

BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

JUAN LARA; VALENTE LUNA;) CASE NOS.: WC-CM-606912; WC-CM-
GERARDO MARTINEZ; GUSTAVO) 606837; WC-CM-606885; WC-CM-
VILLA; RODOLFO RODRIGUEZ; JOSE) 606891; WC-CM-606918; WC-CM-
GARCIA; JOSE VIDAL; FLAVIO) 606927; WC-CM-606932; WC-CM-
ACOSTA; JULIO CONTRERAS; JESUS) 606957; WC-CM-606855; WC-CM-
MALDONADO; RAMON PEREZ;) 606902; WC-CM-615202; WC-CM-
GABRIEL ACOSTA; MIGUEL CANO;) 615229; WC-CM-615094; AND
AND MANUEL MARTINEZ,) WC-CM-615219.

Plaintiffs,

v.

CAL CARTAGE TRANSPORTATION) ORDER, DECISION, OR AWARD OF
EXPRESS, LLC, a Delaware Limited) THE LABOR COMMISSIONER
Liability Company; JIM DEGRAW, an)
individual; and CCX2931, LLC, a)
California Limited Liability Company,)
formerly known as California Cartage)
Express, LLC, a Delaware Limited)
Liability Company,)

Defendants.

Hearings for the above-referenced matters were conducted in Long Beach, California, from September 27, 2018 through October 9, 2018, before the undersigned hearing officer designated by the Labor Commissioner to hear this matter.

Plaintiffs Juan Lara, Valente Luna, Gerardo Martinez, Gustavo Villa, Rodolfo Rodriguez, Jose Garcia, Jose Vidal, Flavio Acosta, Julio Contreras, Jesus Maldonado, Ramon Perez, Gabriel Acosta, Miguel Cano and Manuel Martinez appeared and were represented by Jean Choi and Erika Villasenor, attorneys at Los Angeles Alliance for a New Economy.

Defendants Cal Cartage Transportation Express, LLC, a Delaware Limited Liability Company, Jim Degraw, an individual, CCX2931, LLC, a California Limited Liability

1 Company, formerly known as California Cartage Express, LLC, a Delaware Limited Liability
2 Company were represented by John H. Haney and Samuel Stone, attorneys at Holland &
3 Knight LLP.

4 Defendants submitted Answers in response to Plaintiffs' Complaints and briefs. No
5 witnesses appeared on Defendants' behalf.

6 Moshe Rodriguez and Susana Ruiz provided Spanish translation services.

7 Due consideration having been given to the testimony, documentary evidence, and
8 arguments presented, the Labor Commissioner hereby adopts the following Order, Decision,
9 or Award.

10 **BACKGROUND**

11 Plaintiff Juan Lara (Case No. WC-CM-606912) filed an initial claim with the Labor
12 Commissioner's Office on August 3, 2018 against Defendants. The Complaint alleges that he
13 is owed the following for the period of March 1, 2017 to the date of the hearing: (1) unpaid
14 wages, claiming \$6,048.00; (2) meal period premiums, claiming \$14,827.59; (3) rest period
15 premiums, claiming \$14,827.59; (4) unlawful deductions, claiming \$239.20; (5) unreimbursed
16 business expenses, claiming \$99,821.41; (6) liquidated damages in an amount to be
17 determined; (7) additional wages pursuant to Labor Code Section 203 as a penalty amount to
18 be determined; and (8) attorney's fees to be determined.

19 Plaintiff Valente Luna (Case No. WC-CM-606837) filed an initial claim with the Labor
20 Commissioner's Office on August 2, 2018 against Defendants. The Complaint alleges that he
21 is owed the following for the period of January 23, 2012 to December 17, 2017: (1) unpaid
22 wages, claiming \$14,434.00; (2) meal period premiums, claiming \$39,467.41; (3) rest period
23 premiums, claiming \$39,467.41; (4) unlawful deductions, claiming \$58,315.68; (5)
24 unreimbursed business expenses, claiming \$283,761.93; (6) liquidated damages in an amount
25 to be determined; (7) additional wages pursuant to Labor Code Section 203 as a penalty
26 amount to be determined; and (8) attorney's fees to be determined.

