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all others similarly situated, and on behalf of the general public.

5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

7 CHRISTIAN BRINK and DAVID MAIER
8 on behalf of themselves, all others similarly
9 situated, and on behalf of the general
public,

10 Plaintiffs,

11 v.

12 CENTRAL VALLEY AUTO
13 TRANSPORT, INC.; and DOES 1-100,

14 Defendants.

Case No. 1:19-cv-01213-AWI-SKO

**PLAINTIFFS' SECOND AMENDED CLASS
ACTION COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND RESTITUTION**

- 1) Failure to Pay All Straight Time Wages;
- 2) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 9-2001(11); Cal. Code Regs., tit. 8 § 11090);
- 3) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 9-2001(12); Cal. Code Regs. Title 8 § 11090);
- 4) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);
- 5) Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§201-203);
- 6) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.);
- 7) Failure to Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802, Cal. Regs., tit. 8, § 11090(8)); and,
- 8) Violations of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

DEMAND FOR JURY TRIAL

1 Plaintiffs CHRISTIAN BRINK and DAVID MAIER, on behalf of themselves, all others similarly
2 situated, and on behalf of the general public, complain of Defendant CENTRAL VALLEY AUTO
3 TRANSPORT, INC. and/or DOES and for causes of action and alleges:

4 1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf
5 of Plaintiffs, CHRISTIAN BRINK and DAVID MAIER, and all non-exempt, truck
6 workers, truck drivers, drivers, or similar job designations who are presently or formerly
7 employed by CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES and/or their
8 subsidiaries or affiliated companies and/or predecessors within the State of California.
9 Plaintiff DAVID MAIER additionally brings this case on behalf of himself and all present
10 and former drivers who directly signed a contract with CENTRAL VALLEY AUTO
11 TRANSPORT, INC. and/or DOES and have driven for CENTRAL VALLEY AUTO
12 TRANSPORT, INC. and/or DOES within the State of California during the period of the
13 relevant statute of limitations.

14 2. At all times mentioned herein, CENTRAL VALLEY AUTO TRANSPORT, INC. and/or
15 DOES own and operate trucks, industrial trucks, industrial vehicles, and/or industrial work
16 sites. At all times during the liability period, CENTRAL VALLEY AUTO TRANSPORT,
17 INC. and/or DOES have conducted business in Tulare County and elsewhere within
18 California.

19 3. At all times mentioned herein, CENTRAL VALLEY AUTO TRANSPORT, INC. and/or
20 subsidiaries or affiliated companies and/or DOES, within the State of California, have,
21 among other things, employed current and former non-exempt employees with job titles
22 including, truck workers, industrial truck workers, industrial truck drivers, industrial vehicle
23 drivers, and/or industrial workers, and drivers who directly signed a contract with CENTRAL
24 VALLEY AUTO TRANSPORT, INC. and/or DOES and have performed services
25 CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES pursuant to that contract
26 within the State of California during the period of the relevant statute of limitations
27 (hereinafter “non-exempt employees”).

28 4. At all times mentioned herein, the common policies and practices of CENTRAL VALLEY

1 AUTO TRANSPORT, INC. and/or DOES were a direct cause of Defendant's and/or
2 DOES' failure to comply with California's wage and hours laws, Wage Orders, and/or the
3 California Labor Code, as set forth more fully within.

4 5. For at least four (4) years prior to the filing of this action and through to the present,
5 Defendant CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES have had a
6 consistent policy and/or practice of not paying Plaintiffs and its Non-Exempt Employees
7 for all of the hours they worked.

8 6. For at least four (4) years prior to the filing of this action and through to the present,
9 Defendant CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES have had a
10 continuous and widespread policy of not paying Plaintiffs and those similarly situated for
11 all hours they worked, including before clocking in for their work shift, after clocking out
12 for their work shift, and during unpaid meal periods. Further, Defendant CENTRAL
13 VALLEY AUTO TRANSPORT, INC. and/or DOES have had a continuous and
14 widespread policy to shave the time Plaintiffs and those similarly situated worked (referred
15 to as "time shaving").

16 7. For at least four (4) years prior to the filing of this action and through to the present,
17 Defendant CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES have had a
18 continuous and widespread policy of "clocking-out" Plaintiffs and those similarly situated
19 for thirty (30) minute meal periods, even though Plaintiffs and those similarly situated were
20 suffered and/or permitted to work during these deduction periods, thereby deducting thirty
21 (30) minutes of paid time, including straight time and overtime.

22 8. For at least four (4) years prior to the filing of this action and through to the present,
23 Defendant CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES have had a
24 consistent policy and/or practice of failing to provide all straight time and overtime wages
25 owed to Non-Exempt Employees, as mandated under the California Labor Code and the
26 implementing rules and regulations of the Industrial Welfare Commission's ("IWC")
27 California Wage Orders.

28 9. For at least four (4) years prior to the filing of this action and through to the present,

1 Defendant CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES have had a
2 consistent policy of requiring Non-Exempt Employees within the State of California,
3 including Plaintiffs, to work through meal periods and work at least five (5) hours without
4 a meal period and failing to pay such employees one (1) hour of pay at the employees'
5 regular rate of compensation for each workday that the meal period is not provided, or
6 other compensation, as required by California's state wage and hour laws, and
7 automatically deducting a half hours pay from their wages.

8 10. For at least four (4) years prior to filing of this action and through the present, Defendant
9 CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES did not have a policy of
10 allowing its employees working shifts of ten (10) or more hours in a day to take a second
11 meal period of not less than thirty (30) minutes as required by the applicable Wage Order
12 of the IWC.

13 11. For at least four (4) years prior to the filing of this action and through to the present,
14 Defendant CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES have had a
15 consistent policy of requiring Non-Exempt Employees within the State of California,
16 including Plaintiffs, to work over ten (10) hours without providing an additional,
17 uninterrupted meal period of thirty (30) minutes and failing to pay such employees one (1)
18 hour of pay at the employees' regular rate of compensation for each workday that the meal
19 period is not provided, or other compensation, as required by California's state wage and
20 hour laws.

21 12. For at least four (4) years prior to the filing of this action and through to the present,
22 Defendant CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES have had a
23 consistent policy and/or practice of requiring its Non-Exempt Employees within the State
24 of California, including Plaintiffs, to work for over four hours, or a major fraction thereof,
25 without a 10 minute rest period, and failing to pay such employees one (1) hour of pay at
26 the employees' regular rate of compensation for each workday that the rest period is not
27 provide, or other compensation, as required by California's state wage and hour laws.

28 13. For at least four (4) years prior to the filing of this action and through to the present,

1 Defendant CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES and/or their
2 officers and/or managing agents have had a consistent policy and/or practice of willfully
3 failing to provide to Plaintiffs and its Non-Exempt Employees, accurate itemized employee
4 wage statements.

5 14. For at least four (4) years prior to the filing of this action and through to the present,
6 Defendant CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES and/or their
7 officers and/or managing agents have had a consistent policy and/or practice of willfully
8 failing to timely pay wages owed to Plaintiffs and those Non-Exempt Employees who left
9 Defendant CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES employ or
10 who were terminated.

11 15. For at least four (4) years prior to the filing of this action and through to the present,
12 CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES, by failing to lawfully
13 pay Plaintiffs and those similarly situated all the wages they are owed, engaged in false,
14 unfair, fraudulent and deceptive business practices within the meaning of the Business and
15 Professions Code section 17200, et seq.

