, Swift generated consolidated operating revenue of \$4.3 billion from its service offerings, which include line-haul services, dedicated customer contracts, temperature-controlled units, intermodal freight solutions, cross-border United States/Mexico and United States/Canada freight, flatbed hauling, freight brokerage and logistics, and others. Consolidated operating income in 2014 was \$370.1 million.

25. Plaintiffs are informed and believe, and based thereon alleges, that Swift employs and has continuously employed during the Class Period over 100 Hostlers in the state of California.

V.

FACTUAL BACKGROUND

26. Plaintiffs are informed and believe, and based thereon allege, that Swift has operated, and at all times during the Class Period has conducted business, as an employer of Retail Managed Freight Transportation Services in the state of California. Simply put, Swift provides third-party transportation services to deliver commercial freight across the country.

27. Plaintiffs are informed and believe, and based thereon allege, that as part of its business Swift employs plaintiffs and each class member as “Hostlers” at its distribution facilities, and has done so for throughout the class period.

A. Hostlers' Predominant Nonexempt Job Activities.

28. Plaintiffs are informed and believe, and based thereon allege, Swift's Hostlers primarily operate vehicles that are not used for transportation on the public highways in interstate or foreign commerce, and are known in the industry as a "goat tractor" or a "hostler tractor," which have only two axles and no "sleeper cab" or "day cab" attached, as opposed to a "delivery tractor" used for transportation on the public highways in interstate or foreign commerce, which have three axles and an attached "sleeper cab" or "day cab," and are operated by "delivery drivers."

29. Plaintiffs are informed and believe, and on that basis allege, that the Hostlers only operate hostler tractors on defendants' facility grounds, and never on public roadways or interstate highways, and that the hostler tractors lack the requisite licensing, registration and/or insurance to be legally operable on such roadways or highways, and that Hostlers are not required to have a class A or B commercial driver's license to operate hostler tractors, which is also a prerequisite to operate vehicles used for transportation on the public highways in interstate or foreign commerce.

1 30. Plaintiffs are informed and believe, and based thereon allege, that Hostlers perform
2 the following activities in the performance of their jobs: connecting hostler tractors to freight
3 trailers in order to transport the trailers from a staging area to loading docks at defendants'
4 facilities, thereafter unloading the freight into the facility, and thereafter using the hostler tractor to
5 return the emptied trailers to the staging area, as well as helping to "spot" trailers that other
6 Hostlers are backing up to the distribution facilities' loading docks, often chocking the trailers'
7 tires to ensure that the trailers do not slide or roll unintentionally after being parked at the loading
8 dock.

9 31. Plaintiffs are informed and believe, and on that basis allege, that the Hostlers also
10 perform the activities involved with inspecting their assigned hostler tractors for any noticeable
11 maintenance or damage issues at the start of each work day, and if such issues exist, reporting them
12 to an on-site administrator and make a detailed report detailing the issue.

13 32. Plaintiffs are informed and believe, and on that basis allege, that the Hostlers also
14 perform activities involved in inspecting trucks, trailers, and freight that arrive at each distribution
15 facility, and when receiving refrigerated trucks ensure that the fuel and temperature levels of the
16 truck remain satisfactory during the transfer.

17 33. Plaintiffs are informed and believe, and on that basis allege, that the Hostlers also
18 often use bolt cutters to break the trailers' seal and open the trailer's back doors before backing the
19 trailer onto the loading dock, and that Swift has issued internal memoranda on the procedure for
20 this activity entitled "Hostlers in the Yard Concerning Receiving Trailers" specifically addressed
21 "To Hostlers" and stating that only the Hostlers, and not the delivery drivers, are able to perform
22 this task.

23 **B. Swift's Uniform Misclassification of Hostlers as Exempt Employees.**

24 34. Plaintiffs are informed and believe, and based thereon allege, that Hostlers are paid
25 hourly at the rate of between \$17 and \$18 an hour, while delivery drivers are paid piece rate, with
26 compensation set per mile and for various tasks associated with arriving and departing from
27 Swift's distributions centers.

28 35. Plaintiffs are informed and believe, and based thereon allege, that Hostlers are
referred to as "Hostlers" in internal memorandum and documents, are designated as such on
scheduling documents which reflect their calendared shifts, are referred to as such by dispatch

1 personnel within the distribution center, and are required to sign in as "Hostlers" when entering
2 distribution centers for security purposes.

3 36. Plaintiffs are informed and believe, and on that basis allege, that Swift typically
4 requires the Hostlers to work in excess of 14 hours a day, and does not compensate them for any
5 overtime pay pursuant to the provisions of the Fair Labor Standards Act and the California Labor
6 Code.

7 37. Plaintiffs are informed and believe, and on that basis allege, that Swift requires the
8 Hostlers to operate vehicles which require them to transport property in an attempt to make them
9 exempt from overtime compensation requirements under the Motor Carrier Act, and to classify
10 them as performing work involved in interstate activities, however,

11 38. Plaintiffs are informed and believe, and based thereon allege, that Swift misclassifies
12 its Hostlers as exempt from the overtime compensation requirements of the Fair Labor Standard
13 Act, as well as the California Labor Code, when they are in fact non-exempt employees, by
14 requiring them to occasionally operate a vehicle involved in interstate commerce; however, the
15 combined duties of the two jobs do not result in an exemption because the primary, principal,
16 main, major or most important function and duty of the Hostlers is to conduct nonexempt
17 activities, and thus as a qualitative matter, Hostlers are nonexempt employees, and exempt
18 activities are not the reason for their job, but merely incidental as part of a deliberate scheme by
19 Swift to avoid paying them overtime wages.