27 Plaintiff Gerardo Martinez (Case No. WC-CM-606885) filed an initial claim with the

1 Labor Commissioner's Office on August 5, 2018 against Defendants. The Complaint alleges
2 that he is owed the following for the period of January 1, 2013 to May 22, 2014: (1) unpaid
3 wages, claiming \$6,232.00; (2) meal period premiums, claiming \$16,653.07; (3) rest period
4 premiums, claiming \$16,653.07; (4) unlawful deductions, claiming \$44,861.64; (5)
5 unreimbursed business expenses, claiming \$84,125.03; (6) liquidated damages in an amount
6 to be determined; (7) additional wages pursuant to Labor Code Section 203 as a penalty
7 amount to be determined; and (8) attorney's fees to be determined.

8 Plaintiff Gustavo Villa (Case No. WC-CM-606891) filed an initial claim with the Labor
9 Commissioner's Office on August 3, 2018 against Defendants. The Complaint alleges that he
10 is owed the following for the period of February 1, 2014 to the date of the hearing: (1) unpaid
11 wages, claiming \$16,471.00; (2) meal period premiums, claiming \$42,395.31; (3) rest period
12 premiums, claiming \$42,395.31; (4) unlawful deductions, claiming \$6,800.93; (5)
13 unreimbursed business expenses, claiming \$278,753.57; (6) liquidated damages in an amount
14 to be determined; (7) additional wages pursuant to Labor Code Section 203 as a penalty
15 amount to be determined; and (8) attorney's fees to be determined.

16 Plaintiff Rodolfo Rodriguez (Case No. WC-CM-606918) filed an initial claim with the
17 Labor Commissioner's Office on August 2, 2018 against Defendants. The Complaint alleges
18 that he is owed the following for the period of January 23, 2012 to the date of the hearing: (1)
19 unpaid wages, claiming \$23,073.00; (2) meal period premiums, claiming \$63,973.52; (3) rest
20 period premiums, claiming \$63,973.52; (4) unlawful deductions, claiming \$41,572.00; (5)
21 unreimbursed business expenses, claiming \$371,768.87; (6) liquidated damages in an amount
22 to be determined; (7) additional wages pursuant to Labor Code Section 203 as a penalty
23 amount to be determined; and (8) attorney's fees to be determined.

24 Plaintiff Jose Garcia (Case No. WC-CM-606927) filed an initial claim with the Labor
25 Commissioner's Office on August 2, 2018 against Defendants. The Complaint alleges that he
26 is owed the following for the period of January 23, 2012 to the date of the hearing: (1) unpaid
27 wages, claiming \$24,859.00; (2) meal period premiums, claiming \$65,990.77; (3) rest period

1 premiums, claiming \$65,990.77; (4) unlawful deductions, claiming \$178,112.16; (5)
2 unreimbursed business expenses, claiming \$296,500.32; (6) liquidated damages in an amount
3 to be determined; (7) additional wages pursuant to Labor Code Section 203 as a penalty
4 amount to be determined; and (8) attorney's fees to be determined.

5 Plaintiff Jose Vidal (Case No. WC-CM-606932) filed an initial claim with the Labor
6 Commissioner's Office on August 2, 2018 against Defendants. The Complaint alleges that he
7 is owed the following for the period of January 23, 2012 to the date of the hearing: (1) unpaid
8 wages, claiming \$23,511.00; (2) meal period premiums, claiming \$66,007.42; (3) rest period
9 premiums, claiming \$66,007.42; (4) unlawful deductions, claiming \$53,955.87; (5)
10 unreimbursed business expenses, claiming \$355,486.01; (6) liquidated damages in an amount
11 to be determined; (7) additional wages pursuant to Labor Code Section 203 as a penalty
12 amount to be determined; and (8) attorney's fees to be determined.

13 Plaintiff Flavio Acosta (Case No. WC-CM-606957) filed an initial claim with the Labor
14 Commissioner's Office on August 2, 2018 against Defendants. The Complaint alleges that he
15 is owed the following for the period of December 1, 2013 to the date of the hearing: (1)
16 unpaid wages, claiming \$16,581.00; (2) meal period premiums, claiming \$42,748.73; (3) rest
17 period premiums, claiming \$42,748.73; (4) unlawful deductions, claiming \$233,438.75; (5)
18 unreimbursed business expenses, claiming \$13,156.27; (6) liquidated damages in an amount
19 to be determined; (7) additional wages pursuant to Labor Code Section 203 as a penalty
20 amount to be determined; and (8) attorney's fees to be determined.