16 16. Throughout the statutory period, CENTRAL VALLEY AUTO TRANSPORT, INC.'s
17 and/or DOES' employees, including Plaintiffs and similarly situated Non-Exempt
18 Employees, were not provided all straight time and overtime wages owed, meal periods
19 and rest periods, or compensation in lieu thereof, as mandated under the California Labor
20 Code, and the implementing rules and regulations of the Industrial Welfare Commissions
21 ("IWC") California Wage Orders.

22 17. Throughout the statutory period, CENTRAL VALLEY AUTO TRANSPORT, INC. and/or
23 DOES employees, including Plaintiffs and similarly situated Non-Exempt Employees were
24 not provided with accurate and itemized employee wage statements.

25 18. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES failed to comply with
26 Labor Code section 226, subdivision (a), by itemizing in wage statements all compensation
27 and accurately reporting total hours worked by Plaintiffs and the members of the proposed
28 class. Plaintiffs and members of the proposed class are entitled to penalties not to exceed

- 1 \$4,000 for each employee pursuant to Labor Code section 226(b).
- 2 19. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES have failed to comply
3 with IWC Wage Order 9-2001(7) by failing to maintain accurate time records showing
4 compensation, when the employee begins and ends each work day and total daily hours
5 worked by itemizing in wage statements and accurately reporting total hours worked by
6 Plaintiffs and members of the proposed class.
- 7 20. CENTRAL VALLEY AUTO TRANSPORT, INC.'s and/or DOES' failure to retain
8 accurate records of total hours worked by Plaintiffs and the proposed class was willful and
9 deliberate, was a continuous breach of CENTRAL VALLEY AUTO TRANSPORT,
10 INC.'s and/or DOES' duty owed to Plaintiffs and the proposed class.
- 11 21. Throughout the statutory period, CENTRAL VALLEY AUTO TRANSPORT, INC.'s
12 and/or DOES' employees, including Plaintiffs and similarly situated Non-Exempt
13 Employees, were not timely paid all wages owed to them at the time of termination.
- 14 22. Defendant CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES are and were
15 aware that Plaintiffs and members of the proposed class were not paid all straight time and
16 overtime wages owed, nor provided meal and rest periods. Defendant CENTRAL
17 VALLEY AUTO TRANSPORT, INC.'s and/or DOES' denial of wages and other
18 compensation due to Plaintiffs and members of the proposed class was willful and
19 deliberate.
- 20 23. Defendant CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES, each and
21 collectively, controlled the wages, hours, and working conditions of Plaintiffs and the
22 proposed class, creating a joint-employer relationship over Plaintiffs and the proposed
23 class.
- 24 24. Plaintiffs CHRISTIAN BRINK and DAVID MAIER, on behalf of themselves and all of
25 CENTRAL VALLEY AUTO TRANSPORT, INC.'s and/or DOES' Non-Exempt
26 Employees, brings this action pursuant to California Labor Code sections 218, 218.5, 222,
27 223, 224, 226, subd. (b), 226.7. 510, 512, 515, 558, 1194, 1197, and California Code of
28 Regulations, Title 8, sections 11090 and 3395, seeking unpaid wages, overtime, meal and

1 rest period compensation, penalties, injunctive and other equitable relief, relief under the
2 Labor Code Private Attorneys General Act of 2004 (“PAGA”), and reasonable attorneys’
3 fees and costs.

4 25. Plaintiffs CHRISTIAN BRINK and DAVID MAIER, on behalf of themselves and all
5 putative Class members made up of CENTRAL VALLEY AUTO TRANSPORT, INC.’s
6 and/or DOES’ non-exempt employees, pursuant to California Business and Professions
7 Code sections 17200-17208, also seeks injunctive relief, restitution, and disgorgement of
8 all benefits CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES enjoyed from
9 their failure to pay all straight time wages, overtime wages, and meal and rest period
10 compensation.

11 **I. VENUE**

12 26. Venue as to each Defendant, CENTRAL VALLEY AUTO TRANSPORT, INC. and/or
13 DOES, is proper in this judicial district, pursuant to Code of Civil Procedure section 395.
14 Defendant CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES conduct
15 business and commit Labor Code violations within Tulare County, and each Defendant
16 and/or DOE is within California for service of process purposes. The unlawful acts alleged
17 herein have a direct effect on Plaintiffs and those similarly situated within the State of
18 California and within Tulare County. Defendant CENTRAL VALLEY AUTO
19 TRANSPORT, INC. and/or DOES employ numerous Class members who work in Tulare
20 County, in California.

21 **II. PARTIES**

22 **A. Plaintiffs.**

23 27. At all relevant times, herein, Plaintiffs CHRISTIAN BRINK and DAVID MAIER are and
24 were residents of California. At all relevant times, herein, they were employed by
25 Defendant CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES within the last
26 four (4) years as a non-exempt truck worker, industrial truck worker, industrial truck driver,
27 industrial vehicle driver, industrial worker and/or any similar job designation in California.
28 Plaintiff DAVID MAIER was also employed by Defendant CENTRAL VALLEY AUTO

1 TRANSPORT, INC. and/or DOES within the last four (4) years as a driver who directly
2 signed a contract with CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES
3 and performed services for CENTRAL VALLEY AUTO TRANSPORT, INC. and/or
4 DOES pursuant to that contract within the State of California.

5 28. On or about June 28, 2018, Plaintiff CHRISTIAN BRINK filed a Notice of Labor Code
6 Violations Pursuant to Labor Code Section 2699.3 with the Labor and Workforce
7 Development Agency (“LWDA”). To date, Plaintiff has not received notice that the
8 LWDA will be taking action in response to Plaintiff’s Notice.

9 29. On information and belief, Plaintiffs and all other members of the proposed class
10 experienced Defendant CENTRAL VALLEY AUTO TRANSPORT, INC.’s and/or
11 DOES’ common company policies of failing to pay all straight time and overtime wages
12 owed.

13 30. On information and belief, Plaintiffs and all other members of the proposed class
14 experienced Defendant CENTRAL VALLEY AUTO TRANSPORT, INC.’s and/or
15 DOES’ common company policies of illegally deducting wages from employees for meal
16 periods during which they were performing work.

17 31. On information and belief, Plaintiffs and all other members of the proposed class
18 experienced Defendant CENTRAL VALLEY AUTO TRANSPORT, INC.’s and/or
19 DOES’ common company policies and/or practices of failing to pay all straight time and
20 overtime wages owed, and failing to provide compliant meal periods to employees before
21 the end of their fifth hour of work or a second meal period before the end of the tenth hour
22 or work, or compensation in lieu thereof.

23 32. On information and belief, Plaintiffs and all other members of the proposed class
24 experienced Defendant CENTRAL VALLEY AUTO TRANSPORT, INC.’s and/or
25 DOES’ common company policies of failing to provide ten (10) minute paid rest breaks to
26 employees whom worked four (4) hours or major fractions thereof.

27 33. On information and belief, Plaintiffs and all other members of the proposed class
28 experienced Defendant CENTRAL VALLEY AUTO TRANSPORT, INC.’s and/or

1 DOES' common company policies of failing to provide Non-Exempt Employees with
2 accurate itemized wage statements. On information and belief, Defendants and/or DOES
3 failure to provide to their Non-Exempt Employees, including Plaintiffs, with accurate
4 itemized wage statements was willful.