20 39. Plaintiffs are informed and believe, and based thereon allege, that Swift misclassifies
21 its Hostlers as exempt, when they are in fact non-exempt employees, by requiring them to
22 occasionally operate a vehicle involved in interstate commerce, however, in no case are more than
23 50% of their on-duty time comprised of conducting exempt activities, and in fact in no case do
24 Hostlers spend less than 51% of their on-duty time performing nonexempt activities, and thus as a
25 quantitative matter, Hostlers are nonexempt employees who occasionally perform exempt activities
26 incidental to their nonexempt activities as part of a deliberate scheme by Swift to avoid paying
27 them overtime wages.

28 40. Plaintiffs are informed and believe, and based thereon allege, that, during the Class
Period, Swift illegally misclassified its Hostlers as exempt employees when they were, in fact, non-
exempt employees as defined by Wage Order 9-2001 and Wage Order 17-2001 §§ 2(E), 2(F),

2(G). and 3; and, California common law, and routinely required the Class Members to work overtime hours and did not properly compensate them for the same.

C. Facts Related to Hostlers' Other Claims.

41. Plaintiffs are informed and believe, and based thereon allege, that Hostlers regularly work beyond eight hours in a day or forty hours in a week in order to complete their work.

42. Labor Code § 510 and the applicable Wage Order(s) require employers to pay employees one-and-one-half times their normal hourly rate for hours worked in excess of eight per day and in excess of forty per week, and at twice the normal hourly rate for hours worked in excess of twelve per day and eight on the seventh day worked in a work week. However, Plaintiffs are informed and believe, and based thereon allege, that Swift has had a policy and/or practice of failing to compensate Hostlers for all overtime hours worked.

43. Plaintiffs are informed and believe, and based thereon allege, that Swift does not maintain a policy that compensates Swift Hostlers an amount equal to or greater than the minimum wage for all hours worked, as required by California Labor Code §§ 1194, 1197, 1197.1 and the applicable Wage Orders. For example, Swift does not compensate its Hostlers for time spent cleaning their trucks. Swift only pays its Hostlers for time spent performing the activities described in paragraphs 27-32 above. As a result of violations of California Labor Code §§ 1194, 1197, 1197.1 and the applicable Wage Order(s) for failure to pay minimum wage, Swift is liable for civil penalties pursuant to California Labor Code §§ 558 and 1197.1.

44. Plaintiffs are informed and believe, and based thereon allege, during the Class Period, Swift has failed to provide Hostlers with an uninterrupted, off-duty thirty (30) minute meal break for each five (5) hours a day worked as required by Labor Code §§ 226.7 and 512 and the applicable Wage Order(s), and maintains a uniform policy to deny the class members these breaks, and is therefor liable for civil penalties pursuant to California Labor Code § 226.7.

45. Plaintiffs are informed and believe, and based thereon allege, during the Class Period, Swift has failed to provide Hostlers with an uninterrupted paid ten (10) minute rest break for each four (4) hours or major fraction thereof worked per day as required by Labor Code § 226.7 and the applicable Wage Order(s), and maintains a uniform policy to deny the class members these breaks, and is therefor liable for civil penalties pursuant to California Labor Code § 226.7.

46. Plaintiffs are informed and believe, and based thereon allege, that during the Class Period, Swift has required its Hostlers to incur reasonable and necessary business expenses in the

1 course of completing their job duties, such as tools and equipment, uniform expenses, and cleaning
2 supplies for the hostler tractors, but has refused to reimburse the Class Members for these
3 reimbursable costs, in violation of Labor Code § 2802, and the class is therefor entitled to
4 attorney's fees and costs of suit.

5 47. Plaintiffs are informed and believe, and based thereon allege, that Swift does not
6 properly compensate Swift Hostlers for hours worked in excess of eight in a day and forty in a
7 week, as well as missed meal periods. Accordingly, Swift violated California Labor Code § 204(a),
8 which requires that employers pay "all wages" (...) twice during each calendar month on days
9 designated in advance by the employer as the regular paydays" (emphasis added). As a result,
Swift is liable for civil penalties.

10 48. Plaintiffs are informed and believe, and based thereon allege, that Swift intentionally
11 and knowingly does not furnish Hostlers with timely and accurate wage statements that show: (1)
12 all applicable hourly rates in effect during each respective pay period and the corresponding
13 number of hours worked by each respective individual; ((2) number of hours worked; (3) gross
14 wages earned; (4) net wages earned; (5) all deductions; (6) inclusive dates of the period for which
15 the employee is paid; (7) the employee identification or social security number; (8) and the address
16 of the legal entity that is the employer. Plaintiffs and California Class Members have suffered
17 actual harm and damages from Swift's failure to provide these accurate itemized wage statements
18 because they remained ignorant of their actual hours worked, overtime worked, and their
19 applicable hourly rate. Thus, the Hostlers were unable to assert their statutory protections to
Swift's various Labor code violations at the time the violations occurred.

20 49. Plaintiffs are informed and believe, and based thereon allege, that, during the Class
21 Period (and Collective Action Period), Defendants failed to fully compensate Plaintiffs and Class
22 Members for regular and overtime hours worked as required by FLSA, §§206-207, Labor Code §
23 512, 558, 1194, 1194.2, 1197, and the applicable Wage Order(s).

24 50. During the Class Period, Plaintiffs are informed and believe, and based thereon
25 allege, that Swift has failed to pay all compensation due and owing to Plaintiffs and all former
26 Hostlers upon separation, as required by Labor Code §§ 201 and 202. Plaintiffs further allege that
this failure to pay all compensation due was willfully done by Swift.

27 51. During the Class Period, Plaintiffs are informed and believe, and based thereon
28 allege, that Swift has knowingly and intentionally failed to furnish Plaintiffs and California Class

1 Members with timely itemized wage statements accurately showing, among other required things,
2 total hours worked or hourly rate paid, as required by Labor Code § 226 (a).

