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Attorneys for Plaintiffs DAVID TOWNSEND and FARSHAD FIROUZMANDI,
individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

DAVID TOWNSEND and FARSHAD
FIROUZMANDI, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

C.R. ENGLAND INC., a Utah Corporation,
and DOES 1-50, inclusive,

Defendants.

CASE NO.: 37-2019-00065139-CU-0E-CTL

Assigned For All Purposes To:
Judge:
Dept.:

**CLASS ACTION COMPLAINT
PURSUANT TO CALIFORNIA CODE OF
CIVIL PROCEDURE §382**

COMPLAINT FOR:

1. Failure to Pay Minimum Wages as Required by Labor Code § 1194
2. Failure to Provide Meal Periods as Required by Labor Code §§ 226.7, 512 and IWC Wage Orders
3. Failure to Provide Rest Periods as Required by Labor Code §§ 226.7, 512
4. Failure to Pay Timely Wages Required by Labor Code § 203
5. Failure to Provide Accurate Itemized Wage Statements as Required by Labor Code § 226
6. Failure to Indemnify Necessary Business Expenses as Required by Labor Code § 2802
7. Violation of Business & Professions Code § 17200, et seq.

DEMAND FOR JURY TRIAL

1 Plaintiffs DAVID TOWNSEND and FARSHAD FIROUZMANDI (“Plaintiffs”),
2 individually and on behalf of all others similarly situated (hereinafter collectively referred to as the
3 “Class” or “Class Member”), hereby files this Complaint against Defendants C.R. ENGLAND,
4 INC., a Utah Corporation; and DOES 1-50, inclusive (collectively “Defendants”) and alleges on
5 information and belief as follows:

6 **I. JURISDICTION AND VENUE**

7 1. This class action is brought pursuant to California Code of Civil Procedure §382.
8 The monetary damages and restitution sought by Plaintiffs exceed the minimum jurisdiction limits
9 of the California Superior Court and will be established according to proof at trial.

10 2. This Court has jurisdiction over this action pursuant to the California Constitution
11 Article VI §10, which grants the California Superior Court original jurisdiction in all causes
12 except those given by statute to other courts. The statutes under which this action is brought do
13 not give jurisdiction to any other court.

14 3. This Court has jurisdiction over Defendants because, upon information and belief,
15 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
16 avails itself of the California market so as to render the exercise of jurisdiction over it by the
17 California Courts consistent with traditional notions of fair play and substantial justice.

18 4. The California Superior Court also has jurisdiction in this matter because the
19 individual claims of the members of the Classes herein are under the seventy-five thousand dollar
20 (\$75,000.00) jurisdictional threshold for Federal Court and the aggregate claim, including attorneys’
21 fees, is under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of
22 2005. Further, there is no federal question at issue, as the issues herein are based solely on California
23 statutes and law, including the Labor Code, IWC Wage Orders, CCP, California Civil Code (“CC”)
24 and B&PC.

25 5. Venue is proper in this Court because upon information and belief, one or more of
26 the Defendants, reside, transact business, or have offices in this County and/or the acts or
27 omissions alleged herein took place in this County.

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II. PARTIES

6. Plaintiff, DAVID TOWNSEND, was at all times relevant to this action, a resident of Mission Viejo, California. Plaintiff Townsend was employed by Defendants in approximately September 2018 as a non-exempt employee, with the title of driver, and delivered freight to various locations throughout California, including shipments for companies such as Walmart. Plaintiff Townsend separated from Defendants' employment in July 2019.

7. Plaintiff FIROUZMANDI, was at all time relevant to this action, a resident of Riverside, California. Plaintiff Firouzmandi was employed by Defendants in approximately February 2019 as a non-exempt employee, with the title of driver and delivered freight across the U.S. Plaintiff Firouzmandi separated from Defendants' employment in August 2019.

8. Defendants C.R. ENGLAND, INC., own and operate as a trucking and logistics company across the U.S. including California. Defendant maintains terminals throughout California. Plaintiffs estimate there are in excess of 100 Non-Exempt Employees who work or have worked for Defendants over the last four years.

9. Other than identified herein, Plaintiffs is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but are informed and believe and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiffs will amend this complaint when their true names and capabilities are ascertained.

10. Plaintiffs are informed and believe and thereon allege that each defendant, directly or indirectly, or through agents or other persons, employed Plaintiffs and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiffs are informed and believe and thereon allege that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other defendants.

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III. CLASS ACTION ALLEGATION

11. Plaintiffs brings this action individually and on behalf of all others similarly situated as a class action pursuant to Code of Civil Procedure § 382. The members of the Class are defined as follows:

All persons who currently are or who have been employed by Defendants as Non-Exempt Employees or equivalent positions, however titled, in the state of California within four (4) years from the filing of the Complaint in this action until its resolution. (collectively referred to as the "Class" or "Plaintiffs' Class" or "Class Members").

