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7 *Attorneys for Plaintiffs and the Putative Class*

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**

11 DIANNA MORRISON AND MICHAEL  
LOPER, on behalf of themselves and all  
12 others similarly situated;

13 Plaintiffs,

14 vs.

15 MARTEN TRANSPORT, LTD, and  
16 DOES 1-20, inclusive;

17 Defendants,

Case No. **23CV029816**

**CLASS ACTION COMPLAINT:**

- (1) Failure to Pay for All Hours Worked (Labor Code § 204);
- (2) Failure to Pay Minimum Wages (Labor Code §§ 1182.11, 1182.12, 1194, 1197, and 1197.1);
- (3) Failure to Provide Timely and Accurate Itemized Wage Statements (Labor Code § 226, 226.3 and 226.6);
- (4) Waiting Time Penalties (Cal. Lab. Code §§ 201-203);
- (5) Unlawful Business Practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*)

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Dianna Morrison, and Michael Loper (“Plaintiffs”) bring this action on behalf  
2 of themselves, and all other similarly situated against Marten Transport, LTD any subsidiaries or  
3 affiliated companies (hereinafter, along with DOES 1 through 20, collectively referred to as  
4 “Marten” or “Defendants”), and allege as follows:

5 **INTRODUCTION**

6 **1.** This is a class and collective action on behalf of Plaintiffs and other similarly  
7 situated individuals who have worked for Marten Transport, LTD as over-the-road truck drivers  
8 in California.

9 **2.** Plaintiffs bring this case to address Defendant’s systematic denial of minimum  
10 wage, among other violations. Plaintiffs state claims under California Labor Code; and  
11 California Department of Industrial Relations, Industrial Welfare Commission (IWC) wage  
12 orders.

13 **3.** Marten has employed Plaintiffs and hundreds of other similarly situated  
14 employees in California as over-the-road truck drivers (collectively “Drivers” and/or “the  
15 Class”). The Drivers work away from home for days and often weeks on end hauling freight in  
16 long-haul semis, either alone, or as part of a two-driver team.

17 **4.** During their tours of duty transporting freight for Marten, Drivers live on the  
18 truck and attempt to rest in the truck’s cramped “sleeper berth,” a small space equipped with a  
19 bunk bed in the truck’s cab, but without a restroom or sink.

20 **5.** The Drivers work day and night, transporting loads up to and often over a  
21 thousand miles. They spend days and often weeks away from home as part of their regular job  
22 duties. To maximize productivity and profits, Marten works to keep the trucks moving as much  
23 as possible. The more Marten maximizes its drivers’ work hours, the more loads its trucks can  
24 transport in a shorter amount of time. Not surprisingly, the Department of Transportation (DOT)  
25 has observed that over-the-road truck drivers like Marten’s “work some of the longest hours  
26 known in this country.” *See* Notice of Proposed Rulemaking; Request for Comments,  
27 Department of Transportation, Federal Motor Carrier Safety Administration, Hours of Service of  
28 Drivers; Driver Rest and Sleep for Safe Operations, 2000 WL 517560, 65 FR 25540-01, at

1 25548.

2 **6.** Plaintiffs Dianna Morrison and Michael Loper worked for Marten as over-the-  
3 road drivers.

4 **7.** When they are not driving, Plaintiffs and the other Drivers have remained  
5 responsible for the security of the truck and the load and restricted by Marten’s policies in terms  
6 of where they can go and what they can do. Between the hours per day spent driving, performing  
7 non-driving tasks, and remaining under Marten’s control while confined to the truck’s sleeper  
8 berth and the immediate area around the truck, unable to use the time effectively for their own  
9 purposes, the Plaintiffs and other similarly situated Drivers regularly worked more than 100  
10 hours per week.

11 **8.** There are a host of reasons related to routing, safety, layover requirements,  
12 customer concerns and other circumstances that compel Drivers to stop driving or doing  
13 productive work during their tours of duty. Drivers have little or any control over most of them.

14 **9.** For instance, the DOT’s “hours of service” safety regulations require Drivers to  
15 stop the truck for safety purposes and take a layover of at least 10 hours once they reach daily  
16 limits on drive and other work time. By way of background, the Drivers’ time is logged in the  
17 truck’s electronic system during each hour of every 24-hour period as one of either: “Driving,”  
18 “On-duty, not driving,” “Off-duty,” or “Sleeper berth.” These designations correspond to the  
19 duty statuses set forth in the DOT “hours of service” regulations, to which the Drivers must  
20 adhere. Under the regulations, Drivers who have already been logged as “Driving” for 11 hours,  
21 or after being logged as “On duty, not driving” or “Driving” for 14 hours, must log at least 10  
22 consecutive hours as “Off duty” or “Sleeper berth” before driving again.

23 **10.** The Drivers’ compensation is primarily based on a per-mile piece rate. Marten  
24 uniformly does not pay Drivers at all—not even minimum wage—for time logged as “Off duty”  
25 or “Sleeper berth.” Marten attempts to justify its pay policies by arguing that they comply with  
26 the DOT “hours of service” regulations, but the “DOT Regulations [] have little or no bearing”  
27 on compensability of time logged as “Off duty” or “Sleeper berth.” *Julian v. Swift Transp. Co.*,  
28 360 F. Supp. 3d 932, 943 (D. Ariz. 2018); *Browne v. P.A.M. Transp., Inc.*, 2018 U.S. Dist.