3 52. During the Class Period, Plaintiffs are informed and believe, and based thereon
4 allege, that Swift violated the Unfair Competition Law, California Business and Professions Code
5 § 17200 et seq., by the predicate violations of the California wage and hour laws described above.

6 VI.

7 COLLECTIVE CLASS ALLEGATIONS

8 53. Plaintiffs bring the First Cause of Action for violations of the FLSA as a collective
9 action pursuant to Section 16(b) of the FLSA, 29 U.S.C. §216(b) on behalf of the FLSA Collective
10 Action Members, who include all persons who worked as Hostlers for Swift in the United States at
any time within the applicable statutory time period.

11 54. Plaintiffs and FLSA Collective Action Members performed the same or substantially
12 similar duties for Defendants; were subject to Defendants' common policy and practice of failing
13 to pay wages, failing to pay overtime wages for all hours worked over forty in one workweek; have
14 otherwise been subject to common compensation plans, policies, and practices; and are otherwise
15 "similarly situated" employees within the meaning of the FLSA.

16 55. The First Cause of Action for violations of the FLSA may be brought and obtained
17 as an "opt-in" action pursuant to Section 16(b) of the FLSA, 29 U.S.C. §216(b), because Plaintiffs'
claims and all FLSA Collective Action Members are similarly situated.

18 56. The names and addresses of the FLSA Collective Action Members are available
19 from Defendants. Accordingly, Plaintiffs pray for an order requiring Defendants to provide the
20 names and all available contact information for all FLSA Collective Action Members so that notice
21 can be provided to them of the pendency of this action, and their right to opt in to this action.
22 Plaintiffs further pray that the applicable statute of limitations be tolled based on, among other
23 reasons, Defendants' violations regarding its Hostlers' entitlement to regular and overtime pay.

24 VII.

25 SECTION 382 CLASS ACTIONS ALLEGATIONS

26 57. Plaintiffs bring all claims alleged herein under California law as class action claims
27 on behalf of, and seek to have certified pursuant to Section 382 of the California Code of Civil
28 Procedure, the class composed of:

1 All Persons who worked as Hostlers for Swift in California at any
2 time from four years prior to the date of filing of this action through
3 the date of trial.

4
5 58. This class action meets the statutory prerequisites for the maintenance of a class
6 action as set forth in Code of Civil Procedure §382, in that:

- 7 a) The persons who comprise the Class are ascertainable and so numerous that the joinder
8 of all such persons is impracticable and the disposition of their claims will benefit the
9 parties and the Court. The potential California Class Members as defined herein are so
10 numerous that joinder would be impracticable. Defendants have employed more than
11 100 Hostlers in California during the Class Period, and it can further be presumed that
12 California Class Members' residences are dispersed throughout California, and that
13 some California Class Members no longer reside in the state. The names and addresses
14 of the California Class Members are available to Defendants. Notice can be provided to
15 the California Class Members via first class mail using techniques and a form of notice
16 similar to those customarily used in class action lawsuits of this nature.;
- 17 b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised
18 in this Complaint are common to the Class and will apply uniformly to every member of
19 the Class, and as a practical matter be dispositive of interests of the other members not
20 party to the adjudication;
- 21 c) Defendants have acted or refused to act on grounds generally applicable to the Class,
22 thereby making appropriate injunctive relief or declaratory relief with respect to the
23 Class as a whole; and
- 24 d) Common questions of law and fact exist as to the members of the Class and predominate
25 over any questions affecting only individual members; the common predominating
26 questions include:
- 27 i. Whether Swift's uniform decision to classify all Class Members as independent contractors
28 and not as employees violates Labor Code, applicable Wage Orders, and California common law;

- 1 ii. Whether Swift's uniform right to control requires that the Hostlers be classified as
2 employees under California Law;
- 3 iii. Whether the Hostlers are engaged in a distinct occupation or business from Swift;
- 4 iv. Whether the skills required for the hostler jobs support employee status;
- 5 v. Whether the Hostlers' work is part of Swift's regular business;
- 6 vi. Whether Swift's failure to pay California Class Members overtime wages violates Labor
7 Code §§ 510, 1194 and applicable Wage Orders;
- 8 vii. Whether Swift's failure to pay California Class Members an amount equal to or greater than
9 the minimum wage for all hours worked violates Labor Code §§ 1194, 1197, 1197. 1, and the
10 applicable Wage Orders;
- 11 viii. Whether Swift's failure to provide meal periods to California Class Members violates Labor
12 Code §§ 226.7, 512 and the applicable Wage Orders;
- 13 ix. Whether Swift's failure to provide paid rest periods to California Class Members violates
14 Labor Code § 226.7 and the applicable Wage Orders;
- 15 x. Whether Swift's failure to fully reimburse California Class Members for their employment-
16 related expenses violates Labor Code § 2802;
- 17 xi. Whether Swift's failure to keep accurate payroll records of daily hours worked violates
18 Labor Code § 1174(d);
- 19 xii. Whether Swift's failure to provide California Class Members with itemized statements of
20 wages and hours worked violates Labor Code § 226;
- 21 xiii. Whether Swift's various violations of the Labor Code serve as predicate violations of the
22 UCL.
- 23 e) class action is superior to other available methods for the fair and efficient adjudication
24 of the controversy, including consideration of:
- 25 1) The interests of the members of the Class in individually controlling the prosecution
26 or defense of separate actions;
- 27 2) The extent and nature of any litigation concerning the controversy already
28 commenced by or against members of the Class;
- 3) The desirability or undesirability of concentrating the litigation of the claims in the
particular forum; and

1 4) The difficulties likely to be encountered in the management of a class action.