21 Plaintiff Julio Contreras (Case No. WC-CM-606855) filed an initial claim with the Labor
22 Commissioner's Office on August 3, 2018 against Defendants. The Complaint alleges that he
23 is owed the following for the period of September 10, 2013 to April 28, 2016: (1) unpaid
24 wages, claiming \$828.00; (2) meal period premiums, claiming \$2,401.70; (3) rest period
25 premiums, claiming \$2,401.70; (4) unlawful deductions, claiming \$1,035.64; (5) unreimbursed
26 business expenses, claiming \$348,637.60; (6) liquidated damages in an amount to be
27 determined; (7) additional wages pursuant to Labor Code Section 203 as a penalty amount to

1 be determined; and (8) attorney's fees to be determined.

2 Plaintiff Jesus Maldonado (Case No. WC-CM-606902) filed an initial claim with the
3 Labor Commissioner's Office on August 3, 2018 against Defendants. The Complaint alleges
4 that he is owed the following for the period of December 1, 2013 to the date of the hearing: (1)
5 unpaid wages, claiming \$16,066.00; (2) meal period premiums, claiming \$41,723.04; (3) rest
6 period premiums, claiming \$41,723.04; (4) unlawful deductions, claiming \$196,257.03; (5)
7 unreimbursed business expenses, claiming \$101,966.95; (6) liquidated damages in an amount
8 to be determined; (7) additional wages pursuant to Labor Code Section 203 as a penalty
9 amount to be determined; and (8) attorney's fees to be determined.

10 Plaintiff Ramon Perez (Case No. WC-CM-615202) filed an initial claim with the Labor
11 Commissioner's Office on August 19, 2018 against Defendants. The Complaint alleges that
12 he is owed the following for the period of July 1, 2016 to the date of the hearing: (1) unpaid
13 wages, claiming \$6,603.00; (2) meal period premiums, claiming \$15,566.75; (3) rest period
14 premiums, claiming \$15,566.75; (4) unlawful deductions, claiming \$142.60; (5) unreimbursed
15 business expenses, claiming \$83,034.26; (6) liquidated damages, claiming \$6,603.00; (7)
16 additional wages pursuant to Labor Code Section 203 as a penalty amount to be determined;
17 and (8) attorney's fees to be determined.

18 Plaintiff Gabriel Acosta (Case No. WC-CM-615229) filed an initial claim with the Labor
19 Commissioner's Office on August 29, 2018 against Defendants. The Complaint alleges that
20 he is owed the following for the period of January 23, 2012 to the date of the hearing: (1)
21 unpaid wages, claiming \$16,534.00; (2) meal period premiums, claiming \$45,066.40; (3) rest
22 period premiums, claiming \$45,066.40; (4) unlawful deductions, claiming \$159,123.47; (5)
23 unreimbursed business expenses, claiming \$108,983.29; (6) liquidated damages, claiming
24 \$16,534.00; (7) additional wages pursuant to Labor Code Section 203 as a penalty amount to
25 be determined; and (8) attorney's fees to be determined.

26 Plaintiff Miguel Cano (Case No. WC-CM-615094) filed an initial claim with the Labor
27 Commissioner's Office on August 4, 2018 against Defendants. The Complaint alleges that he

1 is owed the following for the period of June 1, 2012 to May 31, 2018: (1) unpaid wages,
2 claiming \$5,275.00; (2) meal period premiums, claiming \$10,833.33; (3) rest period premiums,
3 claiming \$10,833.33; (4) unlawful deductions, claiming \$343.00; (5) unreimbursed business
4 expenses, claiming \$73,408.80; (6) liquidated damages, claiming \$5,275.00; (7) additional
5 wages pursuant to Labor Code Section 203 as a penalty amount to be determined; and (8)
6 attorney's fees to be determined.

7 Plaintiff Manuel Martinez (Case No. WC-CM-615219) filed an initial claim with the
8 Labor Commissioner's Office on August 7, 2018 against Defendants. The Complaint alleges
9 that he is owed the following for the period of January 23, 2012 to June 30, 2017: (1) unpaid
10 wages, claiming \$19,243.00; (2) meal period premiums, claiming \$52,623.65; (3) rest period
11 premiums, claiming \$52,623.65; (4) unlawful deductions, claiming \$31,192.52; (5)
12 unreimbursed business expenses, claiming \$376,019.82; (6) liquidated damages, claiming
13 \$19,243.00; (7) additional wages pursuant to Labor Code Section 203 as a penalty amount to
14 be determined; and (8) attorney's fees to be determined.