1 LEXIS 180189, at \*8 (W.D. Ark. Oct. 19, 2018); *Hubchak v. FedEx Ground Package Sys.*, 2019  
2 U.S. Dist. LEXIS 127856, at \*3-4 (S.D. Ill. July 31, 2019). The DOT “Off duty” status does not  
3 equate to being “off duty” for pay purposes. The Department of Labor (DOL) has emphasized  
4 (and the DOT has recognized) that time during which an employee is considered on or off duty  
5 by the DOT is not governed by the same principles as apply under the wage laws. The DOT's  
6 regulations are concerned primarily with the safe operation of the vehicle and not compensable  
7 hours worked. Thus, the off-duty time required by DOT for safety purposes exceeds the amount  
8 of sleep time or other non-working time that may be deducted pursuant to wage laws.

9 **11.** During these layover periods and other non-driving time, Marten’s uniform  
10 operational policies severely restrict the Drivers’ freedom of movement and activity and limit  
11 them to Marten’s premises and worksite (the truck, sleeper berth and the immediate area around  
12 it).

13 **12.** To begin with, Marten assigns Drivers loads that require them to travel though  
14 remote areas fall along the designated route from pickup to delivery. Thus, whenever Drivers are  
15 required to stop under DOT Regulations, they will have to stop the truck wherever they happen  
16 to be.

17 **13.** Marten also does not provide or reimburse for lodging or other facilities, leaving  
18 Drivers with no option other than the cramped, roughly 5-by-8-foot sleeper berth to attempt to  
19 rest. The sleeper berth is a bunk in the truck’s cab with a mattress but no bathroom or sink.

20 **14.** Marten also makes Drivers responsible for the security of the loads they are  
21 transporting, even during the 10-hour non-driving periods. Marten holds Drivers responsible for  
22 theft or vandalism that occurs when they are in possession of the truck, causing them to have to  
23 stay with the rig or else risk discipline and potential termination if a security issue arises under  
24 their watch. Drivers have an ongoing responsibility over the truck and the load that is not  
25 removed just because the truck is stopped.

26 **15.** Nor does Marten pay for or provide any transportation other than the truck. As a  
27 result, Drivers are limited to the truck as the only realistic option for leaving the area where they  
28 had to stop for their layover. Yet, DOT Regulations provide that if Drivers log time as “Driving”

1 or “On duty” during the layover periods, the 10-hour clock starts all over again. But, Marten  
2 schedules its load assignments such that Drivers generally cannot spend significantly more than  
3 10 hours during their layovers before having to get back on the road in order to ensure on-time  
4 delivery. Thus, Drivers cannot drive the truck somewhere else without running afoul of DOT  
5 Regulations and/or compromising their ability to make deliveries on time.

6 **16.** In addition, Marten prohibits use of the company equipment—including the  
7 truck—for personal reasons. Thus, Drivers cannot use the truck to leave the location where they  
8 had to stop on their route during their layovers, even to the extent it would be permitted under  
9 DOT Regulations or feasible under Marten’s demanding delivery schedules. This leaves Drivers  
10 without a realistic option of leaving the worksite after they stop for a layover.

11 **17.** In addition, Marten prohibits Drivers from detaching the cab from the loaded  
12 trailer, which prevents them from driving their cabs to a movie theater, a restaurant, or any other  
13 business or residence location, unless that location happens to accommodate parking for big rigs  
14 with 53-foot trailers and satisfies Marten’s other onerous parking restrictions. But very few do.

15 **18.** Marten also requires that Drivers make requests to go home and get approval  
16 from management before going home.

17 **19.** These are just a few examples of the restrictions from Marten’s operational  
18 policies that prevent drivers from using non-driving time effectively for their own purposes.

19 **20.** For all these reasons, Drivers are subject to Defendant’s control and unable to use  
20 the time effectively for their own purposes.

21 **21.** Whether the truck is moving or stationary, the time the Drivers spend in the  
22 sleeper berth, passenger seat, or elsewhere in the truck and its immediate vicinity is subject to the  
23 control of Defendant.

24 **22.** That time is also primarily for Defendant’s benefit because it lets Drivers resume  
25 hauling freight for Defendant as early as possible when they are permitted to begin driving again  
26 under DOT Regulations. This in turn allows the trucks to move as efficiently as possible and  
27 maximizes the amount of freight Defendant can deliver to its customers in the shortest period.





**FACTUAL ALLEGATIONS**

1  
2       **36.** Marten is one of the leading temperature-sensitive truckload carriers in the United  
3 States, specializing in transporting and distributing food, beverages, and other consumer  
4 packaged goods. The company offers service in the United States, Canada, and Mexico,  
5 concentrating on expedited movements for high volume customers. The company’s fleet includes  
6 more than 3,300 tractors and approximately 5,400 trailers.

7       **37.** Marten has employed Plaintiffs and hundreds of other truck drivers to perform  
8 work in the State of California. The Drivers work away from home for days and weeks on end  
9 driving long-haul trucks. They spend their time hauling freight for Marten’s customers,  
10 conducting pre- and post-trip inspections, washing the trailers, fueling the tractors, taking the  
11 trucks through weigh scales, and conducting business with delivery agents, among other tasks.

