

David Mara, Esq. (230498)
Matthew Crawford, Esq. (310230)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 205
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Raquel Enriquez, Deputy

\$435 PAID

Attorneys for ROBERT MARK-WATERHOUSE,
on behalf of himself, all others similarly
situated, and on behalf of the general public.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF STANISLAUS

ROBERT MARK-WATERHOUSE on
behalf of himself, all others similarly
situated, and on behalf of the general
public,

Plaintiffs,

v.

DOT TRANSPORTATION, INC.; DOT
FOODS, INC.; and DOES 1-100,

Defendants.

Case No. CV-22-004102

**PLAINTIFF'S CLASS ACTION
COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND RESTITUTION**

- 1) Failure to Pay All Straight Time Wages;**
- 2) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 9-2001(11); Cal. Code Regs., tit. 8 § 11090);**
- 3) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 9-2001(12); Cal. Code Regs. Title 8 § 11090);**
- 4) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);**
- 5) Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§ 201-203);**
- 6) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.).**

DEMAND FOR JURY TRIAL

This case has been assigned to Judge Sandhu, Sonny S.
Dept. 24
Department _____, for all purposes including Trial.

1 Plaintiff ROBERT MARK-WATERHOUSE (“Plaintiff”), on behalf of himself, all others similarly
2 situated, and on behalf of the general public, complains of Defendants DOT
3 TRANSPORTATION, INC. and DOT FOODS, INC. (“Defendants”), and/or DOES and for causes
4 of action and alleges:

5 1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf
6 of Plaintiff, and all hourly drivers, truck drivers, truck workers, or similar job designations
7 who haul freight for Defendants and who spent a majority of their work time in California
8 and/or had their base of operations in California.

9 2. At all times mentioned herein, Defendants and/or DOES have conducted business in
10 Stanislaus County and elsewhere within California.

11 3. At all times mentioned herein, Defendants and/or DOES, within the State of California,
12 have, among other things, employed current and former hourly drivers, truck drivers, truck
13 workers, or similar job designations and titles.

14 4. At all times mentioned herein, the common policies and practices of Defendants and/or
15 DOES were a direct cause of Defendants’ and/or DOES’ failure to comply with
16 California’s wage and hours laws, Wage Orders, and/or the California Labor Code, as set
17 forth more fully within.

18 5. For at least four (4) years prior to the filing of this action and through to the present,
19 Defendants and/or DOES have had a consistent policy and/or practice of not paying
20 Plaintiff and all hourly drivers, truck drivers, truck workers, or similar job designations and
21 titles, and all other similarly situated hourly employees for all of the hours they worked.

22 6. For at least four (4) years prior to the filing of this action and through to the present,
23 Defendants and/or DOES have had a continuous and widespread policy of not paying
24 Plaintiff and those similarly situated for all hours they worked, including, but not limited
25 to, verifying their loads with dispatch prior to their shifts, picking up paperwork,
26 performing pre-and post-trip inspections, waiting at the terminal for trucks to be loaded,
27 waiting at a customer’s location, doing drop and hooks, or having to stop and wait at CHP
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1 inspections.

2 7. For at least four (4) years prior to the filing of this action and through to the present,
3 Defendants and/or DOES have had a consistent policy and/or practice of failing to provide
4 all straight time and minimum wages owed to hourly drivers, truck drivers, truck workers,
5 or similar job designations and titles, and all other similarly situated hourly employees, as
6 mandated under the California Labor Code and the implementing rules and regulations of
7 the Industrial Welfare Commission's ("IWC") California Wage Orders.

8 8. For at least four (4) years prior to the filing of this action and through to the present,
9 Defendants and/or DOES have had a consistent policy of requiring hourly drivers, truck
10 drivers, truck workers, or similar job designations and titles, and all other similarly situated
11 hourly employees within the State of California, including Plaintiff, to work through meal
12 periods and work at least five (5) hours without a meal period and failing to pay such
13 employees one (1) hour of pay at the employees' regular rate of compensation for each
14 workday that the meal period is not provided, or other compensation, as required by
15 California's state wage and hour laws.

16 9. For at least four (4) years prior to filing of this action and through the present, Defendants
17 and/or DOES did not have a policy of allowing its hourly drivers, truck drivers, truck
18 workers, or similar job designations and titles, and all other similarly situated non-exempt,
19 hourly employees working shifts of ten (10) or more hours in a day to take a second meal
20 period of not less than thirty (30) minutes as required by the applicable Wage Order of the
21 IWC.

22 10. For at least four (4) years prior to the filing of this action and through to the present,
23 Defendants and/or DOES have had a consistent policy of requiring hourly drivers, truck
24 drivers, truck workers, or similar job designations and titles, and all other similarly situated
25 hourly employees within the State of California, including Plaintiff, to work over ten (10)
26 hours without providing an additional, uninterrupted meal period of thirty (30) minutes and
27 failing to pay such employees one (1) hour of pay at the employees' regular rate of
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1 compensation for each workday that the meal period is not provided, or other
2 compensation, as required by California's state wage and hour laws.