12. Plaintiffs also seeks to represent the subclass(es) composed of and defined as follows:

Sub-Class 1: All Class Members who are or were employed by Defendants who worked in excess of six or ten hours in a work day but were not provided with a timely, uninterrupted, duty-free thirty-minute meal period (hereinafter collectively referred to as the "Meal Period Subclass").

Sub-Class 2: All Class Members who are or were employed by Defendants who worked in excess of three and a half (3.5) or ten hours in a work day but were not authorized and permitted a rest period (hereinafter collectively referred to as the "Rest Period Subclass").

Sub-Class 3: All Class Members who are or were employed by Defendants at any time between December 2018 and the present and who received wage statements from Defendant (hereinafter collectively referred to as the "Wage Statement Subclass").

Sub-Class 4: All Class Members who have been employed by Defendants at any time between December 2016 and the present and have separated their employment (hereinafter collectively referred to as the "Waiting Time Penalty Subclass")

Sub-Class 5: All Class Members who are or were employed by Defendants were not reimbursed for all business expenses incurred in the discharge of their duties(hereinafter collectively referred to as the "Reimbursement Subclass").

Sub-Class 6: All Class Members who are or were employed by Defendants and subject to Defendant's Unfair Business Practices (hereinafter collectively referred to as the "Unfair Business Practice Subclass").

13. Plaintiffs reserves the right under California Rule of Court 3.765(b) and other applicable laws to amend or modify the class definition with respect to issues or in any other ways. Plaintiffs is a member of the Class as well as each of the Sub-Classes.

1 14. The term “Class” includes Plaintiffs and all members of the Class and each of
2 the Sub-Classes, if applicable. Plaintiffs seeks class-wide recovery based on the allegations set
3 forth in this complaint.

4 15. There is a well-defined community of interest in the litigation and the proposed
5 Class is easily ascertainable through the records Defendants are required to keep.

6 16. Numerosity. The members of the Class are so numerous that individual joinder
7 of all of them as Plaintiffs is impracticable. While the exact number of the Class members is
8 unknown to Plaintiffs at this time, Plaintiffs are informed and believe and thereon alleges that
9 there are at least 100 (one hundred) Class members.

10 17. Commonality. Common questions of law and fact exist as to all Class members
11 and predominate over any questions that affect only individual members of the Class. These
12 common questions include, but are not limited to:

13 i. Whether Defendants failed to pay minimum wage compensation to
14 Plaintiffs and Class Members for all hours worked;

15 ii. Whether Defendants violated Labor Code sections 226.7, 512, and
16 applicable IWC Wage Orders, by failing to authorize and permit daily rest periods to Plaintiffs and
17 Class Members for every four hours or major fraction thereof worked and failing to compensate
18 said employees one hours wages in lieu of rest periods;

19 iii. Whether Defendants violated Labor Code sections 226.7, 512 and
20 applicable IWC Wage Orders, by failing to provide a meal period to Plaintiffs and Class Members
21 on days they worked work periods in excess of six and 10 hours and failing to compensate said
22 employees one hour wages in lieu of meal periods;

23 iv. Whether Defendants failed to maintain accurate time record including
24 recording Plaintiffs and Class Members’ meal periods pursuant to Labor Code sections 1174.5 and
25 the applicable IWC Wage Orders;

26 v. Whether Defendants provided accurate itemized wage statements pursuant
27 to Labor Code section 226.
28

1 vi. Whether Defendants violated Business and Professions Code and Labor
2 Code sections 201-202, 226, 226.7, 266.3, 512, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 2802,
3 and applicable IWC Wage Orders which violation constitutes a violation of fundamental public
4 policy; and

5 vii. Whether Plaintiffs and the Members of the Plaintiffs Class are entitled to
6 equitable relief pursuant to Business and Professions Code section 17200, *et. seq.*

7 viii. Whether Plaintiffs and the Members of the Plaintiffs Class are entitled to
8 relief in the form of back wages, penalties and interest for failure to pay minimum wages pursuant
9 to Labor Code sections 558, 1194 and 1197.

10 18. Typicality. Plaintiffs' claims herein alleged are typical of those claims which
11 could be alleged by any member of the Class and/or Subclass, and the relief sought is typical of
12 the relief which would be sought by each member of the Class and/or Subclass in separate actions.
13 Plaintiffs and all members of the Class and or Subclass sustained injuries and damages arising out
14 of and caused by Defendants' common course of conduct in violation of California laws,
15 regulations, and statutes as alleged herein.