12       **38.** During their tours of duty, the Drivers live on the truck and attempt to rest in the  
13 truck’s cramped “sleeper berth.” The sleeper berth is a small space with a bunk bed in the truck’s  
14 cab. It does not have a bathroom or a sink.

15       **39.** The Drivers work day and night, transporting loads up to and often over a  
16 thousand miles and overnight, while hauling freight. They spend weeks away from home at a  
17 time.

18       **40.** As over-the-road drivers, Plaintiff Dianna Morrison and Michael Loper worked  
19 around the clock hauling freight, performing various non-driving tasks (such as trip inspections,  
20 bringing the truck through weigh scales, working with delivery agents, fueling, and completing  
21 paperwork, among numerous other tasks), and remaining responsible for the security of the load  
22 while in and around the truck and inside its sleeper berth, even when the truck was stopped.

23       **41.** The Drivers’ time is logged in the truck’s electronic system during each hour of  
24 every 24-hour period as one of either: “Driving,” “On-duty, not driving,” “Off-duty,” or “Sleeper  
25 berth.”

26       **42.** Marten’s policy and practice is to pay only for time spent driving and to not pay  
27 Drivers for any time logged as “Off duty” or “Sleeper berth” even though, for the reasons  
28 discussed herein, the Drivers remain tethered to the immediate area of the truck and its cramped



1 sleeper berth when logged in these designations during layovers and other non-driving time.

2       **43.** When not driving, Plaintiffs and the other Drivers have remained responsible for  
3 the security of the load and are required to be available to Marten—all while being restricted to  
4 the truck and its immediate vicinity by Marten’s policies—even when the truck is stopped.  
5 Between the hours per day spent driving, performing non-driving tasks, and remaining under  
6 Marten’s control while confined to the truck’s sleeper berth and the area around it, unable to use  
7 the time effectively for their own purposes, the Plaintiffs and other similarly situated Drivers  
8 regularly worked more than 100 hours per week.

9       **44.** There are a host of reasons related to routing, safety, layover requirements,  
10 customer concerns and other circumstances that compel Drivers to stop driving or doing  
11 productive work during their tours of duty. Drivers have little or any control over most of them.

12       **45.** For instance, the Department of Transportation’s (DOT’s) “hours of service”  
13 safety regulations require Drivers who have already been driving for 11 hours, or after being  
14 logged as “On duty” for 14 hours, to log at least 10 consecutive hours as “Off duty” or “Sleeper  
15 berth” before driving again.

16       **46.** At the same time, Marten assigns Drivers loads that require them to travel though  
17 remote areas along a designated route from pickup to delivery. Thus, whenever Drivers are  
18 required to stop under DOT Regulations, they will have to stop the truck wherever they happen  
19 to be.

20       **47.** During these layover periods and other non-driving time, Marten’s uniform  
21 operational policies severely restrict the Drivers’ freedom of movement and activity and limit  
22 them to Marten’s premises and worksite (the truck, sleeper berth and the immediate area around  
23 it).

24       **48.** Marten does not provide or reimburse for lodging or other facilities, leaving them  
25 with no option other than the sleeper berth to attempt to rest.

26       **49.** Marten also makes Drivers responsible for the security of trucks and the loads  
27 they are transporting, even during the 10-hour non-driving periods. Marten holds Drivers  
28 responsible for theft, vandalism or other security breaches that occur when they are in possession

1 of the truck, causing them to have to stay with the rig or else risk discipline and potential  
2 termination if a security issue arises under their watch. Thus, Drivers have an ongoing  
3 responsibility over the truck and the load that is not removed just because the truck is stopped.

4 **50.** Nor does Marten pay for or provide any transportation other than the truck. As a  
5 result, Drivers are limited to the truck as the only realistic option for leaving the area where they  
6 had to stop for their layover. Yet, DOT Regulations provide that if Drivers log time as “Driving”  
7 or “On duty” during the layover periods, the 10-hour clock starts all over again. At the same  
8 time, Marten schedules its load assignments such that Drivers cannot afford to repeat 10-hour  
9 layovers without jeopardizing on-time delivery and sacrificing productivity. In this connection,  
10 an integral part of the Drivers’ work is to get needed rest during the layover periods, so that  
11 Drivers can get back behind the wheel at the earliest possible time and keep the freight moving  
12 for Marten. Thus, Drivers cannot drive the truck somewhere else without running afoul of DOT  
13 Regulations, compromising their ability to make deliveries on time, and/or impeding Marten’s  
14 productivity.

15 **51.** In addition, Marten prohibits Drivers from using of the company equipment for  
16 personal reasons—including the truck. As a result, Drivers cannot use the truck to leave the  
17 location where they had to stop on their route during their layovers, even to the extent it would  
18 be permitted under DOT Regulations or feasible under Marten’s assigned schedules and  
19 deadlines. This leaves Drivers without a realistic option of leaving the worksite after they stop  
20 for a layover.

21 **52.** In addition, Marten prohibits Drivers from detaching the cab from the loaded  
22 trailer, which prevents them from driving their cabs to a movie theater, a restaurant, or any other  
23 business or residence location, unless that location happens to accommodate parking for big rigs  
24 with 53-foot trailers and satisfies Marten's other onerous parking restrictions. But very few do.

25 **53.** Marten also requires that Drivers make requests to go home and get approval  
26 from management before going home.