2
3 **FIRST CAUSE OF ACTION**

4 **[FLSA Claims, 29 U.S.C. §201, *et seq.*]**

5 **(By Plaintiffs and FLSA Collective Action Members against Defendants)**

6 59. Plaintiffs reallege and incorporate by this reference all allegations contained above as
7 though fully set forth herein.

8 60. At all relevant times hereto, Defendants have been, and are, employers engaged in
9 commerce, as defined under 29 U.S.C. §203(b) and (d). As such, Swift employed members of the
10 FLSA Collective Action Class as Hostlers, employment which engaged the employees in
11 commerce, as defined under 29 U.S.C. §§ 203(b), (e), (g), and 29 U.S.C. §207(a)(1). At all times
12 relevant hereto, Defendants have been an “enterprise engaged in commerce or in the production of
13 goods for commerce,” as defined under 29 U.S.C. §203(s)(1).

14 61. Representative Plaintiffs are informed and believe, and thereon allege, that Swift has
15 required, or requires, the FLSA Collective Action Members as part of their employment to work
16 without additional compensation, such as overtime, in excess of the forty hours per week
17 maximum under 29 U.S.C. §207(a)(1). That Section provides the following:

18 62. Except as otherwise provided in this section, no employer shall employ any of his
19 employees . . . for a workweek longer than forty hours unless such employee receives
20 compensation for his employment in excess of the hours above specified at a rate which is not less
21 than one and one-half times the regular rate at which he is employed.

22 63. Indeed, in the performance of their duties for Defendants, the FLSA Collective
23 Action Members often did work over forty hours per week, yet did not receive overtime
24 compensation for the work, labor and services they provided to Defendants, as required by the
25 FLSA, 29 U.S.C. §§ 206 and 207. The precise number of unpaid overtime hours will be proven at
26 trial.

27 64. Representative Plaintiffs propose to undertake appropriate proceedings to have such
28 FLSA Collective Action Members aggrieved by Defendants’ unlawful conduct notified of the
pendency of this action and join this action as plaintiffs, pursuant to 29 U.S.C. §216(b), by filing
written consents to joinder with the Court.

 65. Defendants’ violations of the FLSA were willful.

66. As a result of the foregoing, Plaintiffs seek judgment against Defendants on their own behalf, and on behalf of those FLSA Collective Action Members similarly situated who file written consents to joinder in this action, for all unpaid wages, including overtime wages owed by Defendants to the Plaintiffs and FLSA Collective Action Members, pursuant to 29 U.S.C. §§ 206 and 207, together with an award of an additional equal amount as liquidated damages, and costs, interest, and reasonable attorneys' fees, as provided for under 29 U.S.C. §216(b).

SECOND CAUSE OF ACTION

Failure to Pay Overtime Wages

[Cal. Labor Code §§ 204, 510, 1194]

(On behalf of Plaintiffs and California Class Members)

67. Plaintiffs re-allege each and every paragraph of this Complaint as though fully set forth.

68. Labor Code § 510 and the “Hours & Days of Work” Section of the Wage Orders entitles non-exempt employees to one and one-half times their hourly pay for any and all hours worked in excess of eight hours in any work day, for the first eight hours worked on the seventh consecutive day of work in a work week, and for any work in excess of forty hours in any one work week. Employees are entitled to two times their hourly pay for any and all hours worked in excess of 12 hours in any work day and in excess of 8 hours on the 7th consecutive work day.

69. Plaintiffs and Class Members regularly worked in excess of eight hours per day and/or forty hours per week without overtime compensation.

70. By failing to pay overtime compensation to Plaintiffs and Class Members, Swift violated and continues to violate Labor Code §§ 204, 510 and 1194 and the applicable Wage Orders.

71. As a result of Swift's unlawful acts, Plaintiffs and class Members have been deprived of overtime compensation in an amount to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, attorney's fees and costs, under Labor Code § 1194.

72. Plaintiffs, on behalf of themselves and Class Members, also request further relief as described below.

1 **THIRD CAUSE OF ACTION**

2 **Failure to Pay Minimum Wage**

3 **[Cal. Labor Code §§ 1194, 1197, 1197.1 and I.W.C. Wage Orders No. 9-2001, 17-2001]**

4 **(On behalf of Plaintiffs and California Class Members)**

5 73. Plaintiffs re-allege each and every paragraph of this Complaint as though fully set
6 forth.

7 74. California Labor Code §§ 1194, 1197, 1197.1 and Industrial Welfare Commission
8 Wage Orders 9-2001 and 17-2001 entitle non-exempt employees to an amount equal to or greater
9 than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate
10 and no part of this rate may be used as a credit against a minimum wage obligation.

11 75. The minimum wage provisions of the California Labor Code are enforceable by
12 private civil action pursuant to California Labor Code § 1194(a).

13 76. Under California law, an employer is required to pay an employee the minimum
14 wage for every hour worked. California minimum wage law forbids averaging wages over the
15 course of the pay period to determine minimum wage compliance. Instead, an employer must pay
16 the minimum wage for each hour worked, and the fact that an employee's total compensation for a
17 pay period exceeds the minimum wage does not satisfy the employer's statutory burden.

18 77. At all times relevant herein, Swift had a policy and practice of failing to compensate
19 Plaintiff and California Class Members for all hours they worked that qualified as compensable
20 under California law, including for time spent changing over, by washing and preparing, the trucks
21 and equipment for the next Hostler who comes on-duty. Swift only paid its Hostlers for time spent
22 hostling at the distribution center while on-duty inside the facility.

23 78. By refusing and failing to pay Plaintiffs and California Class Members for all
24 compensable time they worked, Defendants not only failed to pay them the agreed-upon rate but
25 also failed to pay them at least the minimum wage for all hours worked.