16 19. Adequacy. Plaintiffs is qualified to, and will fairly and adequately protect the
17 interests of each member of the Class and/or Subclass with whom she has a well defined
18 community of interest and typicality of claims, as demonstrated herein. Plaintiffs acknowledge an
19 obligation to make known to the Court any relationships, conflicts, or differences with any
20 member of the Class and/or Subclass. Plaintiffs' attorneys and the proposed Counsel for the Class
21 and Subclass are versed in the rules governing class action discovery, certification, litigation, and
22 settlement and experienced in handling such matters. Other former and current employees of
23 Defendants may also serve as representatives of the Class and Subclass if needed.

24 20. Superiority. A class action is superior to other available means for the fair and
25 efficient adjudication of the claims of the Class and would be beneficial for the parties and the
26 court. Class action treatment will allow a large number of similarly situated persons to prosecute
27 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
28 duplication of effort and expense that numerous individual actions would require. The damages

1 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
2 and the expense and burden of individual litigation would make it extremely difficult or
3 impossible for the individual Class Members to seek and obtain individual relief. A class action
4 will serve an important public interest by permitting such individuals to effectively pursue
5 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
6 or contradictory judgments raised by individual litigation.

7 21. Public Policy Considerations: Employers in the state of California violate
8 employment and labor laws everyday. Current employees are often afraid to assert their rights out
9 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
10 they believe their former employers may damage their future endeavors through negative
11 references and/or other means. The nature of this action allows for the protection of current and
12 former employees' rights without fear or retaliation or damage.

13 **IV. FACTUAL ALLEGATIONS**

14 22. At all times set forth herein, Defendants employed Plaintiffs and other persons in
15 the capacity of non-exempt positions, however titled, throughout the state of California.

16 23. Plaintiffs are informed and believe Class Members have at all times pertinent
17 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
18 rules and regulations of the IWC California Wage Orders.

19 24. Plaintiffs are informed and believe that all Class Members are citizens of the state
20 of California.

21 25. Defendants continue to employ Non-Exempt Employees, however titled, in
22 California and implement a uniform set of policies and practices to all non-exempt employees, as
23 they were all engaged in the generic job duties of deliveries freight to Defendants' various clients.

24 26. Plaintiffs are informed and believe, and thereon alleges, that Defendants are and
25 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
26 of the requirements of California's wage and employment laws.

27 27. Plaintiff is informed and believes, and thereon alleges, that during the relevant time
28 frame, Defendants compensated Plaintiff and Class Members based on a hybrid hourly and piece

1 rate compensation system (i.e. per mile basis) that did not always equate to minimum wage for all
2 hours worked.

3 28. Plaintiff is informed and believes, and thereon alleges, that during the relevant time
4 period, Plaintiff and Class Members were regularly required to work without being paid minimum
5 wage as a result of the methodology of Defendants' piece-rate payment scheme which is incapable
6 of providing compensation to Plaintiff and Class Members for when the vehicle is not moving.
7 For instance, each and every day, Plaintiff and Class Members would typically perform the
8 following tasks that went uncompensated, such tasks included but were not limited to conducting
9 pre-trip and post-trip inspections of the truck, trailer, and equipment, filling out freight
10 transportation paper work/inspection reports, waiting for freight loads and unloads, and truck
11 fueling between various legs of their routes ("Non-Driving tasks"), all without payment of
12 minimum wage, as required by California law.

13 29. In addition to the above Non-Driving tasks, Plaintiffs and Class Members were
14 required to report to their designated terminals to await for their assigned trucks to become
15 available in order to begin driving their loads to their destinations. On a consistent and daily basis,
16 Plaintiff and Class Members would spend hours waiting at Defendants terminals to get assigned a
17 truck and were not compensated for the time they reported in and waited for a truck to become
18 available.

19 30. On information and belief, the time records and drivers' logs Defendants are
20 required to maintain will provide the information and details showing the times Defendants' trucks
21 were not moving, resulting in Plaintiff and Class Members not being compensated for such time.

22 31. On information and belief, during the relevant time frame, Plaintiffs and Class
23 Members typically worked varying schedules throughout the week and would drive between 10 to
24 14 hours in a day.

25 32. Plaintiffs are informed and believe that the Class Members were required to keep
26 similar schedules.

27 33. Plaintiffs and the Class Members were regularly required to work shifts in excess
28 of five hours without being provided a lawful meal period and over ten hours in a day without

1 being provided a second lawful meal period as required by law.

2 34. Indeed, during the relevant time, as a consequence of Defendants' staffing and
3 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
4 Defendants frequently failed to provide Plaintiffs and the Class Members timely, legally complaint
5 uninterrupted 30-minute meal periods on shifts over five hours as required by law.