27 **54.** These are just a few examples of the restrictions from Marten’s operational  
28 policies that prevent drivers from using non-driving time effectively for their own purposes.

1           **55.** For all these reasons, Drivers are subject to Defendant’s control and unable to use  
2 unpaid time during their tours of duty effectively for their own purposes.

3           **56.** Whether the truck is moving or stationary, the time the Drivers spend in the  
4 sleeper berth, passenger seat, or elsewhere in the truck and its immediate vicinity is subject to the  
5 control of Defendant.

6           **57.** That time is also primarily for Defendant’s benefit because it lets Drivers resume  
7 hauling freight for Defendant as early as possible when they are permitted to begin driving again  
8 under DOT Regulations. This in turn allows the trucks to move as efficiently as possible and  
9 maximizes the amount of freight Defendant can deliver to its customers in the shortest period.

10           **58.** Having the drivers stay near the truck and the load also benefits Defendants by  
11 ensuring that equipment and cargo are not left unattended and are secure, as discussed above.

12           **59.** This time during which the Drivers are on tours of duty and confined to the  
13 sleeper berth and the immediate area surrounding it, subject to the control of Defendant, is  
14 compensable under California law. Indeed, under California law, time during which employees  
15 are subject to the control of the employer and unable to use the time effectively for their own  
16 purposes is compensable. *Morrillion v. Royal Packing Co.* (2000) 22 Cal. 4<sup>th</sup> 575, 582. In this  
17 connection, “an employee who is subject to an employer’s control does not have to be working  
18 during that time to be compensated.” *Id.* For example, the Ninth Circuit recently affirmed a jury  
19 verdict finding layovers for similar truck drivers to be compensable, based on analogous  
20 operational policies. *Ridgeway v. Walmart Inc.* (9th Cir. 2020) 946 F.3d 1066, 1082-83.

21           **60.** The Drivers are subject to Defendant’s control during their 10-hour non-driving  
22 periods in the sleeper berth because they have to remain in or around the immediate area of the  
23 truck, must get permission to go home, are unable to use the time effectively for their own  
24 purposes and have to remain in and around the truck and its sleeper berth for the benefit of  
25 Defendant.

26           **61.** As a result of these policies, Marten has failed to compensate Plaintiffs and its  
27 other Drivers for all hours worked.

28

**CCP 382 CLASS ACTION ALLEGATIONS**

1  
2       **62.** Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set  
3 forth herein.

4       **63.** Plaintiffs bring this case as a class action on behalf of themselves and all others  
5 similarly situated pursuant to California Code of Civil Procedure 382. The putative Class and Sub-  
6 class that Plaintiff seeks to represent are defined as follows:

7               All current and former over-the-road truck drivers of Marten  
8 Transport, LTD, who drove for Marten in California at any time  
9 beginning four years prior to the filing of this Complaint until the  
date of class notice. (“the putative Class”).

10       **64.** This action has been brought and may properly be maintained as a class action  
11 under CCP 382 because there is a well-defined community of interest in the litigation and the  
12 putative class is ascertainable.

- 13       a. **Numerosity:** The potential members of the putative Class as defined are so numerous that  
14 joinder of all the members of the putative Class is impracticable.
- 15       b. **Commonality:** There are questions of law and fact common to Plaintiffs and the putative  
16 Class that predominate over any questions affecting only individual members of the  
17 putative Class. These common questions of law and fact include, but are not limited to:
- 18           i. Whether Defendant authorized or required Drivers to be on duty on the  
19 employer’s premises or at a prescribed workplace during the non-driving periods  
20 logged as sleeper berth;
- 21           ii. Whether Defendant’s policies subject Drivers to Defendant’s control during their  
22 10 or more-hour non-driving periods;
- 23           iii. Whether Defendant’s policies subject Drivers to Defendant’s control during the  
24 time they must spend in the trucks’ sleeper berths;
- 25           iv. Whether Defendant’s policies prevent Drivers from being able to use time spent  
26 during 10 or more-hour non-driving periods effectively for their own purposes;
- 27           v. Whether Defendant owes the Drivers minimum wages in violation of the Cal.  
28 Lab. Code and Wage Order 9;

- 1 vi. Whether Defendant owes the Drivers straight-time wages in violation of the Cal.  
2 Lab. Code and Wage Order 9;
- 3 vii. Whether the paychecks provided to the Drivers in connection with their  
4 compensation accurately state all the required elements for itemized wage  
5 statements under California Labor Code Section 226(a);
- 6 viii. Whether Drivers who had their employment relationship with Defendant  
7 terminated are entitled to penalties for Defendant’s failure to timely pay all  
8 outstanding amounts of compensation owed upon termination of the employment  
9 relationship;
- 10 ix. Whether Defendant’s policies and practices have resulted in violation of one or  
11 more of the California Labor Code Provisions cited herein;
- 12 x. Whether Defendant’s policies and practices are unlawful unfair business practices  
13 in violation of California Business & Professions Code Sections 17200, et seq.;
- 14 and
- 15 xi. The monetary relief to which Plaintiff Morrison, Plaintiff Loper and the Class  
16 may be entitled as a result of the violations alleged herein.
- 17 c. **Typicality:** Plaintiffs’ claims are typical of the claims of the Class. Defendants’ common  
18 course of conduct in denying the Drivers compensation for time logged as “Off duty”:  
19 and “Sleeper berth” has caused Plaintiffs and putative Class members to sustain the same  
20 or similar injuries and damages. Plaintiffs’ claims are thereby representative of and co-  
21 extensive with the claims of the Putative Class.
- 22 d. **Adequacy of Representation:** Plaintiffs are members of the putative Class, do not have  
23 any conflicts of interest with other putative Class members, and will prosecute the case  
24 vigorously on behalf of the putative Class. Counsel representing Plaintiffs is competent  
25 and experienced in litigating large employment class actions, including wage and hour  
26 cases. Plaintiffs will fairly and adequately represent and protect the interests of the Class  
27 members.
- 28