3 11. For at least four (4) years prior to the filing of this action and through to the present,
4 Defendants and/or DOES have had a consistent policy and/or practice of requiring its
5 hourly drivers, truck drivers, truck workers, or similar job designations and titles, and all
6 other similarly situated hourly employees within the State of California, including Plaintiff,
7 to work for over four hours, or a major fraction thereof, without a 10 minute rest period,
8 and failing to pay such employees one (1) hour of pay at the employees' regular rate of
9 compensation for each workday that the rest period is not provide, or other compensation,
10 as required by California's state wage and hour laws.

11 12. For at least four (4) years prior to the filing of this action and through to the present,
12 Defendants and/or DOES and/or their officers and/or managing agents have had a
13 consistent policy and/or practice of willfully failing to provide to Plaintiff and its hourly
14 drivers, truck drivers, truck workers, or similar job designations and titles, and all other
15 similarly situated hourly employees, accurate itemized employee wage statements.

16 13. For at least four (4) years prior to the filing of this action and through to the present,
17 Defendants and/or DOES and/or their officers and/or managing agents have had a
18 consistent policy and/or practice of willfully failing to timely pay wages owed to Plaintiff
19 and those hourly drivers, truck drivers, truck workers, or similar job designations and titles,
20 and all other similarly situated hourly employees who left Defendants' and/or DOES'
21 employ or who were terminated.

22 14. For at least four (4) years prior to the filing of this action and through to the present,
23 Defendants and/or DOES, by failing to lawfully pay Plaintiff and those similarly situated
24 all the wages they are owed, engaged in false, unfair, fraudulent and deceptive business
25 practices within the meaning of the Business and Professions Code section 17200, et seq.

26 15. Throughout the statutory period, Defendants' and/or DOES' employees, including Plaintiff
27 and those similarly situated were not provided all straight time and minimum wages owed,
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1 meal periods and rest periods, or compensation in lieu thereof, as mandated under the
2 California Labor Code, and the implementing rules and regulations of the Industrial
3 Welfare Commissions (“IWC”) California Wage Orders.

4 16. Throughout the statutory period, Defendants’ and/or DOES’ employees, including Plaintiff
5 and those similarly situated, were not provided with accurate and itemized employee wage
6 statements.

7 17. Defendants and/or DOES failed to comply with Labor Code section 226, subdivision (a),
8 by itemizing in wage statements all hourly compensation and accurately reporting total
9 hours worked by Plaintiff and the members of the proposed class. Plaintiff and members
10 of the proposed class are entitled to penalties not to exceed \$4,000 for each employee
11 pursuant to Labor Code section 226(b).

12 18. Defendants and/or DOES have failed to comply with IWC Wage Order 9-2001(7) by
13 failing to maintain accurate time records showing hourly compensation, when the
14 employee begins and ends each work day and total daily hours worked by itemizing in
15 wage statements and accurately reporting total hours worked by Plaintiff and members of
16 the proposed class.

17 19. Defendants’ and/or DOES’ failure to retain accurate records of total hours worked by
18 Plaintiff and the proposed class was willful and deliberate, was a continuous breach of
19 Defendants’ and/or DOES’ duty owed to Plaintiff and the proposed class.

20 20. Throughout the statutory period, Defendants’ and/or DOES’ employees, including Plaintiff
21 those similarly situated, were not timely paid all wages owed to them at the time of
22 termination.

23 21. Defendants and/or DOES are and were aware that Plaintiff and members of the proposed
24 class were not paid all straight time and minimum wages owed, nor provided meal and rest
25 periods. Defendants’ and/or DOES’ denial of wages and other compensation due to
26 Plaintiff and members of the proposed class was willful and deliberate.

27 22. Defendants and/or DOES, each and collectively, controlled the wages, hours, and working
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conditions of Plaintiff and the proposed class, creating a joint-employer relationship over Plaintiff and the proposed class.

23. Plaintiff, on behalf of himself and all of Defendants' and/or DOES' hourly drivers, truck drivers, truck workers, or similar job designations and titles, and all other similarly situated hourly employees, brings this action pursuant to California Labor Code sections 201, 202, 203, 218, 218.5, 222, 223, 224, 226, subd. (b), 226.7, 510, 512, 515, 558, 1194, 1197, and California Code of Regulations, Title 8, section 11090, seeking unpaid wages, meal and rest period compensation, penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

24. Plaintiff, on behalf of himself and all putative Class members made up of Defendants' and/or DOES' hourly drivers, truck drivers, truck workers, or similar job designations and titles, and all other similarly situated hourly employees, pursuant to California Business and Professions Code sections 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants and/or DOES enjoyed from their failure to pay all straight time wages, minimum wages, and meal and rest period compensation.

I. VENUE

25. Venue as to each Defendant, DOT TRANSPORTATION, INC. and DOT FOODS, INC., and/or DOES, is proper in this judicial district, pursuant to Code of Civil Procedure section 395. Defendants and/or DOES conduct business and commit Labor Code violations within Stanislaus County, and each Defendant and/or DOE is within California for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within the State of California and within Stanislaus County. Defendants and/or DOES employ numerous Class members who work in Stanislaus County, in California.

II. PARTIES

A. Plaintiffs

26. At all relevant times, herein, Plaintiff ROBERT MARK-WATERHOUSE is and was a

1 resident of California. At all relevant times, herein, he was employed by Defendants and/or
2 DOES within the last four (4) years as an hourly truck driver in California.