6 35. Similarly, as a consequence of Defendants' staffing and scheduling practices, lack
7 of coverage, work demands, and Defendants' policies and practices, Defendants frequently failed
8 to provide Plaintiffs and the Class Members legally compliant second meal periods on shifts over
9 ten hours as required by law.

10 36. On information and belief, Plaintiffs and Class Members did not waive their rights
11 to meal periods under the law.

12 37. Plaintiffs and the Class Members were not provided with valid lawful on-duty meal
13 periods.

14 38. Plaintiffs and the Class Members were not allowed to leave their trucks during
15 meal periods.

16 39. Despite the above-mentioned meal period violations, Defendants failed to
17 compensate Plaintiffs, and on information and belief, failed to compensate Class Members, one
18 additional hour of pay at their regular rate as required by California law when meal periods were
19 not timely or lawfully provided in a compliant manner.

20 40. Plaintiffs are informed and believe, and thereon alleges, that Defendants know,
21 should know, knew, and/or should have known that Plaintiffs and the other Class Members were
22 entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but
23 were not receiving such compensation.

24 41. In addition, during the relevant time frame, Plaintiffs and the Non-Exempt
25 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
26 period for every four hours worked or major fraction thereof, which is a violation of the Labor
27 Code and IWC wage order.

28 42. Defendants maintained and enforced scheduling practices, policies, and imposed
work demands that frequently required Plaintiffs and Class Members to forego their lawful, paid

1 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
2 requisite rest periods were not timely authorized and permitted.

3 43. Throughout the liability period, Plaintiff and Class Members were not properly
4 compensated by Defendants because they did not receive separate and hourly pay for their
5 statutory rest breaks when they were able to take them, due to Defendants' piece rate
6 compensation. Throughout the liability period, in violation of governing California law,
7 Defendants had a policy and practice of not paying its drivers time spent taking their Labor Code-
8 compliant rest periods. *See e.g., Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864, 872-73
9 ("Thus, contrary to Safeway's argument, a piece rate compensation formula does not compensate
10 separately for rest periods does not comply with California minimum wage law."); *Shook v. Indian*
11 *River Transport Co.*, 2014 WL 7178199 (E.D. Cal. 2014). As a result, Plaintiff and Class Members
12 never received a lawfully compliant paid rest break, yet despite these realities, Plaintiff and Class
13 Members were also not provided with one hour wages in lieu thereof in violation of the applicable
14 IWC Wage Orders and Labor Codes.

15 44. In addition, Plaintiffs and the Class Members were not allowed to leave their trucks
16 during rest breaks.

17 45. Despite the above-mentioned rest period violations, Defendants did not compensate
18 Plaintiffs, and on information and belief, did not pay Class Members one additional hour of pay at
19 their regular rate as required by California law, including Labor Code section 226.7 and the
20 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
21 permitted.

22 46. Moreover, Plaintiffs and the Class Members were required to incur necessary
23 expenses in the discharge of their duties, including without limitation the use of their personal
24 cellphones while driving their routes. Each and everyday, Plaintiff and Class Members were
25 contacted by Defendant's dispatch to coordinate their loads and pickups. Each and every day,
26 Plaintiff and Class Members also used their personal cellphones to contact customers to coordinate
27 their load drop-offs. Defendants did not reimburse Plaintiff and Class Members for such necessary
28 expenses in accordance with Labor Code section 2802.

29 47. Defendants also failed to provide accurate, lawful itemized wage statements to

1 Plaintiffs and the Class Members in part because of the above specified violations. In addition,
2 upon information and belief, Defendants omitted an accurate itemization of total hours worked,
3 including premiums due and owing for meal and rest period violations; gross pay and net pay
4 figures from Plaintiffs and the Class Members' wage statements.

5 48. Plaintiffs are informed and believe, and thereon alleges, that at all times herein
6 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
7 thereof for resignations without prior notice as the case may be) they had a duty to accurately
8 compensate Plaintiffs and Class Members for all wages owed including minimum wages, meal
9 and rest period premiums; and that Defendants had the financial ability to pay such compensation,
10 but willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the
11 above-specified violations.

12 49. Plaintiffs and the Class Members are covered by applicable California IWC Wage
13 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
14 section 11000 *et seq.*

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**

17 **(Against All Defendants)**

18 50. At all times relevant, the IWC wage orders applicable to Plaintiff's and the Class
19 require employers to pay its employees for each hour worked at least minimum wage. "Hours
20 worked" means the time during which an employee is subject to the control of an employer, and
21 includes all the time the employee is suffered or permitted to work, whether or not required to do
22 so, and in the case of an employee who is required to reside on the employment premises, that
23 time spent carrying out assigned duties shall be counted as hours worked.