1 e. **Superiority of Class Action:** A class action is superior to other available means for the  
 2 fair and efficient adjudication of this controversy. Individual joinder of all putative Class  
 3 members is not practicable, and questions of law and fact common to the putative Class  
 4 predominate over any questions affecting only individual members of the putative Class.  
 5 Each putative Class member has been damaged and is entitled to recovery by reason of  
 6 Defendants' illegal policies and/or practices. Class action treatment will allow those  
 7 similarly situated persons to litigate their claims in the manner that is most efficient and  
 8 economical for the parties and the judicial system.

9 **65.** The putative Class may also be certified because the prosecution of separate  
 10 actions by the individual members of the putative Class would create a risk of inconsistent or  
 11 varying adjudication with respect to individual members of the putative Class, and, in turn,  
 12 would establish incompatible standards of conduct for Defendants.

13 **66.** If each individual putative Class member were required to file an individual  
 14 lawsuit, Defendants would necessarily gain an unconscionable advantage because Defendants  
 15 would be able to exploit and overwhelm the limited resources of each member of the putative  
 16 Class with Defendants' vastly superior financial legal resources.

17 **67.** Requiring each individual putative Class member to pursue an individual remedy  
 18 would also discourage the assertion of lawful claims by the putative Class members who would  
 19 be disinclined to pursue these claims against Defendants because of an appreciable and  
 20 justifiable fear of retaliation and permanent damage to their lives, careers, and well-being.

21 **68.** Plaintiffs also seek certification of the putative Class to the extent applicable  
 22 under CCP 382 on the grounds that the party opposing the putative Class has acted or refused to  
 23 act on grounds that apply generally to the putative Class, so that final injunctive relief or  
 24 corresponding declaratory relief is appropriate respecting the putative Class as a whole.

25 **FIRST CAUSE OF ACTION**

26 **Failure to Pay for All Hours Worked**  
 27 **Pursuant to Labor Code § 204; IWC Wage Order No. 9**  
**(On Behalf of Plaintiffs and the Putative Class Against Defendant)**

28 **69.** Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set

1 forth herein.

2 **70.** Labor Code § 200(a) defines wages as “all amounts for labor performed by  
3 employees of every description, whether the amount is fixed or ascertained by the standard of  
4 time, task, piece, commission basis or other method of calculation.”

5 **71.** Labor Code § 204 provides that employers must compensate employees for all  
6 hours worked “twice during each calendar month, on days designated in advance by the  
7 employer as the regular paydays.”

8 **72.** Labor Code § 1194(a) provides as follows:  
9 Notwithstanding any agreement to work for a lesser wage, any  
10 employee receiving less than the legal minimum wage or the legal  
11 overtime compensation applicable to the employee is entitled to  
12 recover in a civil action the unpaid balance of the full amount of this  
13 minimum wage or overtime compensation, including interest  
14 thereon, reasonable attorneys’ fees, and cost of suit.

15 **73.** Labor Code § 1198 makes it unlawful for employers to employ employees under  
16 conditions that violate the Wage Orders.

17 **74.** IWC Wage Order 9-2001(2)(H) defines hours worked as “the time during which  
18 an employee is subject to the control of an employer, and includes all the time the employee is  
19 suffered or permitted to work, whether or not required to do so.”

20 **75.** As explained above, Defendant has maintained and continues to maintain a policy  
21 of denying the Drivers any compensation for time logged as “Off duty” and “Sleeper berth,”  
22 even though Defendant’s policies have prevented the Class members from using the time  
23 effectively for their own purposes and subjected Class members (including Plaintiffs Morrison  
24 and Loper) to its control during this time.

25 **76.** Defendant’s unlawful compensation scheme has denied Plaintiffs Morrison and  
26 Loper and the Class the straight time wages to which they are entitled under the law. As  
27 explained above, Plaintiff Morrison, Plaintiff Loper and members of the Class frequently have  
28 worked time for which they are not compensated at their regular rates of pay, as determined by  
the Industrial Welfare Commission.

**77.** Accordingly, Defendant has artificially reduced the pay rates of Plaintiff

1 Morrison, Plaintiff Loper and members of the Class by denying them compensation for time  
2 spent under Defendant’s control while in the sleeper berth and in the immediate vicinity thereof,  
3 primarily for Defendant’s benefit.

4 **78.** In violation of California law, Defendant knowingly and willfully refuses to  
5 perform its obligations to provide Plaintiffs and putative Class members with compensation for  
6 all time worked.