3 27. On information and belief, Plaintiff and all other members of the proposed class
4 experienced Defendants' and/or DOES' common company policies of failing to pay all
5 straight time and minimum wages owed.

6 28. On information and belief, Plaintiff and all other members of the proposed class
7 experienced Defendants' and/or DOES' unlawful piece-rate compensation plan that failed
8 to compensate hourly drivers, truck drivers, truck workers, or similar job designations and
9 titles, and all other similarly situated hourly employees for non-driving work that,
10 including, but not limited to, verifying their loads with dispatch prior to their shifts, picking
11 up paperwork, performing pre-and post-trip inspections, waiting at the terminal for trucks
12 to be loaded, waiting at a customer's location, doing drop and hooks, or having to stop and
13 wait at CHP inspections.

14 29. On information and belief, Plaintiff and all other members of the proposed class
15 experienced Defendants' and/or DOES' common company policies and/or practices of
16 failing to provide compliant meal periods to hourly drivers, truck drivers, truck workers,
17 or similar job designations and titles, and all other similarly situated hourly employees
18 before the end of their fifth hour of work or a second meal period before the end of the
19 tenth hour or work, or compensation in lieu thereof.

20 30. On information and belief, Plaintiff and all other members of the proposed class
21 experienced Defendants' and/or DOES' common company policies of failing to provide
22 ten (10) minute paid rest breaks to hourly drivers, truck drivers, truck workers, or similar
23 job designations and titles, and all other similarly situated hourly employees whom worked
24 four (4) hours or major fractions thereof.

25 31. On information and belief, Plaintiff and all other members of the proposed class
26 experienced Defendants' and/or DOES' common company policies of failing to provide
27 hourly drivers, truck drivers, truck workers, or similar job designations and titles, and all
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1 other similarly situated hourly employees with accurate itemized wage statements. On
2 information and belief, Defendants' and/or DOES' failure to provide Plaintiff and those
3 similarly situated with accurate itemized wage statements was willful.

4 32. On information and belief, Plaintiff and all other members of the proposed class
5 experienced Defendants' and/or DOES' common company policies of failing to timely
6 compensate hourly drivers, truck drivers, truck workers, or similar job designations and
7 titles, and all other similarly situated hourly employees all wages owed upon termination.
8 On information and belief, Defendants' and/or DOES' failure to pay, in a timely manner,
9 compensation owed to Plaintiff and those similarly situated upon termination of their
10 employment with Defendants and/or DOES was willful.

11 33. On information and belief, Plaintiff and all other members of the proposed class
12 experienced Defendants' and/or DOES' fraudulent and deceptive business practices within
13 the meaning of the Business and Professions Code section 17200, et seq.

14 34. Plaintiff and the proposed class are covered by, inter alia, California IWC Occupational
15 Wage Order No. 9-2001, and Title 8, California Code of Regulations, § 11090.

16 **B. Defendants.**

17 35. At all relevant times herein, Defendants and/or DOES engage in the ownership and
18 operation of facilities which are used to provide commercial truck drivers to Defendants'
19 and/or DOES' customers in the State of California to haul freight for the customer.

20 36. On information and belief, Defendants and/or DOES exercised control over the wages,
21 hours, and/or working conditions of Plaintiff and members of the proposed class
22 throughout the liability period.

23 37. Defendants and/or DOES principal place of business is in the State of California.

24 38. The true names and capacities, whether individual, corporate, associate, or otherwise, of
25 Defendants DOES 1-100, inclusive, are presently unknown to Plaintiff, who therefore sues
26 these Defendants by such fictitious names under Code of Civil Procedure section 474.
27 Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
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1 designated herein as a DOE is legally responsible in some manner for the unlawful acts
2 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
3 true names and capacities of the Defendants designated hereinafter as DOES when such
4 identities become known.

5 39. Plaintiff is informed and believes, and based thereon alleges, that each Defendant and/or
6 DOE acted in all respects pertinent to this action as the agent of the other Defendants and/or
7 DOES, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
8 and the acts of each Defendants and/or DOES are legally attributable to the other
9 Defendants and/or DOES.

10 **III. CLASS ACTION ALLEGATIONS**

11 40. Plaintiff brings this action on behalf of himself and all others similarly situated as a class
12 action pursuant to section 382 of the California Code of Civil Procedure. Plaintiff seeks to
13 represent a Class composed of and defined as follows:

14
15 All hourly drivers, truck drivers, truck workers, or similar job
16 designations who haul freight for Defendants and/or DOES and who
17 spent a majority of their work time in California and/or had their
18 base of operations in California during the period of the relevant
19 statute of limitations ("Class Members").

20
21 Plaintiff also seeks to represent subclasses composed of and defined as follows:

22
23 All Class Members who worked one (1) or more shifts in excess of
24 five (5) hours.

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26 All Class Members who worked one (1) or more shifts in excess of
27 six (6) hours.
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All Class Members who worked one (1) or more shifts in excess of ten (10) hours.

All Class Members who worked one (1) or more shifts in excess of twelve (12) hours.

All Class Members who worked one (1) or more shifts in excess of three (3) hour and one-half hours, but less than or equal to six (6) hours.

All Class Members who worked one (1) or more shifts in excess of six (6) hours, but less than or equal to ten (10) hours.

All Class Members who separated their employment from Defendant.

All Class Members who worked one (1) or more shifts in which they received a wage statement for the corresponding pay period.