15 16 FINDINGS OF FACT

17 A. Plaintiff Juan Lara

18 Plaintiff Juan Lara ("Plaintiff Lara") performed personal services for Defendants as a
19 truck driver in the County of Los Angeles, California from March 1, 2017 to present. Plaintiff
20 Lara testified that he worked an average of 10 hours per day, three (3) to five (5) days per
21 week, at a piece rate per load. Plaintiff Lara is still employed.

22 Plaintiff Lara testified that Defendants' dispatchers, Victor and Sergio, set his schedule.
23 Plaintiff Lara was dispatched through phone call or text messages (Exhibit 2). Dispatchers
24 told Plaintiff Lara what time to come to the Borax plant. Plaintiff Lara started work after he
25 was dispatched. There was no set time to start work. Plaintiff Lara was dispatched anytime
26 between 8:00AM and 12:00PM, sometimes mid-afternoon. After he receives the dispatch
27 message, Plaintiff Lara goes to Defendants' yard in Wilmington, CA ("the yard") to pick up

1 the truck. After Plaintiff Lara picks up the truck, he takes the truck to Defendants' client yard
2 to pick up an empty (Exhibit 2), per instructions from the dispatcher. Then, Plaintiff Lara
3 takes the empty to Defendants' Borax plant in Boron, CA ("the plant"). Defendants have a
4 Borax plant and sends loads from the plant to the Long Beach port ("the port") through truck
5 drivers. When Plaintiff Lara arrives at the plant, he receives an envelope number, in person
6 or through the phone application "trinium", which contains information about the load, and
7 takes the load to the port. Plaintiff Lara waits on average one and one-half (1 ½) hours per
8 day between the time he arrives at the plant to the time he receives the envelope number.
9 Plaintiff Lara was frequently dispatched "hot loads" (Exhibit 2) and he did not get paid
10 additionally for hauling hot loads. At the port terminal, Plaintiff Lara waits in line to get in,
11 talks on the speaker to a port representative, provides the container information, booking
12 number and company name, California Cartage Express, to the port representative, and then
13 he is allowed to get in the port. Once Plaintiff Lara is inside the port, he unloads the
14 container, picks up another empty assigned by the dispatcher, and takes the truck to the
15 yard. Plaintiff Lara did not drive for another company while employed by Defendants.
16 Plaintiff Lara did not refuse a dispatch, did not hire drivers and did not negotiate the rate of
17 pay. Plaintiff Lara filled up his truck two (2) times per week, and took on average 45 minutes
18 to fill. Plaintiff Lara performed daily inspections on his truck, and it took him approximately
19 20 minutes per day.

20 Plaintiff Lara was not paid for movement of extra lease chassis from Defendants' yard
21 in Wilmington to South Gate. Plaintiff Lara made a total of ten (10) movements which he was
22 not compensated. Plaintiff Lara testified that it took him approximately 15 minutes each way
23 to go from Wilmington to South Gate. Plaintiff Lara asked the office secretary why he was
24 not paid for the chassis movement, and she said that the dispatchers did not indicate that the
25 movements have been made. The secretary had to ask her boss, Jim Degraw ("Mr. Degraw"),
26 whether this could be paid or not. The dispatchers keep a list of drivers in his office to
27 monitor the drivers. They have control over the movement that a particular driver has done

1 in a week, and they mark up on the list if someone refuses to work.

2 Plaintiff Lara owns the truck, he obtained the truck prior to starting working for
3 Defendants.

4 According to Plaintiff Lara's evidence, Defendants deducted the following for
5 electronic logging device: (1) a total of \$142.60 in 2017; and (2) a total of \$101.20 in 2018
6 (Exhibit 3).

7 Plaintiff Lara claims reimbursement of expenses incurred. A detailed review of the
8 receipts submitted into evidence show that his fuel, DMV payments and maintenance
9 expenses during the claim period were \$47,511.77 in 2017 and \$22,180.59 in 2018 (Exhibit 4).