26 79. Defendants' acts and omissions as alleged herein were willful, in bad faith, and
27 without reasonable grounds for believing that the acts or omissions were not a violation of state
28 law.

80. As a direct and proximate result of Defendants' unlawful conduct as set forth herein, Plaintiffs and California Class Members have sustained damages, including lost wages, in an amount to be determined at trial.

81. Consequently, in addition to recovering the unpaid wages, Plaintiffs and California Class Members are entitled to receive interest and liquidated damages, reasonable attorneys' fees and costs, pursuant to California Labor Code §§ 1194(a) and 1194.2(a).

FOURTH CAUSE OF ACTION

Failure to Reimburse for Business Expenses

[California Labor Code § 2802]

(On behalf of Plaintiffs and California Class Members)

82. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth.

83. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

84. During the Class Period, in order to discharge hostler-related duties for Swift, Plaintiffs and California Class Members have incurred reasonable and necessary expenses in the course of completing their job duties, which were not reimbursed by Swift. These expenses include but are not limited to cleanings supplies, tools and equipment, and uniform expenses:

85. Plaintiffs and California Class Members are entitled to reimbursement for these necessary expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802.

86. Plaintiffs, on behalf of themselves and Class Members, also request relief as described below.

FIFTH CASE OF ACTION

Failure to Provide Mandated Meal Periods

[California Labor Code §§ 226.7, 512]

(On behalf of Plaintiffs and California Class Members)

87. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth.

88. Swift failed to maintain a policy of providing meal breaks as required by Labor Code §§ 226.7, 512 and the applicable Wage Orders

1 89. During the Class Period, Plaintiffs and California Class Members have worked in
2 excess of five hours and at times ten hours a day without being provided at least half hour meal
3 periods in which they were relieved of their duties, as required by Labor Code §§ 226.7 and 512
4 and the applicable Wage Orders. See Brinker Restaurant Corp., et al. v. Superior Court (2012) 53
5 Cal. 4th 1004, 1040-41 (“The employer satisfies this obligation if it relieves its employees of all
6 duty, relinquishes control over their activities and permits them a reasonable opportunity to take an
7 uninterrupted 30-minute break, and does not impede or discourage them from doing to ...[A] first
8 meal period [is required] no later than the end of an employee’s fifth hour of work, and a second
9 meal period [is required] no later than the end of an employee’s 10th hour of work.”)

10 90. Because Swift failed to provide proper meal periods, it is liable to all Plaintiffs and
11 California Class Members for one hour of additional pay at the regular rate of compensation for
12 each work day that the proper meal periods were not provided, pursuant to Labor Code §§226.7
13 and 512 and the applicable Wage Orders, as well as interest thereon, plus reasonable attorney’s
14 fees and costs of suit pursuant to Civil Procedure Code § 1021.5.

15 91. Plaintiffs, on behalf of themselves and Class Members, also request further relief as
16 described below.

17 **SIXTH CAUSE OF ACTION**

18 **Failure to Authorize and Permit Rest Periods**

19 **[California Labor Code § 226.7]**

20 **(On behalf of Plaintiffs and California Class Members)**

21 92. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth.

22 93. During the Class Period, Plaintiffs and Class Members have regularly worked
23 without any rest periods that are required by California Labor Code §226.7 and the applicable
24 Wage Orders. See Brinker, 53 Cal. 4th 1004 at 1029 (“Employees are entitled to 10 minutes rest
25 for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six
26 hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.”).

27 94. Because Swift failed to provide proper rest periods, it is liable to Plaintiffs and Class
28 Members for one hour of additional pay at the regular rate of compensation for each workday that
the proper rest periods were not provided, pursuant to Labor Code § 226.7 and the applicable Wage
Orders, as well as interest thereon, plus reasonable attorneys’ fees and costs of suit pursuant to
Civil Procedure Code § 1021.5.

1 95. Plaintiffs, on behalf of themselves and California Class Members, also request relief
2 as described below.

3 **SEVENTH CAUSE OF ACTION**

4 **Failure to Furnish Timely and Accurate Itemized Wage Statements**

5 **[California Labor Code §§ 226]**

6 **(On behalf of Plaintiffs and California Class Members)**

7 96. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth.

8 97. Labor Code § 226 requires an employer to furnish its employees with an accurate
9 itemized statement in writing showing, among other things: (1) all applicable hourly rates in effect
10 during each respective pay period and the corresponding number of hours worked by each
11 respective individual; (2) total hours worked by each respective individual; (3) gross wages earned;
12 (4) net wages earned; (5) all deductions; (6) inclusive dates of the period for which the employee is
13 paid; (7) the name of the employee and an employee identification or social security number; and
14 (8) the name and address of the legal entity that is the employer.

15 98. As a pattern and practice, in violation of Labor Code § 226(a), Swift did not provide
16 Plaintiffs or California Class Members with accurate itemized wage statements in writing showing:
17 (1) all applicable hourly rates in effect during each respective pay period and the corresponding
18 number of hours worked by each respective individual; (2) number of hours worked; (3) gross
19 wages earned; (4) net wages earned; (5) all deductions; (6) inclusive dates of the period for which
20 the employee is paid; (7) employee identification or social security number; and (8) address of the
21 legal entity that is the employer.

22 99. As a result of Swift's failure to provide accurate itemized wages statements,
23 Plaintiffs and California Class Members suffered actual damages and harm by being unable to
24 determine their applicable hourly rate or the amount of overtime worked each pay period, which
25 prevented them from becoming aware of these violations and asserting their statutory protections
26 under California law.

27 100. Swift has knowingly and intentionally failed to comply with Labor Code § 226(a) on
28 each and every wage statement provided to Plaintiffs and Class and Subclass Members.

101. Pursuant to Labor Code § 226(e), the Plaintiffs and Class Members are entitled to
recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a

1 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
2 pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00).