41. Plaintiff reserves the right under rule 1855, subdivision (b), California Rules of Court, to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.
42. This action has been brought and may properly be maintained as a class action under the provisions of section 382 of the California Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

1 **A. Numerosity.**

2 43. The potential members of the Class and subclasses as defined are so numerous that joinder
3 of all the members of the Class is impracticable. While the precise number of Class and
4 subclass members has not been determined at this time, Plaintiff is informed and believes
5 that Defendants and/or DOES currently employ, and during the liability period employed,
6 over one hundred (100) employees, all in the State of California, in positions as hourly
7 drivers, truck drivers, truck workers, or similar job designations and titles, and all other
8 similarly situated hourly employees.

9 44. Accounting for employee turnover during the relevant periods increases this number
10 substantially. Upon information and belief, Plaintiff alleges Defendants' and/or DOES'
11 employment records will provide information as to the number and location of all Class
12 members. Joinder of all members of the proposed Class is not practicable.

13 **B. Commonality.**

14 45. There are questions of law and fact common to the Class that predominate over any
15 questions affecting only individual Class members. These common questions of law and
16 fact include, without limitation:

17 (1) Whether Defendants and/or DOES violated the Labor Code
18 and/or applicable IWC Wage Orders in failing to pay Class Members all
19 earned wages at the regular rate for all hours worked.

20 (2) Whether Defendants' and/or DOES' uniform policies and/or
21 practices whereby Class Members were pressured and/or incentivized to
22 forego taking meal and/or rest periods.

23 (3) Whether Defendants and/or DOES violated Labor Code
24 section 226.7, IWC Wage Order No. 9-2001 or other applicable IWC Wage
25 Orders, and/or California Code of Regulations, Title 8, section 11090, by
26 failing to authorize, permit, and/or provide rest periods to Class Members
27 for every four (4) hours or major fraction thereof worked and/or failing to
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1 pay said Class Member one (1) hour of pay at the employee's regular rate
2 of compensation for each work day that the rest period was not authorized,
3 permitted and/or provided.

4 (4) Whether Defendants and/or DOES willfully failed to pay, in
5 a timely manner, wages owed to members of the proposed Class who left
6 Defendants' and/or DOES' employ or who were terminated.

7 (5) Whether Defendants and/or DOES violated Labor Code
8 section 203, which provides for the assessment of a penalty against the
9 employer, by willfully failing to timely pay all wages owed to Class
10 Members who left Defendants' and/or DOES' employ or who were
11 terminated.

12 (6) Whether Defendants and/or DOES had uniform policies
13 and/or practices of failing to provide Class Members accurate and itemized
14 wage statements.

15 46. The answer to each of these respective questions will generate a common answer capable
16 of resolving class-wide liability in one stroke.

17 47. Said common questions predominate over any individualized issues and/or questions
18 affecting only individual members.

19 **C. Typicality.**

20 48. The claims of the named Plaintiff are typical of the claims of the proposed class. Plaintiff
21 and all members of the proposed class sustained injuries and damages arising out of and
22 caused by Defendants' and/or DOES' common course of conduct in violation of laws and
23 regulations that have the force and effect of law and statutes as alleged.

24 49. Plaintiff ROBERT MARK-WATERHOUSE was subjected to the same uniform policies
25 and/or practices complained of herein that affected all such employees. Thus, as Plaintiff
26 was subjected to the same unlawful policies and practices as all hourly drivers, truck
27 drivers, truck workers, or similar job designations and titles, and all other similarly situated
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hourly employees, his claims are typical of the class he seeks to represent.

D. Adequacy of Representation.

50. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class.

51. Plaintiff is ready and willing to take the time necessary to help litigate this case.

52. Plaintiff has no conflicts that will disallow her to fairly and adequately represent and protect the interests of the members of the Class.

53. Counsel who represent Plaintiff are competent and experienced in litigating large employment class actions.

54. Specifically, David Mara, Esq. and Matthew Crawford, Esq. are California lawyers in good standing.

55. Counsel who represent Plaintiff are competent and experienced in litigating large employment class actions.

56. The Mara Law Firm has been named class counsel in numerous cases and Mr. Mara's practice is primarily focused on representing classes, large and small, on the basis of California Labor Code and IWC Wage Order Violations similar to those alleged herein. Mr. Mara is frequently called upon to and does author amicus briefs on behalf of the Consumer Attorneys of California on cases in the appellate courts and Supreme Court of California involving important issues relating to those alleged herein.

57. Mara Law Firm, PC has the resources to take this case to trial and judgment, if necessary.

58. Mara Law Firm, PC has the experience, ability, and ways and means to vigorously prosecute this case.

E. Superiority of Class Action.

59. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is

entitled to recovery by reason of Defendants' and/or DOES' illegal policies and/or practices of failing to pay all straight time and minimum wages owed, failing to permit or authorize rest periods, failing to provide meal periods, knowingly and intentionally failing to comply with wage statement requirements, and failing to pay all wages due at termination.

60. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

61. Because such common questions predominate over any individualized issues and/or questions affecting only individual members, class resolution is superior to other methods for fair and efficient adjudication.

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Failure to Pay All Straight Time Wages

62. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

63. Defendants and/or DOES have had a continuous policy of not paying Plaintiff and those similarly situated for all hours worked.