10 Plaintiff Lara testified that he takes one (1) 30 minute meal break per day, he usually
11 takes his meal breaks four (4) hours after he starts working, on his way back from the plant to
12 the port.

13 Plaintiff Lara did not take two uninterrupted ten (10) minute rest breaks. No one told
14 him he could take rest breaks or a second meal break during the day.

15 Plaintiff Lara testified to the following under cross-examination. Plaintiff Lara signed
16 an independent contractor agreement every three (3) months; he needs to submit proper
17 documentation to Defendants in order to get paid; his pay was delayed once and he asked
18 the secretary who works for Mr. Degraw; he does not have a USDOT number; he usually
19 started work 30 minutes after he was dispatched through text message; he was dispatched at
20 different times of the day; his truck has Defendants' logo on it; he chooses the route to take
21 from the plant to the port; he considers himself a professional driver; it takes more skill to
22 drive a truck than a regular car; he owns a business called Rodriguez Lara trucking; he is free
23 to choose where to take the truck for repairs and tires; he leased the truck in March 2017,
24 before he started driving for Defendants; he can choose the insurance carrier for his truck
25 insurance; and no one from Defendants' office told him he was entitled to rest breaks.

26 **B. Plaintiff Valente Luna**

27 Plaintiff Valente Luna ("Plaintiff Luna") performed personal services for Defendants

1 as a truck driver in the County of Los Angeles, California from 2006 to December 17, 2017.
2 Plaintiff Luna testified that he worked an average of ten (10) to twelve (12) hours per day,
3 four (4) to five (5) days per week, at a piece rate per load.

4 Defendants paid Plaintiff Luna weekly and provided a settlement statement that
5 served as a detailed wage statement. According to proof, Plaintiff Luna earned \$11,556.10
6 over the period of 18 workdays during the last four pay periods in November and December
7 2017, equivalent to \$642.01 daily (Exhibit 6).

8 Plaintiff Luna testified that Defendants' dispatchers, Victor and Ricardo, set his
9 schedule. Plaintiff Luna was dispatched through phone call or text messages.

10 After Plaintiff Luna was dispatched, he took an empty he had from the previous day
11 to the plant. On average, he waited a total of two (2) hours per day, two (2) days per week,
12 from the time he arrived at the plant to the time he was actually dispatched through the
13 phone application "trinium". Sometimes, he called Defendants on his way to the plant to let
14 dispatchers know that he was near the plant. Plaintiff Luna received an envelope number for
15 his assignment, and he was not provided with an option to choose an assignment. Plaintiff
16 Luna refused an assignment only when the chassis had bad tires, lights were not functioning,
17 or springs were broken. Plaintiff Luna told dispatchers the chassis was in bad condition, and
18 they assigned him another chassis. Plaintiff Luna was given hot cargos, which he had to
19 move immediately.

20 Plaintiff Luna was not paid for approximately ten (10) chassis movements from the
21 yard to the port. Plaintiff Luna indicated he made the movement in the manifest, but was not
22 paid. Plaintiff Luna asked the secretary why he was not paid for the movements, and the
23 secretary told him that per instructions from Mr. Degraw, Defendants no longer pay drivers
24 for movements from the yard to the port. Plaintiff Luna was previously paid \$60.00 per
25 chassis movement from the yard to the port.

26 Plaintiff Luna testified that Mr. Degraw kept a list of drivers with movements made
27 per week, and would sometimes make comments to him that he pulled too many loads or not

1 enough loads per week. Plaintiff Luna testified that Mr. Degraw changed the company rules
2 on a weekly basis, and stated that if drivers don't follow the rules, they will be fired. For
3 instance, Mr. Degraw instructed drivers to take clean containers to the plant, regardless of
4 what he condition of the container was when they picked up at the port. If the container was
5 not clean, drivers were forced to take back the container to the port without loading, and
6 therefore, not getting paid for the movement or the fuel. As a result, Plaintiff Luna had to
7 inspect the empties every morning before taking the container to the plant at Borax. If the
8 container was dirty, he had to clean and paint them before he took it to the plant to make
9 sure the plant accepted the container. On average, it took him between one (1) and one and a
10 half (1 ½) hour to find a clean container or clean the dirty container. Defendants did not pay
11 Plaintiff Luna for time spent cleaning the empty containers.