3 102. The Plaintiffs and California Class Members are entitled to an award of costs and
4 reasonable attorneys' fees under Labor Code § 226(h).

5 103. Plaintiffs, on behalf of themselves and California Class Members, also request relief
6 as described below.

7 **EIGHTH CAUSE OF ACTION**

8 **Failure to Provide Compensation Due Upon Termination/Waiting Time Penalties**

9 **[Cal. Labor Code §§ 201-203]**

10 **(On behalf of Plaintiffs and California Class Members)**

11 104. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth.

12 105. California Labor Code §§ 201 and 202 require Swift to pay al compensation due and
13 owing to former Hostlers immediately upon discharge or within seventy-two hours of their
14 termination of employment. California Labor Code § 203 provides that if an employer willfully
15 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and
16 202, then the employer is liable for such "waiting time" penalties in the form of continued
17 compensation up to thirty workdays.

18 106. Swift willfully failed to pay Plaintiffs and Class Members who are no longer
19 employed by Swift compensation due upon termination as required by California Labor Code §§
20 201 and 202. As a result, Swift is liable to Plaintiffs and former employee Class members waiting
21 time penalties provided under California Labor Code § 203, plus reasonable attorneys' fees and
22 cost of suit.

23 107. Plaintiffs, on behalf of themselves self and Class Members, also request relief as
24 described below.

25 **NINTH CAUSE OF ACTION**

26 **Unfair Business Practices in Violation of California Law**

27 **[Bus. & Prof. Code §§ 17200 et seq.]**

28 **(On behalf of Plaintiffs and California Class Members)**

108. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth.

1 109. Plaintiffs bring this cause of action individually and as a representative of all others
2 subject to Swift's unlawful acts and practices.

3 110. Business and Professions Code § 17200 prohibits unfair competition in the form any
4 unlawful, unfair, or fraudulent business act or practice.

5 111. Business and Professions Code § 17204 allows "any person who has suffered injury
6 in fact and has lost money or property" to prosecute a civil action for violation of the Unfair
7 Competition Law.

8 112. During the Class Period Swift has committed unlawful, unfair, and/or fraudulent
9 business acts and practices as defined by Business and Professions Code § 17200 by failing to pay
10 overtime wages, to provide meal and rest breaks, to pay wages due at the time of separation, to
11 furnish timely and accurate wage statements, and to reimburse business expenses in violation of
12 state law.

13 113. The above-described unlawful actions of Swift constitute false, unfair, fraudulent
14 and/or deceptive business practices, within the meaning of Business and Professions Code §
15 17200, et seq.

16 114. As a result of their unlawful acts, Swift has reaped and continues to reap unfair
17 benefits and illegal profits at the expense of Plaintiffs, and the Class they seek to represent. Swift
18 should be enjoined from this activity, caused to specifically perform its obligations, and made to
19 disgorge these ill-gotten gains and pay restitution to Plaintiffs and the members of the California
20 Class including, but not limited to, restitution of all unpaid wages, plus interest, as well as
21 attorneys' fees and costs.

22 115. Class Members, also request relief as described below.

23 **TENTH CAUSE OF ACTION**

24 **Violation of Private Attorney General Act**

25 **California Labor Code, §§2698, et. seq.**

26 **(On behalf of Plaintiffs and California Class Members)**

27 116. Plaintiff s Barker, Bachman, & Yingling on behalf of themselves, and all other
28 members of the Class, and or on behalf of all aggrieved employees, as well as the general public,
reallege and incorporate by this reference, the preceding paragraphs of the Complaint as though
fully set forth herein.

1 117. Labor Code §§2698 and 2699 (the California Private Attorney General Act of 2004,
2 or "PAGA"), expressly establish that any provision of the California Labor Code which provides
3 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
4 ("LWDA"), or any of its departments, divisions, commissions, boards, agencies or employees for a
5 violation of the California Labor Code, may be recovered through a civil action brought by an
6 aggrieved employee on behalf of himself or herself, and other current or former employees.

7 118. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
8 agencies or employees has discretion to assess a civil penalty, a fact-finder in a civil action is
9 authorized to exercise the same discretion, subject to the same limitations and conditions, to assess
10 a civil penalty.

11 119. Plaintiffs are "aggrieved employees" as defined by Labor Code §2699, in that are
12 employees of Defendants, and one or more of the Labor Code violations was committed against
13 them.

14 120. Plaintiffs assert all of their claims in this Complaint against Defendants on behalf of
15 themselves, and all other members of the Class and/or on behalf of all aggrieved employees, as
16 well as the general public, in their capacity as "private attorney general" and seek all statutory
17 penalties available under the Labor Code.

18 121. By reason of the above and pursuant to Labor Code §2699, Plaintiffs Barker,
19 Bachman, & Yingling, on behalf of themselves, and all other members of the Class and/or on
20 behalf of all aggrieved employees, as well as the general public, are entitled to payment of a
21 penalty of \$100 per pay period for each employee for the initial violation, and \$200 per pay period
22 for each employee for each subsequent violation, plus interest.

23 122. In addition, Plaintiffs Barker, Bachman, & Yingling, on behalf of themselves, and all
24 other members of the Class and/or on behalf of all aggrieved employees, as well as the general
25 public, seek and are entitled to have 75% of all recovered penalties and interest allocated to the
26 LWDA and 25% to the Plaintiffs. Further, Plaintiffs are entitled to seek and recover reasonable
27 attorneys' fees, expenses, and costs pursuant to Labor Code §2699, and any other applicable
28 statutes.