64. It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages. Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Labor Code section 1197 prohibits the payment of less than the minimum wage. Labor Code section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized

1 in writing by the employee for specified purposes that do not have the effect of reducing
2 the agreed upon wage.

3 65. Plaintiff and those similarly situated Class members were employed by Defendants and/or
4 DOES at all relevant times. Defendants and/or DOES were required to compensate Plaintiff
5 for all hours worked and were prohibited from making deductions that had the effect of
6 reducing the agreed upon wage.

7 66. Defendants and/or DOES have a continuous policy of not paying Plaintiff and those
8 similarly situated Class members for all hours worked under Defendants' and/or DOES'
9 piece-rate pay system. California Labor Code § 226.2, requires employees to be
10 "compensated for rest and recovery periods and other nonproductive time separate from
11 any piece-rate compensation." Defendants and/or DOES pay Plaintiff and Class Members
12 via a piece-rate pay system which compensated them based on miles driven, as opposed to
13 an hourly rate. However, Defendants' and/or DOES' piece-rate does not separately and
14 directly compensate Plaintiff and Class Members for the substantial amount of non-driving
15 work that Defendants and/or DOES require, including, but not limited to, verifying their
16 loads with dispatch prior to their shifts, picking up paperwork, performing pre-and post-
17 trip inspections, waiting at the terminal for trucks to be loaded, waiting at a customer's
18 location, doing drop and hooks, or having to stop and wait at CHP inspections.

19 67. Further, Defendants and/or DOES have a continuous policy of not paying Plaintiff and
20 Class Members for all hours worked, as it fails to pay for all the time Plaintiff and Class
21 Members were subject to Defendants' and/or DOES' compensable control throughout the
22 workday. This includes, but is not limited to, time spent working through meal periods to
23 satisfy their demanding work duties imposed by Defendants and/or DOES, time spent in
24 the sleeper berth, and/or any other time in the day when Plaintiff and Class Members were
25 performing work tasks, subject to the control of Defendants and/or DOES, and/or otherwise
26 had work duties.

27 68. Thus, Defendants and/or DOES shave/steal earned wages from Plaintiff and each and every
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1 member of the Class each and every day they work. Defendants and/or DOES have not
2 paid Plaintiff and the members of the Class all straight time wages owed.

3 69. Plaintiff and the Class members are informed and believe and thereon allege that as a direct
4 result of Defendants' and/or DOES' uniform policies and/or practices, Plaintiff and the
5 Class members have suffered, and continue to suffer, substantial unpaid wages, and lost
6 interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants
7 and/or DOES to fully perform their obligations under state law, all to their respective
8 damage in amounts, according to proof at trial.

9 70. As a direct result of Defendants' and/or DOES' policy of illegal wage theft, Plaintiff and
10 those similarly situated have been damaged in an amount to be proven at trial.

11 71. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
12 below.

13 **SECOND CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Failure**
14 **to Provide Meal Periods, or Compensation in Lieu Thereof (Lab. Code §§ 226.7, 512,**
15 **IWC Wage Order No. 9-2001(11); Cal. Code Regs., tit. 8, § 11090)**

16 72. Plaintiff and those similarly situated Class members hereby incorporate by reference each
17 and every other paragraph in this Complaint herein as if fully plead.

18 73. Under California Labor Code section 512 and IWC Wage Order No. 9, no employer shall
19 employ any person for a work period of more than five (5) hours without providing a meal
20 period of not less than thirty (30) minutes. During this meal periods of not less than thirty
21 (30) minutes, the employee is to be completely free of the employer's control and must not
22 perform any work for the employer. If the employee does perform work for the employer
23 during the thirty (30) minute meal period, the employee has not been provided a meal
24 period in accordance with the law. Also, the employee is to be compensated for any work
25 performed during the thirty (30) minute meal period.

26 74. In addition, an employer may not employ an employee for a work period of more than ten
27 (10) hours per day without providing the employee with another meal period of less than
28 thirty (30) minutes.

- 1 75. Under California Labor Code section 226.7, if the employer does not provide an employee
2 a meal period in accordance with the above requirements, the employer shall pay the
3 employee one (1) hour of pay at the employee's regular rate of compensation for each
4 workday that the meal period is not provided.
- 5 76. At all relevant times, Defendants and/or DOES maintained policies and practices that failed
6 to provide Plaintiff and Class Members with duty-free meal periods and/or providing
7 compensation in lieu thereof. Specifically, Plaintiff and Class Members are required to
8 work through meal periods to satisfy the demanding work duties imposed by Defendants
9 and/or DOES, thereby denying them their right to be completely free from employer
10 control under California law.
- 11 77. Defendants and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods
12 to Class Members who worked for work periods of more than five (5) consecutive hours
13 before the end of the fifth hour of work. As such, Plaintiff and Class Members were
14 required to work over five (5) consecutive hours at a time without being provided a thirty
15 (30) minute uninterrupted meal period within that time.
- 16 78. Defendants and/or DOES failed to provide second thirty (30) minute, uninterrupted meal
17 periods to Class Members who worked for work periods of more than ten (10) consecutive
18 hours before the end of the tenth hour of work. As such, Plaintiff and Class Members were
19 required to work over ten (10) consecutive hours at a time without being provided a second
20 thirty (30) minute uninterrupted meal period within that time.
- 21 79. Defendants and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods
22 to Plaintiff and Class Members for every five (5) continuous hours worked.
- 23 80. Defendants' and/or DOES' business model is such that Plaintiff and Class Members were
24 assigned too much work and insufficient help due to chronic understaffing to be able to
25 take meal periods. Thus, Plaintiff and Class Members are not able to take meal periods.
- 26 81. Throughout the statutory period, Defendants and/or DOES had a pattern and practice of
27 assigning too much work to be completed in too short of time frames, resulting in Plaintiff
28