12 On one occasion, Plaintiff Luna received an assignment at midnight, and he found that
13 the chassis had a flat tire. Plaintiff Luna had to call the mechanic and get the tires fixed. Mr.
14 Degraw called Plaintiff Luna the next day and told him that next time, he needs to leave the
15 cargo instead of fixing at night because the mechanic charges extra for working at night.

16 Plaintiff Luna drove a 2010 Columbia freightliner, which Defendants chose for him.
17 John Cordoba, safety person at Defendants, presented Plaintiff Luna with this truck, the truck
18 was ready for him at the dealership. Plaintiff Luna was part of a group of drivers who had to
19 go to the dealership to pick up the trucks already assigned by Defendants. Defendants
20 instructed Plaintiff Luna to sign the lease documents, and notified that the truck lease
21 payment would be deducted from his wages. Plaintiff Luna could not negotiate the amount
22 of truck lease that would be deducted from his wages.

23 Plaintiff Luna was not allowed to drive for other companies while he was employed
24 by Defendants. Plaintiff Luna did not hire a second driver to drive his truck. Plaintiff Luna
25 currently owns the truck. His truck had Defendants' logo on it while he was driving for
26 Defendants.

27 According to Plaintiff Luna's evidence, Defendants deducted the following for fuel,

1 LNG physical damage, and maintenance operating equipment: a total of \$38,047.29 (Exhibit
2 6).

3 Plaintiff Luna received settlement statements every week with a copy of the check and
4 manifests he had submitted every day. Plaintiff Luna could not negotiate the rate of pay.
5 Defendants provided Plaintiff Luna with a fuel card, and deducted the fuel amount from his
6 wages.

7 Plaintiff Luna claims reimbursement of expenses incurred. A detailed review of the
8 receipts submitted into evidence show that his fuel and maintenance expenses during the
9 claim period were \$313,681.79 (Exhibit 7).

10 Plaintiff Luna incurred expenses for drug test, which Defendants regularly required
11 him to take. Plaintiff Luna paid road taxes one (1) time per year, for a total of \$550.00.
12 Plaintiff Luna parked the truck at a yard near his house, and incurred parking expenses.
13 Plaintiff used his personal phone for work purposes.

14 Plaintiff Luna testified that he did not take uninterrupted meal breaks of at least 30
15 minutes every five (5) hours worked. Defendants did not tell him whether to take or not take
16 meal breaks. He did not take two (2) meal breaks per day. Sometimes, he took one (1) meal
17 break after he finished the work for the day.

18 Plaintiff Luna did not take an uninterrupted rest break. Once he received the
19 assignment, he went straight to the port for delivery.

20 Plaintiff Luna testified to the following under cross-examination: he was given another
21 assignment if the chassis was in bad condition and the mechanic could not fix it; Plaintiff
22 Luna did not want to work at night after the incident with fixing the chassis, and Defendants
23 honored his request not to be assigned work at night; he was not punished for rejecting night
24 loads; Mr. Degraw also had safety rules inside the plant, including speed limits and driving
25 instructions; Defendants instructed Plaintiff Luna to turn in the old truck and to obtain a new
26 truck to continue work; he leased the truck through City National Bank; Plaintiff Luna now
27 owns the truck; when he leased the truck, it was his understanding that he would come to

1 own the truck one day; Plaintiff Luna did not understand the content of the independent
2 contractor agreement when he signed it; he did not ask for a Spanish translation of such
3 contract; the phone bill reflects both personal and business expenses; he did not hire a second
4 driver to drive his truck; he did not ask Defendants if he could hire a second driver; he
5 considers himself a professional driver; he can choose which routes to take from the plant to
6 the port; he could generally choose when to leave the plant after he was dispatched, but it
7 depended on the type of assignment he received; he could choose the insurance carrier for his
8 truck insurance; he has a business, Luna's and Son's trucking, which is required by CHP
9 when driving a truck when he gets pull over; he registered this business in 2012 when he
10 obtained the truck, but he started working for Defendants in 2006; and he had to complete a
11 load between six (6) and eight (8) hours, and no one instructed him to take rest breaks.

12 **C. Plaintiff Gerardo Martinez**

13 Plaintiff Gerardo Martinez ("Plaintiff G. Martinez") performed personal services for
14 Defendants as a truck driver in the County of Los Angeles, California from February 24, 2008
15 to December 20, 2017. Plaintiff G. Martinez testified that he worked an average of ten (10)
16 hours per day, three (3) days per week, at a piece rate per load. He was terminated in
17 December 2017.