5 34. On information and belief, Plaintiffs and all other members of the proposed class
6 experienced Defendant CENTRAL VALLEY AUTO TRANSPORT, INC.'s and/or
7 DOES' common company policies of failing to timely compensate Non-Exempt
8 Employees all wages owed upon termination. On information and belief, Defendant's
9 and/or DOES' failure to pay, in a timely manner, compensation owed to Non-Exempt
10 Employees, including Plaintiffs, upon termination of their employment with CENTRAL
11 VALLEY AUTO TRANSPORT, INC. and/or DOES was willful.

12 35. On information and belief, Plaintiffs and all other members of the proposed class
13 experienced Defendant CENTRAL VALLEY AUTO TRANSPORT, INC.'s and/or
14 DOES' fraudulent and deceptive business practices within the meaning of the Business and
15 Professions Code section 17200, et seq.

16 36. Plaintiffs and the proposed class are covered by, inter alia, California IWC Occupational
17 Wage Order No. 9-2001, and Title 8, California Code of Regulations, §§ 11090 and 3395.

18 **B. Defendants.**

19 37. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES own and operate trucks,
20 industrial trucks, industrial vehicles, and/or industrial work sites, and, at all times during
21 the liability period, have conducted business principally in Tulare County and elsewhere
22 within California. At these work sites and throughout California, Defendant CENTRAL
23 VALLEY AUTO TRANSPORT, INC. and/or DOES have, among other things, employed
24 persons as truck workers, industrial truck workers, industrial truck drivers, industrial
25 vehicle drivers, industrial workers, and/or other similar job designations.

26 38. At all relevant times, herein, CENTRAL VALLEY AUTO TRANSPORT, INC. and/or
27 DOES engage in the ownership and operation of facilities which perform auto and light
28 truck towing, water recovery, lock-out, and roadside service in the State of California.

- 1 39. In addition to classifying drivers as employees, CENTRAL VALLEY AUTO
2 TRANSPORT, INC. contracts with numerous individuals, such as Plaintiff DAVID
3 MAIER, to perform pick up and delivery services of vehicles for its customers. These
4 drivers who enter into these contracts with CENTRAL VALLEY AUTO TRANSPORT,
5 INC. are misclassified as independent contractors and, on that unlawful basis, Defendant
6 CENTRAL VALLEY AUTO TRANSPORT, INC., does not provide the class of
7 Misclassified Drivers with the protections complained of herein, such as the provision of
8 compliant meal and rest periods, itemized wage statements, straight time wages, and all
9 wages at the time of termination.
- 10 40. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES employed Plaintiffs and
11 members of the proposed Class throughout the statutory liability period as non-exempt
12 truck workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers,
13 industrial workers, and/or other similar job designations. On information and belief,
14 CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES employed Plaintiffs and
15 members of the proposed Class within California. On information and belief, CENTRAL
16 VALLEY AUTO TRANSPORT, INC. and/or DOES exercised control over the wages,
17 hours, and/or working conditions of Plaintiffs and members of the proposed classes of
18 Company Drivers and Misclassified Class Members.
- 19 41. Whether classified as Company Drivers or misclassified as independent contractors, such
20 as the Misclassified Class Members, CENTRAL VALLEY AUTO TRANSPORT, INC.
21 was the employer of Plaintiffs and the classes they seek to represent. Plaintiffs and the
22 classes they seek to represent work under the control and direction of CENTRAL VALLEY
23 AUTO TRANSPORT, INC. in connection with the performance of work, both under the
24 contract for hire for the performance of work and fore the performance of work in fact.
25 Plaintiffs and the classes they seek to represent do not perform work that is outside
26 Defendant's usual course of business, and CENTRAL VALLEY AUTO TRANSPORT,
27 INC. retains the right to control Plaintiffs' and the Class' work details. The work performed
28 by Plaintiffs and the classes they seek to represent constitute the integral, if not the

1 essential, part of Defendant's business of vehicle transportation. As such, CENTRAL
2 VALLEY AUTO TRANSPORT, INC. is the employer of both Plaintiffs and the classes
3 they seek to represent and owes the statutory protections the California Labor Code affords
4 employees, such as the right to compliant meal and rest periods, the payment of wages for
5 all hours worked, properly itemized wage statements, and the payment of all wages owed
6 at the time of termination.

7 42. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES principal place of
8 business is in the State of California.

9 43. The true names and capacities, whether individual, corporate, associate, or otherwise, of
10 Defendants DOES 1-100, inclusive, are presently unknown to Plaintiffs, who therefore sue
11 these Defendants by such fictitious names under Code of Civil Procedure section 474.
12 Plaintiffs are informed and believe, and based thereon alleges, that each of the Defendants
13 designated herein as a DOE is legally responsible in some manner for the unlawful acts
14 referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the
15 true names and capacities of the Defendants designated hereinafter as DOES when such
16 identities become known.

17 44. Plaintiffs are informed and believe, and based thereon alleges, that each Defendant and/or
18 DOE acted in all respects pertinent to this action as the agent of the other Defendants and/or
19 DOES, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
20 and the acts of each Defendants and/or DOES are legally attributable to the other
21 Defendants and/or DOES.

22 **III. CLASS ACTION ALLEGATIONS**

23 45. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a
24 class action pursuant to section 382 of the California Code of Civil Procedure. Plaintiffs
25 seek to represent a Class composed of and defined as follows:

26
27 All persons who are employed or have been employed by Defendant
28 in the State of California as Non-Exempt truck workers, industrial

1 truck workers, industrial truck drivers, industrial vehicle drivers,
2 industrial workers, and/or other similar job designations and titles
3 during the period of the relevant statute of limitations. (“Company
4 Driver Class”
5

6 Plaintiffs also seek to represent Company Driver Subclasses composed of and defined as
7 follows:
8

9 All Company Driver Class Members who worked one (1) or more
10 shifts in excess of five (5) hours.
11

12 All Company Driver Class Members who worked one (1) or more
13 shifts in excess of six (6) hours.
14

15 All Company Driver Class Members who worked one (1) or more
16 shifts in excess of ten (10) hours.
17

18 All Company Driver Class Members who worked one (1) or more
19 shifts in excess of twelve (12) hours.
20

21 All Company Driver Class Members who worked one (1) or more
22 shifts in excess of two (2) hours.
23

24 All Company Driver Class Members who worked one (1) or more
25 shifts in excess of three (3) hour and one-half hours, but less than or
26 equal to six (6) hours.
27

28 All Company Driver Class Members who worked one (1) or more

1 shifts in excess of six (6) hours, but less than or equal to ten (10)
2 hours.

3
4 All Company Driver Class Members who worked one (1) or more
5 shifts in excess of ten (10) hours.

6
7 All Company Driver Class Members who separated their
8 employment from Defendant.

9
10 All Company Driver Class Members who worked one (1) or more
11 shifts in which they received a wage statement for the corresponding
12 pay period.

13
14 All Company Driver Class Members who were deducted wages for
15 meal periods.

16
17 Plaintiff DAVID MAIER, in addition to being a representative of the Company Driver
18 Class, also seeks to represent a Class composed of and defined as follows:

19
20 All persons with job titles including, drivers, truck workers, industrial
21 truck workers, industrial truck drivers, and/or industrial vehicle drivers
22 who directly signed a contract with CENTRAL VALLEY AUTO
23 TRANSPORT, INC. and/or DOES and have performed service for
24 CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES in
25 service of that contract within the State of California during the
26 period of the relevant statute of limitations. (Misclassification
27 Class).