- 1 and those similarly situated not being able to take meal periods.
- 2 82. Failing to provide compensation for such unprovided or improperly provided meal periods,
3 as alleged above, Defendants and/or DOES willfully violated the provisions of Labor Code
4 sections 226.7, 512, and IWC Wage Order No. 9.
- 5 83. As a result of the unlawful acts of Defendants and/or DOES, Plaintiff and the Class he
6 seeks to represent have been deprived of premium wages, in amounts to be determined at
7 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon,
8 attorneys' fees and costs, pursuant to Labor Code section 226.7, and IWC Wage Order No.
9 9-2001. Plaintiff and the Class he seeks to represent did not willfully waive their right to
10 take meal periods through mutual consent with Defendants and/or DOES.
- 11 84. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
12 below.
- 13 **THIRD CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Failure**
14 **to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 9-**
15 **2001(12); Cal. Code Regs. Title 8 § 11090)**
- 16 85. Plaintiff and those similarly situated Class members hereby incorporate by reference each
17 and every other paragraph in this Complaint herein, as if fully plead.
- 18 86. Under IWC Wage Order No. 9, every employer shall authorize and permit all employees
19 to take rest periods, "[t]he authorized rest period time shall be based on the total hours
20 worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major
21 fraction thereof." IWC Wage Order 9-2001(12). The time spent on rest periods "shall be
22 counted as hours worked for which there shall be no deduction from wages." *Id.*
- 23 87. Under California Labor Code section 226.7, if the employer does not provide an employee
24 a rest period in accordance with the above requirements, the employer shall pay the
25 employee one (1) hour of pay at the employee's regular rate of compensation for each
26 workday that the rest period is not provided.
- 27 88. At all relevant times, Defendants and/or DOES maintained policies and practices that failed
28 to authorize and/or permit rest period time based upon the total hours worked daily at the

- 1 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
- 2 89. As a matter of policy and practice, Defendants and/or DOES do not authorize and permit
3 employees to take net ten-minute rest breaks every four hours or major fraction thereof.
4 Plaintiff and Class Members are required to work through rest periods to satisfy the
5 demanding work duties imposed by Defendants and/or DOES, thereby denying them their
6 right to be completely free from employer control under California law.
- 7 90. Further, California Labor Code § 226.2, requires employees to be “compensated for rest
8 and recovery periods and other nonproductive time separate from any piece-rate
9 compensation.” Defendants’ and/or DOES’ piece-rate compensation system is unlawful,
10 as it fails to properly compensate Plaintiff and Class Members for paid rest periods.
- 11 91. In the alternative, Defendants’ and/or DOES’ business model was such that Plaintiff and
12 Class Members were assigned too much work with insufficient help due to chronic
13 understaffing whereby Plaintiff and the Class had to work through their rest periods.
- 14 92. Throughout the statutory period, Defendants and/or DOES had a pattern and practice of
15 assigning too much work to be completed in too short of time frames, resulting in Plaintiff
16 and those similarly situated not being able to take rest periods.
- 17 93. As a result of the unlawful acts of Defendants and/or DOES, Plaintiff and the Class he
18 seeks to represent have been deprived of premium wages, in amounts to be determined at
19 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon,
20 attorneys’ fees and costs, pursuant to Labor Code section 226.7, and IWC Wage Order No.
21 9-2001.
- 22 94. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
23 below.
- 24 **FOURTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES:**
25 **Knowing and Intentional Failure to Comply with Itemized Employee Wage**
26 **Statement Provisions (Lab. Code §§ 226, 1174, 1175; IWC Wage Order No. 9; Cal.**
27 **Code Regs., Title 8, § 11040)**
28 95. Plaintiff and those similarly situated Class members hereby incorporate by reference each
and every other paragraph in this Complaint herein as if fully plead.

- 1 96. Labor Code section 226 subdivision (a) requires Defendants and/or DOES to, inter alia,
2 itemize in wage statements and accurately report the total hours worked and total wages
3 earned. Defendants and/or DOES have knowingly and intentionally failed to comply with
4 Labor Code section 226, subdivision (a), on each and every wage statement provided to
5 Plaintiff and members of the proposed Class.
- 6 97. Labor Code section 1174 requires Defendants and/or DOES to maintain and preserve, in a
7 centralized location, records showing the daily hours worked by and the wages paid to its
8 employees. Defendants and/or DOES have knowingly and intentionally failed to comply
9 with Labor Code section 1174. The failure of Defendants and/or DOES, and each of them,
10 to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.
- 11 98. Defendants and/or DOES failed to maintain accurate time records - as required by IWC
12 Wage Order No. 9, and Cal. Code Regs., Title 8 section 11090 - showing, among other
13 things, when the employee begins and ends each work period, the total daily hours worked
14 in itemized wage statements, total wages, bonuses and/or incentives earned, and all
15 deductions made.
- 16 99. Defendants and/or DOES have knowingly and intentionally failed to provide Plaintiff and
17 the Class members with accurate itemized wage statements which show: “(1) gross wages
18 earned, (2) total hours worked by the employee... (3) the number of piece-rate units earned
19 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
20 deductions, provided that all deductions made on written orders of the employee may be
21 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
22 period for which the employee is paid, (7) the name of the employee and only the last four
23 digits of his or her social security number or an employee identification number other than
24 the social security number, (8) the name and address of the legal entity that is the employer
25 . . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding
26 number of hours worked at each hourly rate by the employee[.]” Labor Code section
27 226(a).
28