7 **79.** Therefore, Defendant committed, and continues to commit, the acts alleged herein  
8 knowingly and willfully, and in conscious disregard of the Plaintiffs and putative Class  
9 members’ rights. Plaintiffs and putative Class members are thus entitled to recover nominal,  
10 actual, and compensatory damages, plus interest, attorneys’ fees, expenses, and cost of suit.

11 **80.** As a proximate result of the aforementioned violations, Plaintiffs and putative  
12 Class members have been damaged in an amount according to proof at time of trial.

13 **81.** Wherefore, Plaintiffs and putative Class request relief as hereinafter provided.

14 **SECOND CAUSE OF ACTION**

15 **Failure to Pay Minimum Wages**

16 **Pursuant to Labor Code §§ 1182.11, 1182.12, 1194, 1197, and  
17 1197.1; IWC Wage Order No. 9**

18 **(On Behalf of Plaintiffs and the Putative Class Against Defendant)**

19 **82.** Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set  
20 forth herein.

21 **83.** During the applicable statutory period, California Labor Code Sections 1182.11,  
22 1182.12 and 1197 as well as the Minimum Wage Order were in full force and effect and required  
23 that the Class members receive the minimum wage for all hours worked at a rate not less than  
24 \$12.00 per hour from January 1, 2019 to December 31, 2019; at a rate not less than \$13.00 per  
25 hour from January 1, 2020 to December 31, 2020; at a rate not less than \$14 per hour from  
26 January 1, 2021 to December 31, 2021; at a rate not less than \$15.00 per hour from January 1,  
27 2022 to December 31, 2022; and at a rate not less than \$15.50 per hour commencing on January  
28 1, 2023.

**84.** The Drivers are not paid at all—much less at the statutory minimum wage—for



1 the extensive time they spend logged as “Off duty” or “Sleeper berth” even though they are  
2 subject to Defendant’s control and cannot effectively use the time effectively for their own  
3 purposes. This time is compensable as a matter of law.

4 **85.** Defendant’s unlawful compensation scheme has denied Plaintiff Morrison,  
5 Plaintiff Loper, and the putative Class the minimum wages to which they are entitled under the  
6 law. As explained above, Plaintiffs and members of the putative Class routinely have been  
7 subject to Defendant’s control without pay and performed work for which they are not  
8 compensated even at the statutory minimum wage, as determined by the IWC.

9 **86.** California Labor Code Section 1194.2 provides that, in any action under Section  
10 1194 to recover wages because of the payment of a wage less than minimum wage fixed by an  
11 order of the commission, an employee shall be entitled to recover liquidated damages in an  
12 amount equal to the wages unlawfully unpaid and interest thereon.

13 **87.** Under California Labor Code Section 218.6 and Civil Code Section 3287(a),  
14 Plaintiff Morrison, Plaintiff Loper, and other members of the putative Class are entitled to  
15 recover pre-judgment interest on wages earned, but not paid every pay period.

16 **88.** As a direct and proximate result of the unlawful acts and omissions of Defendant,  
17 Plaintiff Morrison, Plaintiff Loper, and members of the putative Class have been deprived of  
18 minimum wages in an amount to be determined at trial, and are entitled to a recovery of such  
19 amount, plus liquidated damages, plus interest thereon, attorneys’ fees, and costs of suit under  
20 California Labor Code Sections 1194, 1194.2 and 1197.1.

21 **THIRD CAUSE OF ACTION**

22 **Failure to Provide Accurate Itemized Wage Statements**  
23 **Pursuant to Labor Code §§ 226, 226.3 and 226.6**  
**(On Behalf of Plaintiffs and Putative Class Against All Defendants)**

24 **89.** Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set  
25 forth herein.

26 **90.** Defendants do not provide Plaintiffs and putative Class members with accurate  
27 itemized wage statements as required by California law.

28 **91.** Labor Code § 226(a) provides:

1 Every employer shall, semimonthly or at the time of each payment  
 2 of wages, furnish each of his or her employees, either as a detachable  
 3 part of the check, draft, or voucher paying the employee's wages, or  
 4 separately when wages are paid by personal check or cash, an  
 5 accurate itemized statement in writing showing (1) gross wages  
 6 earned, (2) total hours worked by the employee, except for any  
 7 employee whose compensation is solely based on a salary and who  
 8 is exempt from payment of overtime under subdivision (a) of Section  
 9 515 or any applicable order of the Industrial Welfare Commission,  
 10 (3) the number of piece-rate units earned and any applicable piece  
 11 rate if the employee is paid on a piece-rate basis, (4) all deductions,  
 12 provided that all deductions made on written orders of the employee  
 13 may be aggregated and shown as one item, (5) net wages earned, (6)  
 14 the inclusive dates of the period for which the employee is paid, (7)  
 the name of the employee and his or her social security number, (8)  
 the name and address of the legal entity that is the employer, and (9)  
 all applicable hourly rates in effect during the pay period and the  
 corresponding number of hours worked at each hourly rate by the  
 employee. The deductions made from payments of wages shall be  
 recorded in ink or other indelible form, properly dated, showing the  
 month, day, and year, and a copy of the statement or a record of the  
 deductions shall be kept on file by the employer for at least four years  
 at the place of employment or at a central location within the State of  
 California.