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Plaintiff DAVID MAIER also seeks to represent Misclassification Subclasses composed of and defined as follows:

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

All Misclassification Class Members who worked one (1) or more shifts in excess of six (6) hours.

All Misclassification Class Members who worked one (1) or more shifts in excess of ten (10) hours.

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

All Misclassification Class Members who worked one (1) or more shifts in excess of two (2) hours.

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

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

All Misclassification Class Members who worked one (1) or more

1 shifts in excess of ten (10) hours.

2

3 Misclassification Class Members who separated their employment
4 from Defendant.

5

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

9

10 Misclassification Class Members who were not paid wages during
11 meal periods.

12

13 46. Plaintiffs reserve the right under rule 1855, subdivision (b), California Rules of Court, to
14 amend or modify the Class description with greater specificity or further division into
15 subclasses or limitation to particular issues.

16 47. This action has been brought and may properly be maintained as a class action under the
17 provisions of section 382 of the California Code of Civil Procedure because there is a well-
18 defined community of interest in the litigation and the proposed Class is easily
19 ascertainable.

20 **A. Numerosity.**

21 48. The potential members of the Classes as defined are so numerous that joinder of all the
22 members of the Classes is impracticable. While the precise number of Class members has
23 not been determined at this time, Plaintiffs are informed and believe that CENTRAL
24 VALLEY AUTO TRANSPORT, INC. and/or DOES employed during the liability period
25 over 100 (100) Company Drivers, in Tulare County and dispersed throughout California
26 during the liability period and who are or have been affected by CENTRAL VALLEY
27 AUTO TRANSPORT, INC.'s and/or DOES' policies of wage theft, failure to pay all
28 straight time wages owed, failure to provide meal and/or rest periods without the

1 appropriate legal compensation, willful failure to pay all wages due at time of separation
2 from employment, failure to timely pay waiting time monies, and knowing and intentional
3 failure to provide accurate and itemized employee wage statements. Plaintiff is also
4 informed and believes that Defendant has employed over one thousand (1,000)
5 Misclassification Class Members during the liability period.

6 49. Accounting for employee turnover during the relevant periods increases this number
7 substantially. Upon information and belief, Plaintiffs allege CENTRAL VALLEY AUTO
8 TRANSPORT, INC.'s and/or DOES' employment records will provide information as to
9 the number and location of all Class members. Joinder of all members of the proposed
10 Class is not practicable.

11 **B. Commonality.**

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

15 (1) Whether CENTRAL VALLEY AUTO TRANSPORT, INC.
16 and/or DOES violated the Labor Code and/or applicable IWC Wage Orders
17 in failing to pay its non-exempt workers all earned wages at the regular rate
18 for all hours worked.

19 (2) Whether CENTRAL VALLEY AUTO TRANSPORT,
20 INC.'s and/or DOES' uniform policies and/or practices whereby non-
21 exempt workers were pressured and/or incentivized to forego taking meal
22 and/or rest periods.

23 (3) Whether CENTRAL VALLEY AUTO TRANSPORT, INC.
24 and/or DOES violated Labor Code section 226.7, IWC Wage Order No. 9-
25 2001 or other applicable IWC Wage Orders, and/or California Code of
26 Regulations, Title 8, section 11090, by failing to authorize, permit, and/or
27 provide rest periods to its non-exempt employees for every four (4) hours
28 or major fraction thereof worked and/or failing to pay said employees one

1 (1) hour of pay at the employee's regular rate of compensation for each
2 work day that the rest period was not authorized, permitted and/or provided.

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

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

12 (6) Whether CENTRAL VALLEY AUTO TRANSPORT, INC.
13 and/or DOES had uniform policies and/or practices of failing to provide
14 employees accurate and itemized wage statements.

15 (7) Whether CENTRAL VALLEY AUTO TRANSPORT, INC.
16 and/or DOES had uniform policies and/or practices of failing to timely pay
17 all wages owed to employees who left CENTRAL VALLEY AUTO
18 TRANSPORT, INC.'s and/or DOES' employ or who were terminated.

19 (8) Whether Misclassification Class Members have been
20 misclassified as independent contractors.

21 (9) Whether Misclassification Class Members are employees of
22 Defendant.

23 (10) Whether Misclassification Class Members are entitled to the
24 protections of the various provisions of the California Labor Code as
25 detailed herein.

26 (11) Whether Misclassification Class Members' rights to the
27 protections of the various provisions of the California Labor Code as
28 detailed herein have been violated.

1 51. The answer to each of these respective questions will generate a common answer capable
2 of resolving class-wide liability in one stroke.

3 52. Said common questions predominate over any individualized issues and/or questions
4 affecting only individual members.

5 **C. Typicality.**

6 53. The claims of the named Plaintiffs are typical of the claims of the proposed classes they
7 seek to represent. Plaintiffs and all members of the proposed class sustained injuries and
8 damages arising out of and caused by CENTRAL VALLEY AUTO TRANSPORT, INC.'s
9 and/or DOES' common course of conduct in violation of laws and regulations that have
10 the force and effect of law and statutes as alleged.

11 54. Plaintiffs CHRISTIAN BRINK and DAVID MAIER were subjected to the same uniform
12 policies and/or practices complained of herein that affected all such employees. Thus, as
13 CHRISTIAN BRINK and DAVID MAIER were subjected to the same unlawful policies
14 and practices as all non-exempt employees, their claims are typical of the class they seek
15 to represent.

16 **D. Adequacy of Representation.**

17 55. Plaintiffs will fairly and adequately represent and protect the interests of the members of
18 the Class.

19 56. Plaintiffs are ready and willing to take the time necessary to help litigate this case.

20 57. Plaintiffs have no conflicts that will disallow them to fairly and adequately represent and
21 protect the interests of the members of the Class.

22 58. Counsel who represent Plaintiffs are competent and experienced in litigating large
23 employment class actions.

24 59. Counsel who represent Plaintiff are competent and experienced in litigating large
25 employment class actions.

26 60. Specifically, David Mara, Esq., Jamie Serb, Esq., and Tony Roberts, Esq. are California
27 lawyers in good standing.

28 61. Mr. Mara wrote winning amicus briefs in two very worker friendly California Supreme

1 Court cases: *Augustus v. ABM Security Servs.* (2016) 2 Cal.5th 257 and *Williams v.*
2 *Superior Court* (decided July 13, 2017).

3 62. Mr. Mara was appointed class counsel in the landmark California Supreme Court case,
4 *Brinker v. Superior Court* and his firm has been appointed as class counsel in many
5 California wage and hour cases, in both State Court and Federal Court.

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

7 64. Mr. Mara has the experience, ability, and ways and means to vigorously prosecute this
8 case.

9 **E. Superiority of Class Action.**

10 65. A class action is superior to other available means for the fair and efficient adjudication of
11 this controversy. Individual joinder of all Class members is not practicable, and questions
12 of law and fact common to the Class predominate over any questions affecting only
13 individual members of the Class. Each member of the Class has been damaged and is
14 entitled to recovery by reason of CENTRAL VALLEY AUTO TRANSPORT, INC.'s
15 and/or DOES' illegal policies and/or practices of failing to pay all straight time and
16 overtime wages owed, failing to permit or authorize rest periods, failing to provide meal
17 periods, knowingly and intentionally failing to comply with wage statement requirements,
18 and failing to pay all wages due at termination.