18 Defendants paid Plaintiff G. Martinez weekly and provided a settlement statement
19 that served as a detailed wage statement. According to proof, Plaintiff Martinez earned
20 \$12,723.30 over the period of 12 workdays during the last four pay periods in April and May
21 2014, equivalent to \$1,060.28 daily (Exhibit 11).

22 Plaintiff G. Martinez testified that Defendants' dispatcher, Ricardo, set his schedule.
23 Plaintiff G. Martinez was dispatched through phone call or text messages. After he was
24 dispatched, he pulled an empty from the port and went to the plant in Borax. After he
25 unloaded the empty at the plant, he waited to receive an envelope number from the
26 dispatcher. He waited between 30 minutes to four (4) hours at a time. On average, he waited
27 two (2) hours per day at the plant to receive an envelope number. Plaintiff G. Martinez

1 complained to Mr. Degraw that he waited too long before he received an envelope and asked
2 if Mr. Degraw could compensate for the lost time. Mr. Degraw replied that it was not his
3 obligation to pay for waiting time. Plaintiff G. Martinez was not given an option to choose an
4 envelope number and he could not refuse work. If he refused work, the dispatcher would
5 punish him by not giving him work for a few days. He could not negotiate the rate of pay.

6 Plaintiff G. Martinez was not paid for twenty (20) bobtail movements and ten (10)
7 chassis movement from the port to the yard. Plaintiff G. Martinez recorded the bobtail and
8 chassis movements in the manifests. When he went to pick up his paycheck at Mr. Degraw's
9 office, Mr. Degraw saw he recorded the bobtail and chassis movements in the manifests, told
10 him not to record those movements, and crossed them off. Mr. Degraw refused to approve
11 pay for the bobtail and chassis movements. Mr. Degraw only allowed Plaintiff G. Martinez to
12 grab two (2) to three (3) manifests per day at his office, and would chastise him if he grabbed
13 more than the allowed number of manifests. Mr. Degraw kept an eye on the number of loads
14 Plaintiff G. Martinez did per week, and would comment that Plaintiff G. Martinez did too
15 many loads a week. Plaintiff G. Martinez replied to Mr. Degraw that the dispatchers told
16 him how many loads to move per week.

17 Plaintiff G. Martinez filled his truck once a week, and took approximately 30 minutes
18 to fill up the tank.

19 Defendants told Plaintiff G. Martinez to replace his old 1999 freightliner truck with a
20 new one. Plaintiff G. Martinez did not qualify for the purchase, and asked Bob Curry, the
21 owner of Cal Cartage Express, if he could obtain the truck. Mr. Curry talked to the bank to
22 see if Plaintiff G. Martinez could lease the truck. Mr. Curry chose a truck for Plaintiff G.
23 Martinez. When work was slow, Plaintiff G. Martinez asked Mr. Degraw if he could drive for
24 another company, and Mr. Degraw replied that the truck belonged to the company, and
25 therefore, he cannot drive for another company. Plaintiff G. Martinez sold the truck to a co-
26 worker when he left Defendants. The truck had Defendants' logo and USDOT number on it.

27 According to Plaintiff G. Martinez's evidence, Defendants deducted the following for

1 fuel, LNG physical damage, maintenance operating equipment, parking and trip deductions:
2 a total of \$18,426.29 (Exhibit 11).

3 Plaintiff G. Martinez claims reimbursement of expenses incurred. A detailed review of
4 the receipts submitted into evidence show that his fuel, DMV payments and maintenance
5 expenses during the claim period were \$121,020.89 (Exhibit 12).

6 Plaintiff G. Martinez testified that he did not take more than one (1) meal break per
7 day. Whenever he could take the meal breaks, he took 30 minutes. He could not take 10-
8 minute rest breaks. Defendants did not allow him to take rest breaks. He was told by the
9 dispatcher, Ricardo, to keep moving the truck. The truck has GPS installed in it, and one
10 time, when he stopped to buy lunch, the dispatcher called him and told him that he needs to
11 continue driving and get to the port as soon as possible.