24 51. At all relevant times, Labor Code §1197 provides that the minimum wage for
25 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a
26 lesser wage than the established minimum is unlawful. Further, pursuant to the IWC Wage Order
27 and Labor Code, Plaintiff and Class Members are to be paid minimum wage for each hour
28 worked, and cannot be averaged.

1 52. At all relevant times, Labor Code §1197.1 states “[a]ny employer or other persons
2 acting individually as an officer, agent, or employee of another person, who pays or causes to be
3 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or
4 by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
5 damages payable to the employee, and any applicable penalties pursuant to Section 203.

6 53. At all relevant times, Labor Code section 226.2 requires employers to pay
7 employees compensated on a piece-rate basis for rest and recovery periods and other non-driving
8 time separate from any piece-rate compensation. Employees shall be compensated for rest and
9 recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly
10 rate determined by dividing the total compensation for the workweek, exclusive of compensation
11 for rest and recovery periods and any premium compensation for overtime, by the total hours
12 worked during the workweek, exclusive of rest and recovery periods; (ii) the applicable minimum
13 wage.

14 54. On information and belief, Defendants failed to pay its non-exempt drivers at least
15 minimum wage for hours worked when it required Plaintiff and Members of the Class, under the
16 control of Defendants, to wait for the loading and unloading of cargo or goods from or into their
17 trucks, otherwise known as detention time, and further failed to pay minimum wage for all Non-
18 Driving tasks referenced above, due to Defendants’ piece rate scheme where the hours worked
19 delivering the load caused the hourly rate to fall below the minimum wage.

20 55. On information and belief, as a result of Defendants’ piece-rate compensation
21 system Plaintiff and Class Members were not compensated at least minimum wage for rest
22 periods. As set forth above, during the liability period, Plaintiff and Class members were not paid
23 separately and hourly for statutory rest breaks. In failing to pay Plaintiff and Class members for
24 this time, Defendants operated in bad faith given the issuance of *Bluford v. Safeway Stores, Inc.*,
25 216 Cal. App. 4th 864, 872-73 (2013) and cases cited therein.

26 56. On information and belief Defendants failed to compensate Plaintiff and Class
27 Members for all time worked due to Defendants’ unlawful rounding policies.

28 57. While Plaintiff and the Class performed the work as described herein, Defendants
policies and practices failed to pay wages for all hours worked, as required pursuant to Labor

1 Code §§ 200, 1194, and 1197.

2 58. Thus, Plaintiff and Class Members are entitled to recover the unpaid balance of
3 their minimum wage compensation as well as interest, costs, and attorneys' fees pursuant to Labor
4 Code §§ 1194, 1197 and liquidated damages in an amount equal to the wages unlawfully unpaid
5 and interest thereon pursuant to Labor Code §1194.2.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

8 **(Against All Defendants)**

9 59. Plaintiffs incorporate and re-allege each and every allegation contained above as
10 though fully set forth herein.

11 60. Pursuant to Labor Code §512, no employer shall employ an employee for a work
12 period of more than five (5) hours without providing a meal break of not less than thirty
13 (30) minutes in which the employee is relieved of all of his or her duties. An employer may not
14 employ an employee for a work period of more than ten (10) hours per day without providing the
15 employee with a second meal period of not less than thirty (30) minutes, except that if the total
16 hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual
17 consent of the employer and the employee only if the first meal period was not waived.

18 61. Pursuant to the IWC wage orders applicable to Plaintiffs and Class Members'
19 employment by Defendants, in order for an "on duty" meal period to be permissible, the nature of
20 the work of the employee must prevent an employee from being relieved of all duties relating to
21 his or her work for the employer and the employees must consent in writing to the "on duty" meal
22 period. On information and belief, Plaintiffs and Class Members did not consent in writing to an
23 "on duty" meal period. Further, the nature of the work of Plaintiffs and Class Members was not
24 such that they were prevented from being relieved of all duties. Despite the requirements of the
25 IWC wage orders applicable to Plaintiffs' and Class Members' employment by Defendants and
26 Labor Code §512 and §226.7, Defendants did not provide Plaintiffs and Class Members with all
27 their statutorily authorized meal periods.

28 62. For the four (4) years preceding the filing of this lawsuit, Defendants failed to

1 provide Plaintiffs and Class Members, timely and uninterrupted meal periods of not less than
2 thirty (30) minutes pursuant to the IWC wage orders applicable to Plaintiffs and Class Members'
3 employment by Defendants. As a proximate result of the aforementioned violations, Plaintiffs and
4 the other Class Members have been damaged in an amount according to proof at time of trial.