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

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

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IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST CENTRAL VALLEY AUTO TRANSPORT, INC. AND/OR DOES: Failure to Pay All Straight Time Wages (On Behalf of the Company Driver Class and Misclassification Class)

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

69. Defendant and/or DOES have had a continuous policy of not paying Plaintiffs and those similarly situated for all hours worked.

70. It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages. Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Labor Code section 1197 prohibits the payment of less than the minimum wage. Labor Code section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

71. Plaintiffs and those similarly situated Class members were employed by CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES at all relevant times. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES were required to compensate Plaintiffs for all hours worked and were prohibited from making deductions that had the effect of reducing the agreed upon wage.

72. Defendant and/or DOES have had a continuous policy of not paying Plaintiffs and those similarly situated for all hours worked. Specifically, Defendant and/or DOES have not paid for all time employees worked throughout the day. Including, but not limited to rounding, before “shifts” start, after “shifts” end, and/or any other time in the day when the employees

1 were performing work tasks, subject to the control of employer and/or otherwise had work
2 duties.

3 73. Defendant and/or DOES have a continuous and consistent policy of clocking-out Plaintiffs
4 and those similarly situated for a thirty (30) minute meal period, even though Plaintiffs and
5 all members of the Class work through their meal periods. Thus, CENTRAL VALLEY
6 AUTO TRANSPORT, INC. and/or DOES do not pay Plaintiffs and each and every
7 member of the Class for all time worked each and every day they work without a meal
8 period and have time deducted.

9 74. Plaintiffs and those similarly situated Class members are informed and believe and thereon
10 allege that CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES breached the
11 legal duty to pay full wages to Plaintiffs by deducting a portion of the wages earned when
12 Plaintiffs' and the Class members' actual time records indicate that a meal period was not
13 taken. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES did not make
14 reasonable efforts to determine whether the time deducted was actually worked as reported
15 by Plaintiffs and Class members. CENTRAL VALLEY AUTO TRANSPORT, INC.
16 and/or DOES, without a reasonable basis, presumed that actual reported hours had not been
17 accurately reported. The conduct complained of is a form of what is sometimes called
18 "dinging," "shaving," or "scrubbing" and is prohibited by law.

19 75. Defendant and/or DOES have a continuous and consistent policy of not paying Plaintiffs
20 and those similarly situated for all time worked, including before Plaintiffs and those
21 similarly situated clock in for work shifts and after they clock out after work shifts.

22 76. Defendant and/or DOES have a continuous and consistent policy of shaving the time
23 Plaintiffs and those similarly situated work (referred to as "time shaving").

24 77. Thus, CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES shave/steal earned
25 wages from Plaintiffs and each and every member of the Class each and every day they
26 work. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES have not paid
27 Plaintiffs and the members of the Class all straight time wages owed.

28 78. Plaintiffs and the Class members are informed and believe and thereon allege that as a

1 direct result of Defendant's and/or DOES' uniform policies and/or practices, Plaintiffs and
2 the Class members have suffered, and continue to suffer, substantial unpaid wages, and
3 lost interest on such wages, and expenses and attorneys' fees in seeking to compel
4 CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES to fully perform their
5 obligations under state law, all to their respective damage in amounts, according to proof
6 at trial.

7 79. As a direct result of CENTRAL VALLEY AUTO TRANSPORT, INC.'s and/or DOES'
8 policy of illegal wage theft, Plaintiffs and those similarly situated have been damaged in
9 an amount to be proven at trial.

10 80. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
11 below.

12 **SECOND CAUSE OF ACTION AGAINST CENTRAL VALLEY AUTO**
13 **TRANSPORT, INC. AND/OR DOES: Failure to Provide Meal Periods, or**
14 **Compensation in Lieu Thereof (On Behalf of the Company Driver Class and**
15 **Misclassification Class). (Lab. Code §§ 226.7, 512, IWC Wage Order No. 9-2001(11);**
16 **Cal. Code Regs., tit. 8, § 11090)**

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

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

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

- 1 84. Under California Labor Code section 226.7, if the employer does not provide an employee
2 a meal period in accordance with the above requirements, the employer shall pay the
3 employee one (1) hour of pay at the employee's regular rate of compensation for each
4 workday that the meal period is not provided.
- 5 85. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES failed to provide thirty
6 (30) minute, uninterrupted meal periods to its Non-Exempt Employees who worked for
7 work periods of more than five (5) consecutive hours. As such, CENTRAL VALLEY
8 AUTO TRANSPORT, INC. and/or DOES non-exempt employees were required to work
9 over five (5) consecutive hours at a time without being provided a thirty (30) minute
10 uninterrupted meal period within that time.
- 11 86. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES failed to provide thirty
12 (30) minute, uninterrupted meal periods to its Non-Exempt Employees for every five (5)
13 continuous hours worked.
- 14 87. CENTRAL VALLEY AUTO TRANSPORT, INC.'s and/or DOES' business model is such
15 that Non-Exempt Employees were assigned too much work and insufficient help due to
16 chronic understaffing to be able to take meal periods. Thus, Non-Exempt Employees are
17 not able to take meal periods.
- 18 88. Throughout the statutory period, CENTRAL VALLEY AUTO TRANSPORT, INC. and/or
19 DOES had a pattern and practice of assigning too much work to be completed in too short
20 of time frames, resulting in Plaintiffs and those similarly situated not being able to take
21 meal periods.
- 22 89. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES would not permit
23 Plaintiffs and the Class to take 30-minute meal periods unless specifically scheduled by
24 Defendant and/or DOES or unless Plaintiffs and the Class were expressly told to by
25 Defendant and/or DOES. This routinely resulted in Plaintiffs and the Class members not
26 being able to take a meal period, if at all, until after the fifth hour.
- 27 90. CENTRAL VALLEY AUTO TRANSPORT, INC.'s and/or DOES' business model was
28 such that non-exempt employees were assigned too much work that could not reasonably

1 be completed in their assigned shift, work, and/or route, resulting in non-exempt employees
2 routinely and regularly being forced to eat their meals while driving and/or while working
3 their routes.

4 91. Throughout the statutory period, CENTRAL VALLEY AUTO TRANSPORT, INC. and/or
5 DOES had a pattern and practice of assigning too much work to be completed in too short
6 of time frames, resulting in Plaintiffs and those similarly situated not breaking route to take
7 meal periods.

8 92. Throughout the statutory period, CENTRAL VALLEY AUTO TRANSPORT, INC. and/or
9 DOES had a pattern and practice of scheduling routes and assigning too much work to be
10 completed in too short of time frames, resulting in CENTRAL VALLEY AUTO
11 TRANSPORT, INC. and/or DOES pressuring non-exempt employees to complete their
12 routes and/or tasks within the rigorous time frames and not take meal breaks.

13 93. Throughout the statutory period, CENTRAL VALLEY AUTO TRANSPORT, INC. and/or
14 DOES had a pattern and practice of scheduling routes and assigning too much work to be
15 completed in too short of time frames, resulting in CENTRAL VALLEY AUTO
16 TRANSPORT, INC. and/or DOES discouraging non-exempt employees s from taking
17 meal periods.

18 94. Throughout the statutory period, CENTRAL VALLEY AUTO TRANSPORT, INC. and/or
19 DOES had a pattern and practice of scheduling routes and assigning too much work to be
20 completed in too short of time frames, resulting in CENTRAL VALLEY AUTO
21 TRANSPORT, INC. and/or DOES impeding non-exempt employees from taking meal
22 periods.