15 **92.** The IWC Wage Orders also establish this requirement. (See IWC Wage Orders  
 16 9-2001(6))

17 **93.** Labor Code § 226.3 provides, in relevant part:

18 Any employer who violates subdivision (a) of Section 226 shall be  
 19 subject to a civil penalty in the amount of two hundred fifty dollars  
 20 (\$250) per employee per violation in an initial citation and one  
 21 thousand dollars (\$1,000) per employee for each violation in a  
 22 subsequent citation, for which the employer fails to provide the  
 employee a wage deduction statement or fails to keep the records  
 required in subdivision (a) of Section 226.

23 **94.** Labor Code 226.6 provides, in relevant part:

24 Any employer who knowingly and intentionally violates the  
 25 provisions of Section 226, or any officer, agent, employee,  
 26 fiduciary, or other person who has the control, receipt, custody, or  
 27 disposal of, or pays, the wages due any employee, and who  
 28 knowingly and intentionally participates or aids in the violation of  
 any provision of Section 226 is guilty of a misdemeanor and, upon  
 conviction thereof, shall be fined not more than one thousand dollars  
 (\$1,000) or be imprisoned not to exceed one year, or both, at the

1 discretion of the court.

2 **95.** Labor Code § 226(e) provides:

3 An employee suffering injury as a result of a knowing and intentional  
4 failure by an employer to comply with subdivision (a) is entitled to  
5 recover the greater of all actual damages or fifty dollars (\$50) for the  
6 initial pay period in which a violation occurs and one hundred dollars  
7 (\$100) per employee for each violation in a subsequent pay period,  
8 not exceeding an aggregate penalty of four thousand dollars (\$4,000)  
9 and is entitled to an award of costs and reasonable attorney's fees.

10 **96.** Defendants do not provide timely, accurate itemized wage statements to Plaintiffs  
11 and putative Class members in accordance with Labor Code § 226(a) and the IWC Wage Orders.  
12 The wage statements Defendants provide their employees, including Plaintiffs and putative Class  
13 members, do not accurately reflect all hours actually worked, actual gross wages earned and/or  
14 actual net wages earned, including minimum wages, as a result of the failure to pay for time  
15 resulting from violations described herein.

16 **97.** Defendants are liable to Plaintiffs and the putative Class members for the amounts  
17 described above in addition to the civil penalties set forth below, with interest thereon.  
18 Furthermore, Plaintiffs are entitled to an award of attorneys' fees and costs as set forth below,  
19 pursuant to Labor Code § 226(e).

20 **98.** Wherefore, Plaintiffs and the putative Class request relief as hereinafter provided.

21 **FOURTH CAUSE OF ACTION**

22 **Waiting time Penalties**

23 **Pursuant to Cal. Lab. Code §§ 201-203**

24 **(On Behalf of Plaintiffs and Putative Class Against Defendant)**

25 **99.** Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set  
26 forth herein.

27 **100.** Defendants have not provided Class Members with wages due under California  
28 law after their employment with Defendants ends.

**101.** Cal. Lab. Code § 201 provides: "If an employer discharges an employee, the  
wages earned and unpaid at the time of discharge are due and payable immediately."

**102.** Cal. Lab. Code § 202 provides:

If an employee not having a written contract for a definite period quits his or her

1 employment, his or her wages shall become due and payable not later than 72 hours  
2 thereafter, unless the employee has given 72 hours previous notice of his or her  
intention to quit, in which case the employee is entitled to his or her wages at the  
time of quitting.

3 **103.** Cal. Lab. Code § 203 provides, in relevant part:

4 If an employer willfully fails to pay, without abatement or reduction, in accordance  
5 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is  
6 discharged or who quits, the wages of the employee shall continue as a penalty from  
the due date thereof at the same rate until paid or until an action therefor is  
commenced; but the wages shall not continue for more than 30 days.

7 **104.** Plaintiffs and members of the putative Class left their employment with  
8 Defendant during the statutory period, at which time Defendant owed them unpaid wages. These  
9 earned, but unpaid, wages derive from time spent working for the benefit of Defendants during  
10 missed or interrupted meal periods, and/or missed second meal periods.

11 **105.** Defendant willfully refuses and continues to refuse to pay Plaintiffs and putative  
12 Class members all the wages that are due and owing to them for the work performed and the  
13 resulting premium payments for missed or interrupted meal periods, and/or missed second meal  
14 periods, upon the end of their employment. As a result of Defendants' actions, Plaintiffs and  
15 Class Members have suffered and continue to suffer substantial losses, including lost earnings,  
16 and interest.

17 **106.** Defendants' willful failure to pay Plaintiffs and putative Class members the  
18 wages due and owing them constitutes a violation of Cal. Lab. Code §§ 201-202. As a result,  
19 Defendants are liable to Plaintiffs and proposed Class members for all penalties owing pursuant  
20 to Cal. Lab. Code §§ 201-203.

21 **107.** In addition, addition, Cal. Lab. Code § 203 provides that an employee's wages  
22 will continue as a penalty up to thirty days from the time the wages were due. Therefore, the  
23 Plaintiffs and putative Class members are entitled to penalties pursuant to Cal. Lab. Code § 203,  
24 plus interest.

25 **108.** Wherefore, Plaintiffs and putative Class members request relief as hereinafter  
26 provided.

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**FIFTH CAUSE OF ACTION**

**Violation of California Business and Professions Code §§ 17200 *et seq.*  
(On Behalf of Plaintiffs and Putative Class Against All Defendants)**

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2  
3 **109.** Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set  
4 forth herein.