5 63. By their failure to provide a compliant meal period for each shift worked over five
6 (5) hours and their failure to provide a compliant second meal period for any shift worked over ten
7 (10) hours per day by Plaintiffs and the Class Members, and by failing to provide compensation in
8 lieu of such non-provided meal periods, as alleged above, Defendants violated the provisions of
9 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders.

10 64. Plaintiffs and the Class Members she seeks to represent did not voluntarily or
11 willfully waive meal periods and were regularly required to work shifts without being provided all
12 of their legally required meal periods. Defendants created a working environment in which
13 Plaintiffs and Class Members were not provided all of their meal periods due to shift scheduling
14 and/or work related demands placed upon them by Defendants as well as a lack of sufficient
15 staffing to meet the needs of Defendants' business as discussed above. On information and belief,
16 Defendants' implemented a policy and practice which resulted in systematic and class-wide
17 violations of the Labor Code. On information and belief, Defendants' violations have been
18 widespread throughout the liability period and will be evidenced by Defendants' time records for
19 the Class Members.

20 65. As a result of the unlawful acts of Defendants described herein, Plaintiffs and the
21 Class Members they seek to represent have been deprived of premium wages in amounts to be
22 determined at trial. Pursuant to Labor Code §226.7, Plaintiffs and Class Members are entitled to
23 recover one (1) hour of premium pay for each day in which a meal period was not provided, along
24 with interest and penalties thereon, attorneys' fees, and costs.

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THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU

THEREOF

(Against All Defendants)

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5 66. Plaintiffs incorporate and re-allege each and every allegation contained above as
6 though fully set forth herein.

7 67. Pursuant to the IWC wage orders applicable to Plaintiffs and Class Members'
8 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
9 periods, which insofar as practicable shall be in the middle of each work period.... [The]
10 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
11 minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest period
12 time shall be counted as hours worked, for which there shall be no deduction from wages." Labor
13 Code §226.7(a) prohibits an employer from requiring any employee to work during any rest period
14 mandated by an applicable order of the IWC.

15 68. At all relevant times, Labor Code section 226.2 requires employers to pay
16 employees compensated on a piece-rate basis for rest and recovery periods and other non-driving
17 time separate from any piece-rate compensation. Employees shall be compensated for rest and
18 recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly
19 rate determined by dividing the total compensation for the workweek, exclusive of compensation
20 for rest and recovery periods and any premium compensation for overtime, by the total hours
21 worked during the workweek, exclusive of rest and recovery periods; (ii) the applicable minimum
22 wage.

23 69. Defendants were required to authorize and permit employees such as Plaintiffs and
24 Class Members to take rest periods, based upon the total hours worked at a rate of ten (10) minutes
25 net rest per four (4) hours worked, or major fraction thereof, with no deduction from wages.
26 Despite said requirements of the IWC wage orders applicable to Plaintiffs' and Class Members'
27 employment by Defendants, Defendants failed and refused to authorize and permit Plaintiffs and
28 Class Members, to take ten (10) minute rest periods for every four (4) hours worked, or major

1 fraction thereof.

2 70. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
3 compensate Plaintiff and Class Members for their statutory required rest breaks, due to
4 Defendants' piece rate compensation. Throughout the liability period, in violation of governing
5 California law, Defendants had a policy and practice of not paying its drivers time spent taking
6 their Labor Code-compliant rest periods. *See e.g., Bluford v. Safeway Stores, Inc.*, 216 Cal. App.
7 4th 864, 872-73. Further, during the liability period, Defendants' failed to authorize and permit
8 Plaintiff and Class Members the required rest periods pursuant to the IWC wage orders applicable
9 to Plaintiff and Class Members' employment by Defendants and Labor Code §226.7 as
10 Defendants' and their supervisors maintained direction and control over Plaintiff and Class
11 Members during this time, or would prioritize freight delivery at the expense of Plaintiff and Class
12 Members' rest breaks. On information and belief, Defendants on a consistent and regular basis,
13 required Plaintiff and Class Members to continue driving to their next delivery destinations in
14 order to make their guaranteed windows for their freight. Despite this, Defendant's failed to pay
15 Plaintiff and Class Members the required premiums owed pursuant to §226.7 or were inaccurately
16 paid the required premiums.

