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County of San Joaquin
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STK-CV-UOE-2023-0012580

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF SAN JOAQUIN
14 UNLIMITED JURISDICTION

15 LARRY JENKINS, an individual,

16 Plaintiff,

17 v.

18 SUNVIEW LOGISTICS INC., a
19 corporation; SPEED INTERMODAL, a
20 business entity, form unknown; and
21 DOES 1-25, inclusive,

22 Defendants.

Case No.:

CLASS ACTION

Complaint for Wage and Hour Violations

Jury Trial Demanded

1 Plaintiff is informed and believes and thereon alleges as follows:
2

3 **PARTIES**

4 1. Plaintiff LARRY JENKINS is a competent adult.

5 2. Defendant SUNVIEW LOGISTICS INC., a general stock corporation formed in
6 California, is in the business of hauling freight by truck. Defendant SPEED INTERMODAL,
7 a business entity of unknown form, is also in the business of hauling freight by truck.

8 3. Plaintiff is presently unaware of the true names and capacities of the persons named
9 as Does 1 through 25, and therefore sues them by these fictitious names. Plaintiff will amend
10 this complaint to assert their true names and capacities when these are ascertained. Except as
11 otherwise alleged herein, each of the entities sued as Does 1 through 25 was responsible for
12 the damages to Plaintiff as alleged herein.
13

14 **VENUE**

15 4. Plaintiff was a truck driver employed by Defendants. He was dispatched out of
16 Defendants' facilities located in Stockton, California.
17

18 **FACTUAL BACKGROUND**

19 5. Plaintiff was employed by Defendants from approximately March 2022 until
20 approximately February 2, 2023.
21

22 **CLASS ALLEGATIONS**

23 6. The class consists of all truck drivers employed by Defendants from the date four
24 years before the filing of this Complaint until the commencement of trial.

25 7. The class is readily ascertainable through Defendants' employment records.

26 8. The number of class members is too great to make joinder of all practicable.

27 9. The claims that Plaintiff makes in this lawsuit are typical of the claims made by the
28 other class members.

1 10. Plaintiff can adequately represent the interests of the other class members. He
2 does not have any conflict with any other class member, and his counsel is knowledgeable
3 and experienced in prosecuting wage and hour class actions.

4 11. The legal and factual issues that are common to the class predominate over any
5 individual issues that must be litigated.

6 12. Resolving the common issues in this class action lawsuit would provide
7 substantial efficiencies for the parties and the court in the management of the claims of the
8 class members and, through the vigorous enforcement of the State's wage and hour laws,
9 prevent the failure of justice that would occur if these claims were never litigated, which for
10 the vast majority of the class members is the practical alternative to a class procedure. A
11 class action lawsuit would be superior to any other procedure for resolving these claims.

12
13 **FIRST CAUSE OF ACTION**
14 **Breach of Contract**
15 **Failure to Pay for All Miles Driven**

16 13. Plaintiff incorporates herein the foregoing paragraphs.

17 14. Defendants employed Plaintiff and the other class members primarily on a piece-
18 rate basis, generally at the rate of a certain amount per mile.

19 15. Defendants frequently failed to pay Plaintiff and other class members the full
20 amount due for the miles driven.

21
22 **SECOND CAUSE OF ACTION**
23 **Minimum Wages – Nonproductive Time**
24 **Labor Code Sec. 226.2(a)(1); Labor Code Sec. 1182.12(b)(1); Labor Code Sec. 1194(a);**
25 **Labor Code Sec. 1197**

26 16. Plaintiff incorporates herein the foregoing paragraphs.

27 17. Defendants frequently failed to compensate Plaintiff and other class members for
28 “other nonproductive time,” that is, for time under Defendants’ control, exclusive of rest and

1 recovery periods, not directly related to the activity being compensated on a piece-rate basis.
2 For example, frequently Defendants would not pay for the time class members spent waiting
3 for a customer's personnel to unload or load a trailer, and frequently Defendants would not
4 pay for the time drivers spent waiting for a loaded trailer to become available for hauling.

5 6 **THIRD CAUSE OF ACTION**

7 **Failure to Provide Accurate Pay Stubs**

8 **Labor Code Sec. 226(a); Labor Code Sec. 226(e); Labor Code Sec. 226.2(a)(2)(B)**

9 18. Plaintiff incorporates herein the foregoing paragraphs.

10 19. The itemized wage statements provided by Defendants to Plaintiff and the other
11 class members on their regular paydays generally failed to accurately show gross wages
12 earned, total hours worked, the number of piece-rate units earned and any applicable piece
13 rate, net wages earned, all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate, or the total hours of "other
15 nonproductive time," the rate of compensation, and the gross wages paid for that time during
16 the pay period.