5 **110.** California Business and Professions Code Section 17200 defines unfair  
6 competition to include, “unlawful, unfair or fraudulent business practices.”

7 **111.** Plaintiff Morrison, Plaintiff Loper, and all proposed members of the Class are  
8 “persons” within the meaning of California Business and Professions Code Section 17204, who  
9 have suffered injury in fact and have lost money or property as a result of Defendant’s unfair  
10 competition.

11 **112.** Defendant has been committing, and continue to commit, acts of unfair  
12 competition by engaging in the unlawful and unfair business practices and acts described in this  
13 Complaint, including, but not limited to:

- 14 i. violations of Labor Code §§ 1182.11, 1182.12, 1194, 1197, 1197.1, 1198,  
15 and IWC Wage Order 9-2001 pertaining to payment of wages, including  
16 minimum wage, for all hours worked;  
17 ii. violations of Labor Code §§ 226, 226.3 and 226.6 regarding accurate,  
18 timely itemized wage statements; and  
19 iii. violations of Cal. Lab. Code §§ 201-203 pertaining to payment of all  
20 wages owed during employment and following separation from  
21 employment

22 **113.** The violations of these laws and regulations, as well as of the fundamental  
23 California public policies protecting wages, are unlawful predicate acts and practices for  
24 purposes of Business and Professions Code §§ 17200 *et seq.*

25 **114.** The acts and practices described above constitute unfair, unlawful, and fraudulent  
26 business practices, and unfair competition, within the meaning of Business and Professions Code  
27 §§ 17200 *et seq.* Among other things, the acts and practices have taken from Plaintiffs and the  
28

1 putative Class wages rightfully earned by them, while enabling Defendant to gain an unfair  
2 competitive advantage over law-abiding employers and competitors.

3 **115.** Business and Professions Code § 17203 provides that a court may make such  
4 orders or judgments as may be necessary to prevent the use or employment by any person of any  
5 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to  
6 prevent Defendant from repeating the unlawful, unfair, and fraudulent business acts and practices  
7 alleged above.

8 **116.** As a direct and proximate result of the aforementioned acts and practices,  
9 Plaintiffs and putative Class members have suffered a loss of money and property, in the form of  
10 unpaid wages, which are due and payable.

11 **117.** Business and Professions Code § 17203 provides that the Court may restore to  
12 any person in interest any money or property which may have been acquired by means of such  
13 unfair competition. Plaintiffs and putative Class members are entitled to restitution pursuant to  
14 Business and Professions Code § 17203 for all wages and payments unlawfully withheld from  
15 employees during the four-year period prior to the filing of this Complaint. Plaintiffs' success in  
16 this action will enforce important rights affecting the public interest and, in that regard, Plaintiffs  
17 sue on behalf of themselves as well as others similarly situated. Plaintiffs and putative Class  
18 members seek and are entitled to unpaid wages, declaratory and injunctive relief, and all other  
19 equitable remedies owed to them.

20 **118.** Plaintiffs herein take upon themselves enforcement of these laws and lawful  
21 claims.

22 **119.** There is a financial burden involved in pursuing this action, the action is seeking  
23 to vindicate a public right, and it would be against the interests of justice to penalize Plaintiffs by  
24 forcing them to pay attorneys' fees from any recovery thereof. Attorneys' fees are appropriate  
25 pursuant to Code of Civil Procedure § 1021.5 and otherwise.

26 **120.** Wherefore, Plaintiffs and the putative Class request relief as hereinafter provided.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiffs pray for relief as follows:

- 1 a. Damages and restitution according to proof at trial for all unpaid wages and other
- 2 injuries, as provided by the California Labor Code and California Business and
- 3 Professions Code;
- 4 b. For a declaratory judgment that Defendants have violated the California Labor
- 5 Code, California law, and public policy as alleged herein;
- 6 c. For a declaratory judgment that Defendants have violated California Business and
- 7 Professions Code §§ 17200 *et seq.*, as a result of the aforementioned violations of
- 8 the California Labor Code;
- 9 d. For preliminary, permanent, and mandatory injunctive relief prohibiting
- 10 Defendants, their officers, agents, and all those acting in concert with them from
- 11 committing in the future those violations of law herein alleged;
- 12 e. For an equitable accounting to identify, locate, and restore to all current and former
- 13 employees the wages they are due, with interest thereon;
- 14 f. For an order awarding Plaintiffs and putative Class members compensatory
- 15 damages, including lost wages, earnings, liquidated damages, and other employee
- 16 benefits, restitution, recovery of all money, actual damages, treble damages,
- 17 punitive damages, and all other sums of money owed to Plaintiffs and putative
- 18 Class members, together with interest on these amounts, according to proof;
- 19 g. For an award of reasonable attorneys' fees as provided by the California Labor
- 20 Code, including California Code of Civil Procedure § 1021.5 and/or other
- 21 applicable law;
- 22 h. For all costs of suit;
- 23 i. For interest as provided by applicable law; and
- 24 j. For such other and further relief as this Court deems just and proper.

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Respectfully submitted,

Dated: March 21, 2023

**SCHNEIDER WALLACE  
COTTRELL KONECKY LLP**



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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Dated: March 21, 2023

**SCHNEIDER WALLACE  
COTTRELL KONECKY LLP**



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