17 71. As a proximate result of the aforementioned violations, Plaintiffs and Class
18 Members have been damaged in an amount according to proof at time of trial. Pursuant to Labor
19 Code §226.7, Plaintiffs and Class Members are entitled to recover one (1) hour of premium pay
20 for each day in which Defendants failed to provide a rest period to Plaintiffs and the Class, plus
21 interest and penalties thereon, attorneys' fees, and costs.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PAY TIMELY PAY WAGES**

24 **(Against All Defendants)**

25 72. Plaintiffs incorporate and re-allege each and every allegation contained above as
26 though fully set forth herein.

27 73. Plaintiffs incorporate and re-allege each and every allegation contained above as
28 though fully set forth herein. Labor Code §§201-202 requires an employer who discharges an

1 employee to pay compensation due and owing to said employee immediately upon discharge and
2 that if an employee voluntarily leaves his or her employment, his or her wages shall become due
3 and payable not later than seventy-two (72) hours thereafter, unless the employee has given
4 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee
5 is entitled to his or her wages on their last day of work.

6 74. Labor Code §203 provides that if an employer willfully fails to pay compensation
7 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for waiting
8 time penalties in the form of continued compensation for up to thirty (30) work days.

9 75. During the relevant time period, Defendants willfully failed and refused, and
10 continue to willfully fail and refuse, to pay Plaintiffs and Class Members their wages, earned and
11 unpaid, either at the time of discharge, or within seventy-two (72) hours of their voluntarily
12 leaving Defendants' employ. These wages include regular wages.

13 76. As a result, Defendants are liable to Plaintiffs and members of the Non-Exempt
14 Production Employee class for waiting time penalties pursuant to Labor Code §203, in an amount
15 according to proof at the time of trial.

16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

18 **(Against All Defendants)**

19 77. Plaintiffs incorporate and re-allege each and every allegation contained above as
20 though fully set forth herein.

21 78. Section 226(a) of the California Labor Code requires Defendants to itemize in wage
22 statements all deductions from payment of wages and to accurately report total hours worked by
23 Plaintiffs and the Class including applicable hourly rates and reimbursement expenses among
24 other things. Defendants have knowingly and intentionally failed to comply with Labor Code
25 section 226 and 204 on wage statements that have been provided to Plaintiffs and the Class.

26 79. IWC Wage Orders require Defendants to maintain time records showing, among
27 others, when the employee begins and ends each work period, meal periods, split shift intervals
28 and total daily hours worked in an itemized wage statement, and must show all deductions and

1 reimbursements from payment of wages, and accurately report total hours worked by Plaintiffs
2 and the Class. On information and belief, Defendants have failed to record all or some of the
3 items delineated in Industrial Wage Orders and Labor Code §226.

4 80. Defendants have failed to accurately record all time worked.

5 81. Defendants have also failed to accurately record the meal and rest period premiums
6 owed and all wages owed per pay period.

7 82. Plaintiffs and the Class have been injured as they were unable to determine whether
8 they had been paid correctly for all hours worked per pay period among other things.

9 83. Pursuant to Labor Code section 226, Plaintiffs and the Class are entitled up to a
10 maximum of \$4,000 each for record keeping violations.

11 84. Pursuant to Labor Code section 266.3, any employer who violates subdivision (a)
12 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
13 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
14 for each violation in a subsequent citation, for which the employer fails to provide the employee a
15 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

16 **SIXTH CAUSE OF ACTION**

17 **FOR FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES**

18 **By Plaintiffs and Class Against All Defendants**

19 85. Plaintiffs incorporate and re-allege each and every allegation contained above as
20 though fully set forth herein.

21 86. Labor Code § 2802 requires Defendants to indemnify Plaintiffs and Class Members
22 for necessary expenditures incurred in direct consequences of the discharge of his or her duties. As
23 a necessary part of their employment, Plaintiffs and on information and belief Class Members
24 were not adequately reimbursed by Defendants for expenses related to all expenses incurred.
25 Despite these realities of the job, Defendants failed to provide reimbursements to Plaintiffs and
26 Class Members.

27 87. Labor Code §2804 states in pertinent part: "Any contract or agreement, express or
28 implied, made by any employee to waive the benefits of this article or any part thereof is null and

1 void, and this article shall not deprive any employee or his or her personal representative of any
2 right or remedy to which he is entitled under the laws of this State.

3 88. As a result of the unlawful acts of Defendants, Plaintiffs and the Class Members
4 have been deprived of un-reimbursed expense amounts to be determined at trial, and are entitled to
5 the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
6 pursuant to Labor Code §§ 226, and 2802.

7 **SEVENTH CAUSE OF ACTION**

8 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et.seq.**

9 **(Against All Defendants)**

10 89. Plaintiffs incorporate and re-allege each and every allegation contained above as
11 though fully set forth herein.