- 1 100. Defendants and/or DOES have knowingly and intentionally failed to comply with Cal. Lab.
2 Code § 226(a). on every wage statement provided to Plaintiff and Class Members.
- 3 101. Defendants and/or DOES knowingly and intentionally failed to accurately itemize the gross
4 wages earned on Plaintiff's and Class Members' wage statements.
- 5 102. In every pay period during the period of the relevant statute of limitations, Defendants
6 and/or DOES knowingly and intentionally did not itemize the total hours worked on wage
7 statements as Cal. Lab. Code § 226 (a), requires. In every pay period during the period of
8 the relevant statute of limitations, Defendants and/or DOES knowingly and intentionally
9 did not include the total hours worked and all applicable hourly rates in effect on wage
10 statements. As Defendants' and/or DOES' piece-rate plan fails to compensate for non-
11 driving work, Plaintiff's and Class Members' wage statements should have reflected these
12 additional hours worked and their corresponding rates. Defendants and/or DOES therefore
13 knowingly and intentionally failed to itemize the total hours worked and their
14 corresponding rates on Plaintiff's and Class Members' wage statements.
- 15 103. In every pay period during the period of the relevant statute of limitations, Defendants
16 and/or DOES knowingly and intentionally did not itemize the number of piece-rate units
17 earned and any applicable piece rate on Plaintiff's and Class Members' wage statements.
18 As a result, Plaintiff and Class Members are unable to determine from the wage statement
19 how many miles they drove in the pay period or how much they were being paid per mile.
- 20 104. In every pay period during the period of the relevant statute of limitations, Defendants
21 and/or DOES knowingly and intentionally did not include Plaintiff's and Class Members'
22 net wages on wage statements and failed to itemize this amount accurately. In every pay
23 period during the period of the relevant statute of limitations, Defendants and/or DOES
24 knowingly and intentionally did not include all deductions on Plaintiff's and Class
25 Members' wage statements and/or failed to itemize deductions accurately.
- 26 105. Throughout the statutory period, as a result of the knowing and intentional failure by
27 Defendants and/or DOES to comply with itemized employee wage statement provisions,
28

1 Plaintiff and Class Members have been able to reconstruct only a reasonable estimate of
2 the hours worked and have, therefore, not received full compensation

3 106. As a direct result of Defendants and/or DOES unlawful acts, Plaintiff and the Class he
4 intends to represent have been damaged and are entitled to recovery of such amounts, plus
5 interest thereon, attorneys' fees, and costs, pursuant to Labor Code section 226.

6 107. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
7 below.

8 **FIFTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Failure to**
9 **Pay All Wages Due at the Time of Termination from Employment (Lab. Code §§ 201-**
10 **203)**

11 108. Plaintiff and those similarly situated Class members hereby incorporate by reference each
12 and every other paragraph in this Complaint herein as if fully plead.

13 109. Plaintiff terminated his employment with Defendants and/or DOES.

14 110. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendants
15 and/or DOES, Defendants and/or DOES did not timely pay him his straight time wages
16 owed at the time of his termination.

17 111. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendants
18 and/or DOES, Defendants and/or DOES did not timely pay his meal and/or rest period
19 premiums owed at the time of his termination.

20 112. Numerous members of the Class are no longer employed by Defendants and/or DOES.
21 They were either fired or quit Defendants' and/or DOES' employ. Defendants and/or
22 DOES did not pay all timely wages owed at the time of their termination. Defendants and/or
23 DOES did not pay all premium wages owed at the time of their termination.

24 113. Labor Code section 203 provides that, if an employer willfully fails to pay, without
25 abatement or reduction, in accordance with Labor Code sections 201, 201.5, 202 and 205.5,
26 any wages of an employee who is discharged or who quits, the wages of the employee shall
27 continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or
28 until an action therefore is commenced.

1 114. Defendants and/or DOES failed to pay Plaintiff a sum certain at the time of his termination
2 or within seventy-two (72) hours of her resignation, and have failed to pay those sums for
3 thirty (30) days thereafter. Pursuant to the provisions of Labor Code section 203, Plaintiff
4 is entitled to a penalty in the amount of his daily wage, multiplied by thirty (30) days.

5 115. When Plaintiff and those members of the Class who are former employees of Defendants
6 /or DOES separated from Defendants' and/or DOES' employ, Defendants and/or DOES
7 willfully failed to pay all straight time wages, meal period premiums, and/or rest period
8 premiums owed at the time of termination.