17
18 20. Defendants knew that they were required by law to furnish accurate and complete
19 itemized statements in writing to Plaintiff and other class members on the regular paydays.
20 Defendants intentionally failed to furnish these accurate and complete statements to Plaintiff
21 and the other class members.

22
23 21. Plaintiff and the other class members suffered injury from Defendants' failure to
24 provide accurate itemized statements in writing on the regular paydays. Plaintiff and other
25 drivers could not promptly and easily determine the amount of wages earned or whether all
26 wages due had been paid. Plaintiff and other drivers must go to the difficulty and bear the
27
28

1 expense of reconstructing time and pay records to make computations to analyze the amounts
2 of wages that are due.

3
4 **FOURTH CAUSE OF ACTION**
5 **Waiting Time Penalties**
6 **Cal. Labor Code Sec. 201, 202, 203(a)**

7 22. Plaintiff incorporates herein the foregoing paragraphs.

8 23. Because Defendants failed to pay Plaintiff and other class members all wages due
9 as described in paragraphs 15 and 17, Defendants willfully failed to pay Plaintiff and other
10 former class members all wages due upon the terminations of their employments or within 72
11 hours of their quitting their employments. To date, Defendants have not paid all wages due.

12
13 **FIFTH CAUSE OF ACTION**
14 **Unfair Competition Law**
15 **Cal. Business & Professions Code Sec. 17200 *et seq.***

16 24. Plaintiff incorporates herein the foregoing paragraphs.

17
18 **SIXTH CAUSE OF ACTION**
19 **Cell Phone Reimbursement**
20 **Labor Code Sec. 2802**

21 25. Plaintiff incorporates herein the foregoing paragraphs.

22 26. Although Defendants required Plaintiff and other drivers to use their personal cell
23 phones for business communications, they failed to reimburse the drivers for this necessary
24 expense

SEVENTH CAUSE OF ACTION
PAGA Penalties
Labor Code Sec. 2699

27. Plaintiff incorporates herein the foregoing paragraphs.

28. Defendants employed Plaintiff and other drivers primarily on a piece-rate basis, generally at the rate of a certain amount per mile. For more than the past year, Defendants have often failed to pay Plaintiff and the other drivers for “other nonproductive time,” that is, for time under Defendants’ control, exclusive of rest and recovery periods, not directly related to the activity being compensated on a piece-rate basis. These failures violated, and continue to violate, Labor Code Sections 226.2(a)(1), 1182.12(b), and 1197.

29. Because Defendants failed to pay Plaintiff and other drivers the wages described in paragraphs 15, 17, and 28, they also failed to pay them all wages due on their regular weekly paydays. These failures violated, and continue to violate, Labor Code Sections 204, 204b and 210(a).

30. Because Defendants failed to pay Plaintiff and other drivers the wages described in paragraphs 15, 17, and 28, they also failed to furnish them on their regular paydays with an accurate itemized statement in writing showing gross wages earned and net wages earned. Moreover, these itemized statements did not accurately show gross wages and net wages earned. The itemized statements generally failed to show total hours worked. The itemized statements generally failed to show both the number of piece-rate units earned and any applicable piece rate. The itemized statements generally failed to show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. The itemized statements generally failed to show the total hours of “other nonproductive time,” the rate of compensation, and the gross wages paid for that time during

1 the pay period. These failures violated, and continue to violate, Labor Code Sections 226(a),
2 226.3, and 226.2(a)(2)(B).

3
4 31. Because Defendants failed to pay Plaintiff and other drivers the wages described
5 in paragraphs 15, 17, and 28, they also failed to pay them all wages due upon the termination
6 of their employments or within 72 hours after they quit their employments. These failures
7 violated, and continue to violate, Labor Code Sections 201(a) and 202(a).

8
9 32. The failure of Defendants to pay Plaintiff and other drivers the wages due upon
10 the termination of their employments, of within 72 hours after they quit their employments, as
11 described in paragraph 31, was willful. In addition, Defendants also failed to pay Plaintiff
12 and the other class members the penalty-wages that accrued for 30 days after these
13 separations. These failures violated, and continue to violate, Labor Code Section 203(a).

14
15 33. Although Defendants required Plaintiff and other drivers to use their personal cell
16 phones for business communications, they failed to reimburse them for this necessary
17 expense. These failures violated, and continue to violate, Labor Code Section 2802(a).