12 90. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
13 unfair, unlawful, and harmful to Plaintiffs and Class Members, Defendants' competitors, and the
14 general public. Plaintiffs seeks to enforce important rights affecting the public interest within the
15 meaning of the California Code of Civil Procedure §1021.5.

16 91. Defendants' policies, activities, and actions as alleged herein, are violations of
17 California law and constitute unlawful business acts and practices in violation of California
18 Business and Professions Code §§17200, et seq.

19 92. A violation of California Business and Professions Code §§17200, et seq., may be
20 predicated on the violation of any state or federal law. Defendants' policy of failing to pay at
21 least minimum wage for all time worked, to provide accurate itemized wage statements and
22 failing to provide Plaintiffs and the Class with meal periods and rest breaks or the one (1) hour of
23 premium pay when a meal or rest break period was not provided or provided outside of the
24 required time frames, violates Labor Code § 226, §512, and §226.7 and applicable IWC Wage
25 Orders and California Code of Regulations.

26 93. Plaintiffs and Class Members have been personally aggrieved by Defendants'
27 unlawful and unfair business acts and practices alleged herein by the loss of money and/or
28 property.

1 94. Pursuant to California Business and Professions Code §§17200, et seq., Plaintiffs
2 and Class Members are entitled to restitution of the wages withheld and retained by Defendants
3 during a period that commences four (4) years prior to the filing of this complaint; an award of
4 attorneys' fees, interest; and an award of costs.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs prays for judgment against Defendants, as follows:

7 **Class Certification**

- 8 1. That this action be certified as a class action;
9 2. That Plaintiffs be appointed as the representative of the Class;
10 3. That Plaintiffs be appointed as the representative of the Subclass; and
11 4. That counsel for Plaintiffs is appointed as counsel for the Class and Subclass..

12 **On the First Cause of Action**

- 13 1. For compensatory damages equal to the unpaid balance of minimum wage
14 compensation owed to Plaintiffs and Class members as well as interest and costs;
15 2. For reasonable attorneys' fees and costs pursuant to Labor Code § 1194;
16 3. For liquidated damages in an amount equal to the wages unlawfully unpaid and
17 interest thereon pursuant to Labor Code §§ 1194.2, 558;
18 4. For such other and further relief as the Court deems proper.

19 **On the Second Cause of Action**

- 20 1. For one (1) hour of premium pay for each day in which a required meal period was
21 not provided or not provided in a timely manner; and
22 2. For such other and further relief as the Court deems proper.

23 **On the Third Cause of Action**

- 24 1. For one (1) hour of premium pay for each day in which a required rest period was
25 not authorized or permitted; and
26 2. For such other and further relief as the Court deems proper.

27 **On the Fourth Cause of Action**

- 28 1. For statutory penalties pursuant to Labor Code §203;

- 1 2. For interest for wages untimely paid; and
- 2 3. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

- 4 1. For statutory penalties pursuant to Labor Code §226;
- 5 2. For interest for wages untimely paid;
- 6 3. For penalties pursuant to Labor Code §266.3; and
- 7 4. For such other and further relief as the Court deems proper.

On the Seventh Cause of Action

- 9 1. For statutory penalties pursuant to Labor Code §2802;
- 10 2. For interest for wages untimely paid; and
- 11 3. For such other and further relief as the Court deems proper.

On the Seventh Cause of Action

- 13 1. That Defendants, jointly and/or severally, pay restitution of sums to Plaintiffs and
- 14 Class Members for their past failure to provide accurate itemized wage statements, pay wages,
- 15 premium wages for meal and/or rest periods, that were not provided as described herein to
- 16 Plaintiffs and Class Members over the last four (4) years in an amount according to proof;
- 17 2. For pre-judgment interest on any unpaid wages due from the day that such amounts
- 18 were due;
- 19 3. For reasonable attorneys' fees that Plaintiffs and Class Members are entitled to
- 20 recover;
- 21 4. For costs of suit incurred herein; and
- 22 5. For such other and further relief as the Court deems proper.

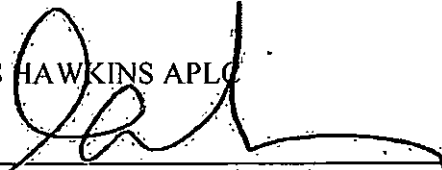
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DEMAND FOR JURY TRIAL

Plaintiffs and members of the Class and Subclass request a jury trial in this matter.

Dated: December 5, 2019

JAMES HAWKINS APLC
By: 

JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.
Attorneys for Plaintiffs DAVID TOWNSEND
and FARSHAD FIROUZMANDI,
individually and on behalf of all others
similarly situated.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [C.R. England Hit with Former Drivers' Unpaid Wage Claims in California Class Action](#)