9 116. Defendants and/or DOES failure to pay said wages to Plaintiffs and members of the Class
10 he seeks to represent, was willful in that Defendants and/or DOES and each of them knew
11 the wages to be due, but failed to pay them.

12 117. As a consequence of Defendants' and/or DOES' willful conduct in not paying wages owed
13 at the time of separation from employment, Plaintiff and members of the proposed Class
14 are entitled to thirty (30) days' worth of wages as a penalty under Labor Code section 203,
15 together with interest thereon and attorneys' fees and costs.

16 118. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
17 below.

18 **SIXTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation**
19 **of Unfair Competition Law (California Bus. & Prof. Code, § 17200, et seq.)**

20 119. Plaintiff and those similarly situated Class members hereby incorporate by reference each
21 and every other paragraph in this Complaint herein as if fully plead.

22 120. Defendants and/or DOES failure to pay all straight time wages earned, failure to provide
23 compliant meal and/or rest breaks and/or compensation in lieu thereof, failure to itemize
24 and keep accurate records, and failure to pay all wages due at time of termination, as alleged
25 herein, constitutes unlawful activity prohibited by California Business and Professions
26 Code section 17200, et seq.

27 121. The actions of Defendants and/or DOES in failing to pay Plaintiff and members of the
28 proposed Class in a lawful manner, as alleged herein, constitutes false, unfair, fraudulent

1 and deceptive business practices, within the meaning of California Business and
2 Professions Code section 17200, et seq.

3 122. Plaintiff is entitled to an injunction and other equitable relief against such unlawful
4 practices in order to prevent future damage, for which there is no adequate remedy at law,
5 and to avoid a multiplicity of lawsuits. Plaintiff brings this cause individually and as
6 members of the general public actually harmed and as a representative of all others subject
7 to Defendants and/or DOES unlawful acts and practices.

8 123. As a result of their unlawful acts, Defendants and/or DOES have reaped and continue to
9 reap unfair benefits at the expense of Plaintiff and the proposed Class he seeks to represent.
10 Defendants and/or DOES should be enjoined from this activity and made to disgorge these
11 ill-gotten gains and restore Plaintiff and the members of the proposed Class pursuant to
12 Business and Professions Code section 17203. Plaintiff is informed and believes, and
13 thereon alleges, that Defendants and/or DOES are unjustly enriched through their policy
14 of not all wages owed to Plaintiff and members of the proposed Class.

15 124. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the
16 proposed class are prejudiced by Defendants' and/or DOES' unfair trade practices.

17 125. As a direct and proximate result of the unfair business practices of Defendants and/or
18 DOES, and each of them, Plaintiff, individually and on behalf of all employees similarly
19 situated, are entitled to equitable and injunctive relief, including full restitution and/or
20 disgorgement of all wages and premium pay which have been unlawfully withheld from
21 Plaintiff and members of the proposed Class as a result of the business acts and practices
22 described herein and enjoining Defendants and/or DOES from engaging in the practices
23 described herein.

24 126. The illegal conduct alleged herein is continuing, and there is no indication that Defendants
25 and/or DOES will cease and desist from such activity in the future. Plaintiff alleges that if
26 Defendants and/or DOES are not enjoined from the conduct set forth in this Complaint,
27 they will continue the unlawful activity discussed herein.
28

1 127. Plaintiff further requests that the Court issue a preliminary and permanent injunction
2 prohibiting Defendants and/or DOES from continuing to not pay Plaintiff and the members
3 of the proposed Class the wages owed to them as discussed herein.

4 128. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
5 below.

6 **V. PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment as follows:

- 8 1. That the Court determine that this action may be maintained as a class action;
- 9 2. For compensatory damages, in an amount according to proof at trial, with interest
10 thereon;
- 11 3. For economic and/or special damages in an amount according to proof with interest
12 thereon;
- 13 4. For unpaid straight time wages, in an amount according to proof at trial, with
14 interest thereon;
- 15 5. For compensation for all time worked;
- 16 6. For compensation for not being provided paid rest breaks;
- 17 7. For compensation for not being provided paid meal periods;
- 18 8. For damages and/or monies owed for failure to comply with itemized employee
19 wage statement provisions;
- 20 9. For all waiting time penalties owed;
- 21 10. That Defendants be found to have engaged in unfair competition in violation of
22 sections 17200 et seq. of the California Business and Professions Code;
- 23 11. That Defendants be ordered and enjoined to make restitution to the Class due to
24 their unfair competition, including disgorgement of their wrongfully withheld
25 wages pursuant to California Business and Professions Code sections 17203 and
26 17204;
- 27 12. That an order of specific performance of all penalties owed be issued under
28

Business and Professions Code sections 17202;

13. That Defendants be enjoined from continuing the illegal course of conduct, alleged herein;

14. That Defendants further be enjoined to cease and desist from unfair competition in violation of section 17200 et seq. of the California Business and Professions Code;

15. That Defendants be enjoined from further acts of restraint of trade or unfair competition;

16. For attorneys' fees;

17. For liquidated damages;

18. For interest accrued to date;

19. For costs of suit and expenses incurred herein; and

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

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

Dated: September 13, 2022

MARA LAW FIRM, PC



David Mara, Esq.

Matthew Crawford, Esq.

Representing Plaintiff ROBERT MARK-WATERHOUSE on behalf of himself, all others similarly situated, and on behalf of the general public