18
19 34. Defendants failed to keep accurate records showing when Plaintiff and other
20 drivers began and ended each work period. Defendants failed to keep accurate records
21 showing the total wages earned by Plaintiff and other drivers each pay period. Defendants
22 failed to keep accurate records showing the total hours worked by Plaintiff and other drivers.
23 Defendants failed to keep accurate records showing the applicable rates of pay earned by
24 Plaintiff and other drivers. Defendants failed to provide Plaintiff and other drivers with their
25 piece-rate formulas. Defendants failed to keep accurate production records of Plaintiff and
26 other drivers. These failures violated, and continue to violate, Labor Code Section 1198.

27
28 35. On July 20, 2023, Plaintiff served Defendants with a written request for a copy of

1 the payroll records that Defendants kept on Plaintiff pursuant to Labor Code Section 226(a),
2 (b), and (c). Although more than 21 calendar days have passed since this request, Defendants
3 have not provided these records.
4

5 36. Defendants failed to provide Plaintiff and other drivers on their regular paydays
6 with written notices setting forth the amount of paid sick leave available or the paid time off
7 leave provided in lieu of sick leave. These failures violated, and continue to violate, Labor
8 Code Section 246(i).
9

10 37. On July 20, 2023, Plaintiff served Defendants with a written request for a copy of
11 any instrument signed by him relating to the obtaining or holding of employment.
12 Defendants have failed to provide a copy of any such instrument to Plaintiff. This failure
13 violated Labor Code Section 432.
14

15 38. On July 20, 2023, Plaintiff served Defendants with a written request for the
16 contents of his personnel records. Although more than 30 days have passed since this
17 request, Defendants have not provided these records. These failures violated Labor Code
18 Section 1198.5.
19

20 39. At the time of its hiring of Plaintiff and other drivers, Defendants did not provide
21 them with written notice containing the information required by Labor Code Section
22 2810.5(a)(1)(A)-(I). In addition, Defendants did not notify Plaintiff and other drivers of any
23 changes in the information that should have been contained in these notices within seven days
24 of the time of any changes. These failures violated, and continue to violate, Labor Code
25 Section 2810.5
26

27 40. On or about September 11, 2023, Plaintiff gave written notice by online filing to
28 the California Labor and Workforce Development Agency (LWDA) of the specific

1 provisions of the Labor Code that Defendants allegedly violated, and this notice included the
2 facts and theories supporting the alleged violations. On or about September 11, 2023,
3 Plaintiff gave written notice by certified mail to Defendant SUNVIEW LOGISTICS INC. of
4 the specific provisions of the Labor Code that Defendants allegedly violated, and this notice
5 included the facts and theories supporting the alleged violations. On or about September 11,
6 2023, Plaintiff sent written notice by certified mail to Defendant SPEED INTERMODAL of
7 the specific provisions of the Labor Code that Defendants allegedly violations, and this notice
8 included the facts and theories supporting the alleged violations. Although this last certified
9 mail was sent to the address that SPEED INTERMODAL listed on the W-2 form that SPEED
10 INTERMODAL provided to Plaintiff, this certified mail came back undelivered. Although
11 more than 65 calendar days have passed since the postmark date of the notices given to the
12 Defendants, the LWDA has not notified the Plaintiffs whether it intends to investigate.
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17

18 PRAYER

19 WHEREFORE, Plaintiff prays for judgment as follows:

- 20 1. Damages in an amount to be proved at trial;
- 21 2. Liquidated damages on the second cause of action pursuant to Cal. Labor Code
22 Sec. 1194.2(a);
- 23 3. Penalty damages on the third cause of action pursuant to Cal. Labor Code Sec.
24 226(e);
- 25 4. Waiting time penalties on the fourth cause of action pursuant to Cal. Labor Code
26 Sec. 203(a);
- 27 5. Restitution of wages on the fifth cause of action;
- 28 6. Civil penalties on the seventh cause of action pursuant to Cal. Labor Code Sec.

- 1 2699;
2 7. Declaratory relief;
3 8. Pre-judgment interest;
4 9. Costs of suit, including expert fees;
5 10. Reasonable attorney's fees; and
6 11. All other appropriate remedies.

7
8
9 Dated: November 22, 2023

AIMAN-SMITH & MARCY
A PROFESSIONAL CORPORATION

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11 
12 Joseph Clapp, Esq.
13 Attorneys for Plaintiff

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15
16 **Demand for Jury Trial**

17 Plaintiff hereby demands trial by jury.

18
19 Dated: November 22, 2023

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A PROFESSIONAL CORPORATION

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21 
22 Joseph Clapp, Esq.
23 Attorneys for Plaintiff
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