23 95. Throughout the statutory period, CENTRAL VALLEY AUTO TRANSPORT, INC. and/or
24 DOES valued productivity over providing meal periods and, because of this, meal breaks
25 were not priorities to CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES.

26 96. Because of CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES demanding
27 policies on route and/or completion times, Plaintiffs and those similarly situated felt that
28

1 breaking to exercise their rights to take meal periods would sacrifice their jobs with
2 CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES.

3 97. Based on CENTRAL VALLEY AUTO TRANSPORT, INC.'s and/or DOES' demanding
4 route and/or task completion time policies, Plaintiffs and those similarly situated routinely
5 worked through their meal periods, which compromised the health and welfare of, not only
6 Plaintiffs and those similarly situated, but all members of the general public.

7 98. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES did not have a policy of
8 providing a second meal period before the end of the tenth hour.

9 99. Failing to provide compensation for such unprovided or improperly provided meal periods,
10 as alleged above, CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES
11 willfully violated the provisions of Labor Code sections 226.7, 512, and IWC Wage Order
12 No. 9.

13 100. As a result of the unlawful acts of CENTRAL VALLEY AUTO TRANSPORT, INC.
14 and/or DOES, Plaintiffs and the Class they seek to represent have been deprived of
15 premium wages, in amounts to be determined at trial, and are entitled to recovery of such
16 amounts, plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor
17 Code section 226.7, and IWC Wage Order No. 9-2001. Plaintiffs and the Class they seek
18 to represent did not willfully waive their right to take meal periods through mutual consent
19 with CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES.

20 101. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
21 below.

22 **THIRD CAUSE OF ACTION AGAINST CENTRAL VALLEY AUTO**
23 **TRANSPORT, INC. AND/OR DOES: Failure to Authorize and Permit Rest Periods**
24 **(On Behalf of the Company Driver Class and Misclassification Class). (Lab. Code §**
226.7; IWC Wage Order No. 9-2001(12); Cal. Code Regs. Title 8 § 11090)

25 102. Plaintiffs and those similarly situated Class members hereby incorporate by reference each
26 and every other paragraph in this Complaint herein, as if fully plead.

27 103. Under IWC Wage Order No. 9, every employer shall authorize and permit all employees
28 to take rest periods, "[t]he authorized rest period time shall be based on the total hours

1 worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major
2 fraction thereof.” IWC Wage Order 9-2001(12). The time spent on rest periods “shall be
3 counted as hours worked for which there shall be no deduction from wages.” *Id.*

4 104. Under California Labor Code section 226.7, if the employer does not provide an employee
5 a rest period in accordance with the above requirements, the employer shall pay the
6 employee one (1) hour of pay at the employee’s regular rate of compensation for each
7 workday that the meal period is not provided.

8 105. At all relevant times, Defendant and/or DOES failed to authorize and/or permit rest period
9 time based upon the total hours worked daily at the rate of ten (10) minutes net rest time
10 per four (4) hours or major fraction thereof.

11 106. In the alternative, CENTRAL VALLEY AUTO TRANSPORT, INC.’s and/or DOES’
12 business model was such that non-exempt employees were assigned too much work that
13 could not be reasonably completed within their assigned shift, work, and/or route, resulting
14 in Non-Exempt Employees routinely and regularly being forced to work through their rest
15 periods.

16 107. Throughout the statutory period, CENTRAL VALLEY AUTO TRANSPORT, INC. and/or
17 DOES had a pattern and practice of assigning too much work to be completed in too short
18 of time frames, resulting in Plaintiffs and those similarly situated not breaking route to take
19 rest periods.

20 108. Because of CENTRAL VALLEY AUTO TRANSPORT, INC.’s and/or DOES’ demanding
21 policies en route and/or task completion times, Plaintiffs and those similarly situated felt
22 that breaking to exercise their rights to take rest breaks would sacrifice their jobs with
23 CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES.

24 109. Throughout the statutory period, CENTRAL VALLEY AUTO TRANSPORT, INC.’s
25 and/or DOES’ uniform policies and practices resulted in non-exempt employees not
26 receiving rest breaks.

27 110. Throughout the statutory period, CENTRAL VALLEY AUTO TRANSPORT, INC. and/or
28

1 DOES valued productivity over providing rest periods and, because of this, rest periods
2 were not priorities to CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES.

3 111. Throughout the statutory period, CENTRAL VALLEY AUTO TRANSPORT, INC.'s
4 and/or DOES' policies promoting productivity subjugated Plaintiffs' and those similarly
5 situated's rights to rest periods.

6 112. Based on CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES demanding
7 route policies, Plaintiffs and those similarly situated routinely worked through their rest
8 periods, which compromised the health and welfare of, not only Plaintiffs and those
9 similarly situated, but all members of the general public.

10 113. As a result of the unlawful acts of CENTRAL VALLEY AUTO TRANSPORT, INC.
11 and/or DOES, Plaintiffs and the Class they seek to represent have been deprived of
12 premium wages, in amounts to be determined at trial, and are entitled to recovery of such
13 amounts, plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor
14 Code section 226.7, and IWC Wage Order No. 9-2001.

15 114. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
16 below.

17 **FOURTH CAUSE OF ACTION AGAINST CENTRAL VALLEY AUTO**
18 **TRANSPORT, INC. AND/OR DOES: Knowing and Intentional Failure to Comply**
19 **with Itemized Employee Wage Statement Provisions (On Behalf of the Company**
20 **Driver Class and Misclassification Class). (Lab. Code §§ 226, 1174, 1175; IWC Wage**
21 **Order No. 9; Cal. Code Regs., Title 8, § 11040)**

22 115. Plaintiffs and those similarly situated Class members hereby incorporate by reference each
23 and every other paragraph in this Complaint herein as if fully plead.

24 116. Labor Code section 226 subdivision (a) requires Defendant and/or DOES to, inter alia,
25 itemize in wage statements and accurately report the total hours worked and total wages
26 earned. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES have knowingly
27 and intentionally failed to comply with Labor Code section 226, subdivision (a), on each
28 and every wage statement provided to Plaintiffs CHRISTIAN BRINK and DAVID
MAIER and members of the proposed Class.

- 1 117. Labor Code section 1174 requires CENTRAL VALLEY AUTO TRANSPORT, INC.
2 and/or DOES to maintain and preserve, in a centralized location, records showing the daily
3 hours worked by and the wages paid to its employees. CENTRAL VALLEY AUTO
4 TRANSPORT, INC. and/or DOES have knowingly and intentionally failed to comply with
5 Labor Code section 1174. The failure of CENTRAL VALLEY AUTO TRANSPORT,
6 INC. and/or DOES, and each of them, to comply with Labor Code section 1174 is unlawful
7 pursuant to Labor Code section 1175.
- 8 118. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES failed to maintain
9 accurate time records - as required by IWC Wage Order No. 9-2001(7), and Cal. Code
10 Regs., Title 8 section 11090 - showing, among other things, when the employee begins and
11 ends each work period, the total daily hours worked in itemized wage statements, total
12 wages, bonuses and/or incentives earned, and all deductions made.
- 13 119. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES have knowingly and
14 intentionally failed to provide Plaintiffs and the Class members with accurate itemized
15 wage statements which show: “(1) gross wages earned, (2) total hours worked by the
16 employee, . . . (4) all deductions, provided that all deductions made on written orders of
17 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
18 inclusive dates of the period for which the employee is paid, (7) the name of the employee
19 and only the last four digits of his or her social security number or an employee
20 identification number other than a social security number, (8) the name and address of the
21 legal entity that is the employer and, if the employer is a farm labor contractor, as defined
22 in subdivision (b) of Section 1682, the name and address of the legal entity that secured
23 the services of the employer, and (9) all applicable hourly rates in effect during the pay
24 period and the corresponding number of hours worked at each hourly rate by the
25 employee[.]” Labor Code section 226(a).
- 26 120. As a direct result of CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES
27 unlawful acts, Plaintiffs and the Class he intends to represent have been damaged and are
28 entitled to recovery of such amounts, plus interest thereon, attorneys’ fees, and costs,

1 pursuant to Labor Code section 226.