 123. Plaintiffs have complied with the notice requirements of Labor Code §2699.3(a)(1)
prior to commencing this action. A copy of the letter sent to the California LWDA on May 2, 2016,
via certified mail, and copied to Defendants' Company Headquarters in Phoenix, AZ on the same

1 date, via certified mail, in accordance with §2699.3(a)(1), is attached hereto, as **Exhibit A**, and by
2 reference incorporated herein.

3 124. As of today's date, the LWDA has not responded to Plaintiffs' notice.

4 125. Plaintiffs and the Plaintiff Class are also entitled to reasonable attorneys' fees and
5 costs, pursuant to California Labor Code section 2699(g)(1).

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs, individually and on behalf of the proposed Classes, pray for judgment
8 against Defendants as follows:

9 A. Certification of Plaintiffs' claims as a class action, pursuant to Section 382 of the California
10 Code of Civil Procedure;

11 B. Class notice to all Hostlers in California who worked for Swift from four years prior to the
12 filing of the original Complaint through the trial of this action;

13 C. That the Court declare that Swift's policies and/or practices of misclassifying Plaintiffs and
14 Class Members as independent contractors violate California law;

15 D. That the Court declare that Swift's policies and/or practices of failing to pay overtime wages
16 to Plaintiffs and Class and Collective Action Members violates FLSA, California Labor Code §§
17 510, 1194 and Wage Orders No. 9-2001, 17-2001 as to Plaintiffs and the Class Members;

18 E. That the Court declare that Swift's policies and/or practices of failing to pay an amount
19 equal to or greater than minimum wage for all hours worked to Plaintiffs and Class Members
20 violates §§ 1194, 1197, 1197.1, and Wage Orders No. 9-2001, 17-2001 as to Plaintiffs and the
21 Class Members;

22 F. That the Court declare that Swift's policies and/or practices of failing to pay all wages twice
23 each calendar month to Plaintiffs and California Class Members violates California Labor Code §
24 2014 as to Plaintiffs and California Class Members;

25 G. That the Court declare that Swift's policies and/or practices of failing to enforce maximum
26 hours of work to Plaintiffs and California Class Members violates California Labor Code §§ 1198
27 as to Plaintiffs and the California Class Members;

28 H. That the Court declare that Swift's policies and/or practices of failing to provide meal
periods violates California Labor Code §§ 226.7 and 512 Wage Orders 9-2001 by failing to

1 provide them a meal period of at least one half hour in which they were relieved of all duties for
2 every five hours of work;

3 I. That the Court declare that Swift's policies and/or practices of failing to provide rest periods
4 violates California Labor Code § 226.7 and Wage Orders 9-2001, 17-2001 by failing to provide
5 them a rest period of at least ten minutes for every four hours of work or major portion thereof;

6 J. That the Court declare that, as to former employee California Class Members, Swift has
7 violated California Labor Code §§ 201-203 for willful failure to pay compensation at the time of
8 termination of employment, resulting in unpaid waiting time penalties;

9 K. That the Court declare that Swift's policies and/or practices of failing to keep accurate
10 payroll records of daily hours worked for Plaintiffs and California Class Members violates
11 California Labor Code § 1174(d) and 1174.5;

12 L. That the Court declare that Swift's policies and/or practices of violate California law by
13 failing to reimburse all business expenses incurred by Hostlers in the discharge of their duties as
14 employees of Swift violates California Labor Code § 226;

15 M. That the Court declare that Swift's policies and/or practices of failing to furnish timely and
16 accurate wage statements violates California Labor Code § 226;

17 N. That the Court declare that Swift's above-mentioned policies and/or practices violate the
18 UCL (Cal. Bus. & Prof. Code §§ 17200-17208);

19 O. An order preliminarily and permanently enjoining Swift from engaging in the practices
20 challenged herein;

21 P. An award to Plaintiffs and Class and Collective Action Members of damages in the amount
22 of unpaid overtime compensation, interest, and penalties subject to proof at trial;

23 Q. An award to Plaintiffs and Class and Collective Action Members of damages in the amount
24 of unpaid minimum wage compensation, interest, and penalties subject to proof at trial;

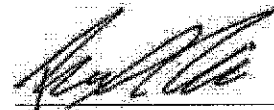
25 R. An award to Plaintiffs and California Class Members of damages in the amount of unpaid
26 unreimbursed business expenses, and interest thereon, subject to proof at trial;

27 S. An award to Plaintiffs and the California Class Members of one (1) hour of additional pay at
28 the regular rate of compensation for each workday that meal periods were not provided, pursuant to
California Labor Code § 226.7 and the applicable Wage Orders and interest thereon;

1 T. An award to Plaintiffs and California Class Members of one (1) hour of additional pay at the
2 regular rate of compensation for each workday that rest periods were not provided, pursuant to
3 California Labor Code § 226.7 and the applicable Wage Orders, and interest thereon;
4 U. An award of damages to Plaintiffs and the California Class Members for Swift's failure to
5 provide accurate itemized wage statements, pursuant to California Labor Code § 226(a);
6 V. An award of payments due to Plaintiffs and California Class Members who have left Swift's
7 employ, as waiting time penalties, pursuant to California Labor Code § 203;
8 W. Interest accrued to date under the California Labor Code, including under Sections 226.7,
9 510, and 2802;
10 X. For an order that Swift make restitution to Plaintiffs and California Class Members for Swift
11 due to their unlawful business practices as described herein pursuant to California Business and
12 Professions Code §§ 17200-17205 and California Labor Code § 1199;
13 Y. An award to Plaintiffs and the Class and Collective Action Members of reasonable
14 attorney's fees and costs, pursuant to California Civil Procedure Code § 1021.5, California Labor
15 Code §§ 226, 226.7, 1194, and/or other applicable law;
16 Z. For the PAGA claim, an award of statutory damages and penalties according to proof,
17 interest on those payments from the date of violation till paid in full, reasonable attorneys' fees,
18 expenses and costs; and,
19 AA. Such other and further relief that the Court may deem just and proper.

20 Dated: June 7, 2016

Respectfully submitted,
THE RDM LEGAL GROUP



RUSSEL MYRICK, ESQ.
Attorney for Plaintiffs

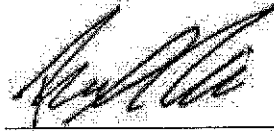
THE MARKHAM LAW FIRM

David R. Markham
Peggy J. Real
Maggie Realin
Ben Travis
Attorneys for Plaintiffs

1 **Plaintiffs hereby demand a jury trial.**

2
3 **DATED: June 6, 2016**

By:

4
5 

6 **RUSSEL MYRICK, ESQ.**
7 **Attorney for Plaintiffs**
8 **Bill Barker, Tab Bachman,**
9 **& William Yingling**

10 **THE MARKHAM LAW FIRM**

11 **David R. Markham**
12 **Peggy J. Reali**
13 **Maggie Realin**
14 **Ben Travis**
15 **Attorneys for Plaintiffs**

EXHIBIT A

THE MARKHAM LAW FIRM

• 750 B Street, Suite 1950 • San Diego, California 92101 •
• Phone: (619) 399-3995 • Fax: (619) 615-2067 •
• EMAIL: MREALIN@MARKHAM-LAW.COM

May 2, 2016

Via Certified Mail Return Receipt Requested:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, California 94612

Re: Wage/Hour Claims of Bill Barker, Tab Bachman and William Yingling ("Employees")
against Swift Transportation Company of Arizona, LLC ("Swift" or "Employer")

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency
("LWDA")

From: Bill Barker, Tab Bachman and William Yingling ("Employees"), who were subjected to
the wage and hour practices as set forth below

Pursuant to California Labor Code section 2699.3, this letter is intended to provide written notice of intent to file a representative civil action by aggrieved employees pursuant to subdivisions (a) and (f) of California Labor Code section 2699. The aggrieved employees are Bill Barker, Tab Bachman and William Yingling. The provisions of the California Labor Code that have been violated, including the facts and theories to support the alleged violations, are set forth below.

Bill Barker, Tab Bachman and William Yingling are residents of the State of California. During the applicable time period, Employees have been employed in California by Swift as Hostlers. They intend to bring a representative action on behalf of themselves and other aggrieved current and former California employees as provided for in California Labor Code section 2698, *et seq.*, known as the Private Attorneys General Act of 2004 ("PAGA").

Swift employs numerous Hostlers in the State of California. During the relevant time period, the Employer utilized consistent policies and procedures regarding the Employees and others similarly situated, in violation of Labor Code sections 226(a), 510, 512, 226.7, 1194, 1197, 1198, 2802, as follows:

First, Employer failed to compensate the Employees and other similarly situated Hostlers for all hours worked, including overtime. During the relevant time period, Employer has had a consistent policy and/or practice of misclassifying Hostlers as exempt "delivery truck drivers" instead of properly classifying them as non-exempt Hostlers and permitting and/or requiring them to work in excess of eight hours a day and/or in excess of forty hours a week without paying them overtime compensation as required by California law. Further, during the relevant time period, Swift failed to compensate Employees for regular hours worked, such as time spent driving between jobs. Swift only paid its Hostlers for time spent at each job time.

As such, in violation of Labor Code sections 510(a), 1194, 1197 and 1998 and the applicable Industrial Wage Order, the Employer, by failing to pay the Employee and all others similarly situated for all hours worked, failed to pay all straight time, minimum wages and overtime wages due.

Second, Employer's policies and procedures caused Employees and other aggrieved employees to miss, delay, or shorten their meal and rest breaks in violations of Labor Code section 512(a), 226.7 and the applicable Wage Order. Employees and other aggrieved employees were not paid meal and rest break premiums for each workday that the meal or rest break was not provided, in violation of Labor Code section 226.7(c).

In addition, as part of their duties, Employees were required to incur reasonable and necessary business expenses in the course of completing their work duties, such as tools and equipment, uniform expenses, and cleaning supplies for the hostler tractors. However, Employer has refused to reimburse Employees and other Hostlers for these reimbursable costs, in violation of Labor Code section 2802.

Further, California Labor Code section 226(a) provides that every employer is required to furnish each employee with accurate itemized statements in writing showing, in part, "all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked by each respective individual," "number of hours worked," "gross wages earned," "net wages earned." Here, because the Employer failed to pay for all regular and/or overtime hours worked at the appropriate straight time or overtime rate, and failed to pay meal and rest break premiums, improper paystubs were issued to Employees and other aggrieved employees, and the Employees allege that the Employer has derivatively violated Labor Code section 226(a).

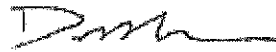
Bill Barker, Tab Bachman and William Yingling, as aggrieved employees and on behalf of themselves and all other current or former Swift employees, seek all penalties or remedies as may be allowed under PAGA, and by this letter give written notice of their PAGA claim pursuant to Labor Code section 2699.3. Please advise within thirty (30) calendar days of the postmark date of this Notice whether the LWDA intends to investigate the violations alleged above. We understand that if we do not receive a response within thirty-three (33) calendar days of the postmark date of this Notice that the LWDA intends to investigate these allegations, the aggrieved Employees may immediately thereafter commence a civil action against the Employer pursuant to Labor Code §2699.

Mr. Barker, Mr. Bachman and Mr. Yingling are represented in this matter by The RDM Legal

Group and The Markham Law Firm.

Very truly yours,

THE MARKHAM LAW FIRM



David R. Markham

cc: (via Certified Mail)
Swift Transportation Company
of Arizona
Attn.: Legal Department
2200 S. 75th Avenue
Phoenix, AZ 85043