2 121. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
3 below.

4 **FIFTH CAUSE OF ACTION AGAINST CENTRAL VALLEY AUTO**
5 **TRANSPORT, INC. AND/OR DOES: Failure to Pay All Wages Due at the Time of**
6 **Termination from Employment. (On Behalf of the Company Driver Class and**
7 **Misclassification Class). (Lab. Code §§ 201-203)**

8 122. Plaintiffs and those similarly situated Class members hereby incorporate by reference each
9 and every other paragraph in this Complaint herein as if fully plead.

10 123. Plaintiffs CHRISTIAN BRINK and DAVID MAIER terminated their employment with
11 CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES.

12 124. Whether Plaintiffs CHRISTIAN BRINK and DAVID MAIER voluntarily or involuntarily
13 terminated their employment with CENTRAL VALLEY AUTO TRANSPORT, INC.
14 and/or DOES, Defendant and/or DOES did not timely pay them straight time wages owed
15 at the time of his termination.

16 125. Whether Plaintiffs CHRISTIAN BRINK and DAVID MAIER voluntarily or involuntarily
17 terminated their employment with CENTRAL VALLEY AUTO TRANSPORT, INC.
18 and/or DOES, Defendant and/or DOES did not timely pay them overtime wages owed at
19 the time of his termination.

20 126. Whether Plaintiffs CHRISTIAN BRINK and DAVID MAIER voluntarily or involuntarily
21 terminated their employment with CENTRAL VALLEY AUTO TRANSPORT, INC.
22 and/or DOES, Defendant and/or DOES did not timely pay them meal and/or rest period
23 premiums owed at the time of his termination.

24 127. Numerous members of the Class are no longer employed by CENTRAL VALLEY AUTO
25 TRANSPORT, INC. and/or DOES. They were either fired or quit CENTRAL VALLEY
26 AUTO TRANSPORT, INC.'s and/or DOES' employ. CENTRAL VALLEY AUTO
27 TRANSPORT, INC. and/or DOES did not pay all timely wages owed at the time of their
28 termination. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES did not pay
all premium wages owed at the time of their termination.

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

6 129. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES failed to pay Plaintiffs
7 CHRISTIAN BRINK and DAVID MAIER a sum certain at the time of their termination
8 or within seventy-two (72) hours of his resignation, and have failed to pay those sums for
9 thirty (30) days thereafter. Pursuant to the provisions of Labor Code section 203, Plaintiffs
10 CHRISTIAN BRINK and DAVID MAIER are entitled to a penalty in the amount of their
11 daily wage, multiplied by thirty (30) days.

12 130. When Plaintiffs and those members of the Class who are former employees of CENTRAL
13 VALLEY AUTO TRANSPORT, INC. and/or DOES separated from Defendant's and/or
14 DOES' employ, Defendant and/or DOES willfully failed to pay all straight time wages,
15 overtime wages, meal period premiums, and/or rest period premiums owed at the time of
16 termination.

17 131. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES failure to pay said wages
18 to Plaintiffs CHRISTIAN BRINK and DAVID MAIER and members of the Class they
19 seek to represent, was willful in that CENTRAL VALLEY AUTO TRANSPORT, INC.
20 and/or DOES and each of them knew the wages to be due, but failed to pay them.

21 132. As a consequence of CENTRAL VALLEY AUTO TRANSPORT, INC.'s and/or DOES'
22 willful conduct in not paying wages owed at the time of separation from employment,
23 Plaintiffs CHRISTIAN BRINK and DAVID MAIER and members of the proposed Class
24 are entitled to thirty (30) days' worth of wages as a penalty under Labor Code section 203,
25 together with interest thereon and attorneys' fees and costs.

26 133. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
27 below.

28 ///

1 **SIXTH CAUSE OF ACTION AGAINST CENTRAL VALLEY AUTO**
2 **TRANSPORT, INC. AND/OR DOES: Violation of Unfair Competition Law (On**
3 **Behalf of the Company Driver Class and Misclassification Class) (California Bus. &**
4 **Prof. Code, § 17200, et seq.)**

4 134. Plaintiffs and those similarly situated Class members hereby incorporate by reference each
5 and every other paragraph in this Complaint herein as if fully plead.

6 135. CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES failure to pay all straight
7 time and overtime wages earned, failure to provide compliant meal and/or rest breaks
8 and/or compensation in lieu thereof, failure to itemize and keep accurate records, failure to
9 pay all wages due at time of termination, as alleged herein, constitutes unlawful activity
10 prohibited by California Business and Professions Code section 17200, et seq.

11 136. The actions of CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES in failing
12 to pay Plaintiffs and members of the proposed Class in a lawful manner, as alleged herein,
13 constitutes false, unfair, fraudulent and deceptive business practices, within the meaning
14 of California Business and Professions Code section 17200, et seq.

15 137. Plaintiffs are entitled to an injunction and other equitable relief against such unlawful
16 practices in order to prevent future damage, for which there is no adequate remedy at law,
17 and to avoid a multiplicity of lawsuits. Plaintiffs bring this cause individually and as
18 members of the general public actually harmed and as a representative of all others subject
19 to CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES unlawful acts and
20 practices.

21 138. As a result of their unlawful acts, CENTRAL VALLEY AUTO TRANSPORT, INC.
22 and/or DOES have reaped and continue to reap unfair benefits at the expense of Plaintiffs
23 and the proposed Class they seek to represent. CENTRAL VALLEY AUTO
24 TRANSPORT, INC. and/or DOES should be enjoined from this activity and made to
25 disgorge these ill-gotten gains and restore Plaintiffs and the members of the proposed Class
26 pursuant to Business and Professions Code section 17203. Plaintiffs are informed and
27 believe, and thereon alleges, that Defendants and/or DOES are unjustly enriched through
28 their policy of not all wages owed to Plaintiff and members of the proposed Class.

1 139. Plaintiffs are informed and believe, and thereon alleges, that Plaintiffs and members of the
2 proposed class are prejudiced CENTRAL VALLEY AUTO TRANSPORT, INC. and/or
3 DOES unfair trade practices.

4 140. As a direct and proximate result of the unfair business practices of CENTRAL VALLEY
5 AUTO TRANSPORT, INC. and/or DOES, and each of them, Plaintiffs, individually and
6 on behalf of all employees similarly situated, are entitled to equitable and injunctive relief,
7 including full restitution and/or disgorgement of all wages and premium pay which have
8 been unlawfully withheld from Plaintiffs and members of the proposed Class as a result of
9 the business acts and practices described herein and enjoining CENTRAL VALLEY
10 AUTO TRANSPORT, INC. and/or DOES from engaging in the practices described herein.

11 141. The illegal conduct alleged herein is continuing, and there is no indication that CENTRAL
12 VALLEY AUTO TRANSPORT, INC. and/or DOES will cease and desist from such
13 activity in the future. Plaintiffs alleges that if CENTRAL VALLEY AUTO TRANSPORT,
14 INC. and/or DOES are not enjoined from the conduct set forth in this Complaint, they will
15 continue the unlawful activity discussed herein.

16 142. Plaintiffs further requests that the Court issue a preliminary and permanent injunction
17 prohibiting CENTRAL VALLEY AUTO TRANSPORT, INC. and/or DOES from
18 continuing to not pay Plaintiffs and the members of the proposed Class overtime wages as
19 discussed herein.

20 143. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
21 below.

22 **SEVENTH CAUSE OF ACTION AGAINST CENTRAL VALLEY AUTO**
23 **TRANSPORT, INC. AND/OR DOES: Reimbursement of Business Expenses (On**
24 **Behalf of the Misclassification Class) (Cal. Lab. Code § 2802**

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

27 145. California Labor Code section 2802 provides: “An employer shall indemnify his or her
28 employees for all necessary expenditures or losses incurred by the employee in direct

1 consequence of the discharge of his or her duties, or of his or her obedience to the directions
2 of the employer...[which includes] all reasonable costs, including, but not limited to,
3 attorneys' fees incurred by the employee enforcing the rights granted by this section."

4 146. As a direct consequence of discharging their duties for Defendant and/or obeying
5 Defendant's directions, Plaintiff and the Misclassification Class Members have necessarily
6 incurred expenses for which they have not been indemnified by Defendant, including the
7 purchase and/or lease and depreciation of vehicles; fuel, maintenance, and other vehicle
8 operating costs; various forms of insurance; costs associated with lost or damaged
9 merchandise and other property damage; certain tools and equipment Defendant has
10 required Plaintiff and Misclassification Class Members to purchase or rent from
11 Defendant's clients; other miscellaneous equipment including moving pads and blankets,
12 dollies, hand tools, installation supplies, GPS navigational equipment, and cellular
13 telephones; fees for payroll administration services; expenses associated with a cash bond
14 or fund Defendant requires Plaintiff and Misclassification Class Members to maintain; and
15 attorneys' fees incurred to enforce Plaintiff's and the Misclassification Class Members'
16 rights under Labor Code section 2802.

17 147. Defendant has failed to indemnify or in any manner reimburse Plaintiff and
18 Misclassification Class Members for these expenditures and losses.

19 148. By requiring Plaintiff and the Misclassification Class Members to pay expenses and cover
20 losses that they incurred in direct consequence of the discharge of their duties for
21 Defendant and/or in obedience of Defendant's direction, Defendant has violated and
22 continues to violate Cal. Labor Code section 2802.

23 149. As a direct and proximate result of Defendant's conduct, Plaintiff and the Misclassification
24 Class Members have suffered substantial losses according to proof, as well as pre-judgment
25 interest, costs, and attorneys' fees for the prosecution of this action, which losses are
26 compensable under Labor Code section 2802.

27 150. Plaintiff requests relief as described below.

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EIGHTH CAUSE OF ACTION AGAINST CENTRAL VALLEY AUTO TRANSPORT, INC. AND/OR DOES: Violations of the Private Attorneys General Act of 2004 (“PAGA”) (On Behalf of the Company Driver Class) (Labor Code §2698 et seq.)

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3 151. Plaintiffs and those similarly situated Class members hereby incorporate by reference each
4 and every other paragraph in this Complaint herein as if fully plead.

5 152. Plaintiff CHRISTIAN BRINK, by virtue of his employment with CENTRAL VALLEY
6 AUTO TRANSPORT, INC. and/or DOES, and CENTRAL VALLEY AUTO
7 TRANSPORT, INC.’s and/or DOES’s failure to provide meal and rest periods, overtime
8 compensation, all wages for all work performed at the statutory minimum agreed upon rate,
9 and all wages due at termination, are aggrieved employees with standing to bring an action
10 under the Private Attorney General Act (“PAGA”). Plaintiff CHRISTIAN BRINK, as
11 representative of the people of the State of California, will seek any and all penalties
12 otherwise capable of being collected by the Labor Commission and/or the Department of
13 Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in
14 Labor Code Section 2699.5, which provides that Section 2699.3(a) applies to any alleged
15 violation of the following provisions: Sections 201 through 203, 204, 205.5, 221, 222, 223,
16 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1199, and 2802.

17 153. Plaintiff CHRISTIAN BRINK is informed and believes that CENTRAL VALLEY AUTO
18 TRANSPORT, INC. and/or DOES has violated and continues to violate provisions of the
19 California Labor Code and applicable Wage Orders related to meal and rest periods,
20 overtime compensation, wages for all work performed, all wages due at termination, and
21 reimbursement for expenses incurred during employment.

22 154. Plaintiff CHRISTIAN BRINK, as personal representative of the general public, will and
23 does seek to recover any and all penalties for each and every violation shown to exist or to
24 have occurred during the one-year period of filing this action, in an amount according to
25 proof, as to those penalties that are otherwise only available to public agency enforcement
26 actions. Funds recovered will be distributed in accordance with PAGA, with at least 75%
27 of the penalties recovered being reimbursed to the State of California and the Labor and
28

1 Workforce Development Agency (LWDA).

2 **V. PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs pray for judgment as follows:

- 4 A. That the Court determine that this action may be maintained as a class action;
- 5 B. For compensatory damages, in an amount according to proof at trial, with interest
6 thereon;
- 7 C. For economic and/or special damages in an amount according to proof with interest
8 thereon;
- 9 D. For unpaid straight time and overtime wages, in an amount according to proof at trial,
10 with interest thereon;
- 11 E. For compensation for all time worked;
- 12 F. For compensation for not being provided paid rest breaks;
- 13 G. For compensation for not being provided paid meal periods;
- 14 H. For damages and/or monies owed for failure to comply with itemized employee wage
15 statement provisions;
- 16 I. For all waiting time penalties owed;
- 17 J. For business expense reimbursements incurred;
- 18 K. That Defendant be found to have engaged in unfair competition in violation of sections
19 17200 et seq. of the California Business and Professions Code;
- 20 L. That Defendant be ordered and enjoined to make restitution to the Class due to their
21 unfair competition, including disgorgement of their wrongfully withheld wages
22 pursuant to California Business and Professions Code sections 17203 and 17204;
- 23 M. That an order of specific performance of all penalties owed be issued under Business
24 and Professions Code sections 17202;
- 25 N. That Defendant be enjoined from continuing the illegal course of conduct, alleged
26 herein;
- 27 O. That Defendant further be enjoined to cease and desist from unfair competition in
28 violation of section 17200 et seq. of the California Business and Professions Code;

- 1 P. That Defendant be enjoined from further acts of restraint of trade or unfair competition;
- 2 Q. For attorneys' fees;
- 3 R. For interest accrued to date;
- 4 S. For costs of suit and expenses incurred herein
- 5 T. For penalties for each violation of the Labor Code Private Attorneys General Act of
- 6 2004 ("PAGA"); and
- 7 U. For any such other and further relief as the Court deems just and proper.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff demands a jury trial.

10
11
12 Dated: 1/30/2020

MARA LAW FIRM, PC

13
14 /s/ David Mara

15 David Mara, Esq.

Jill Vecchi, Esq.

16 Representing Plaintiffs CHRISTIAN BRINK and
17 DAVID MAIER on behalf of themselves, all others
18 similarly situated, and on behalf of the general
19 public.
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