12 Plaintiff G. Martinez testified to the following under cross-examination. Plaintiff G.
13 Martinez was hired as an owner-operator, and he signed the independent contractor
14 agreement every 90 days. He does not speak much English, Defendants did not have the
15 contract available in Spanish. Plaintiff G. Martinez is the only registered under the truck. He
16 sold the truck in 2014 to a co-worker. It was his decision to sell the truck. When he obtained
17 the truck, Defendants told him that a GPS device was installed in this truck. He leased the
18 truck through City National Bank. Plaintiff G. Martinez does not know if he received tax
19 credits for business expenses incurred while working for Defendants. He did not ask
20 Defendants if he could hire another driver to drive his truck. Plaintiff G. Martinez was free to
21 choose the route from the plant to the port. Defendants recommended to take the highway
22 14, but it was his choice to take any route he wanted. He was free to choose where to pump
23 diesel, and where to take his truck for maintenance. He took 15-30 minutes lunch. When
24 Defendants implemented the electronic log book, and the law required him to take the full 30
25 minutes lunch, he started taking 30-40 minutes, but not in 2013 or 2014. He ate while driving,
26 waiting to be dispatched, and he had to run to the lunch truck to get his food. Defendants
27 pressure him to complete the work as soon as possible, especially when the container had a

1 hot load. Defendants did not tell him not to take rest breaks, and he did not take rest breaks.

2 **D. Plaintiff Gustavo Villa**

3 Plaintiff Gustavo Villa ("Plaintiff Villa") performed personal services for Defendants
4 as a truck driver in the County of Los Angeles, California from February 1, 2014 to present.
5 Plaintiff Villa testified that he worked an average of 13 hours per day, four (4) days per week,
6 at a piece rate per load. Plaintiff Villa is still employed.

7 Plaintiff Villa testified that Mr. Degraw, terminal manager, and John Cordoba, director
8 of safety, hired him. Defendants' dispatchers, Ricardo, Victor and Sergio, set his schedule.
9 Plaintiff Villa was generally dispatched through phone text messages.

10 After Plaintiff Villa was dispatched, he generally made one local movement from the
11 yard to the port terminal. Because the port terminals are congested, he did not want to make
12 the local movements, but he had no choice. After completing the local movement, he goes to
13 Borax, per Defendants' instruction. He received the envelope number through the phone
14 application trinium. Plaintiff Villa waited at the plant in Borax approximately two (2) hours
15 per week until February 2018, and starting March 2018, approximately one (1) hour per week
16 before he was given an envelope number. Plaintiff Villa complained to Mr. Degraw multiple
17 times about the waiting time at the plant in Borax, but Mr. Degraw told him he does not pay
18 for waiting time at the plant.

19 Plaintiff Villa did not refuse work. Recently, he stopped working on Fridays.

20 Plaintiff Villa was instructed to move chassis for extra lease from the yard in
21 Wilmington to the city of Commerce. Plaintiff Villa was not paid for these movements. If he
22 refuses to do the job, Defendants retaliate by telling him there is no more work for the day.
23 Plaintiff Villa complained to dispatchers many times that he was not being paid for bobtail
24 movements, and they said that Mr. Degraw does not pay for bobtail. Plaintiff Villa talked to
25 Mr. Degraw regarding the bobtail pay, and he said that he does not pay, and this is how the
26 business is done, and if he is not happy with it, he is free to go and work somewhere else.

27 Plaintiff Villa had to submit manifests every night. Mr. Degraw hands him the

1 paycheck on Thursdays, along with a copy of the settlement statement and the manifests. If
2 Mr. Degraw is not in the office when Plaintiff Villa goes to pick up the check, he has to wait
3 until Friday, because Mr. Degraw likes to hand the paychecks personally and make
4 comments. On one occasion, Mr. Degraw told Plaintiff Villa that he needs to pull certain
5 amount of loads per week, and Plaintiff Villa responded that he had to take the truck for
6 maintenance that week.

7 Plaintiff Villa purchased a 2014 truck, and no deductions were made from his
8 paychecks regarding truck payments. Plaintiff Villa cannot work for another company. Mr.
9 Degraw told him that drivers must have their own trucks and cannot have co-drivers for the
10 same truck. Plaintiff Villa created the business Del Mar Transportation, and has been paid
11 under such business name, for work he did for himself only. His truck has Defendants' logo
12 and uses Defendants' USDOT and MC numbers.

13 Plaintiff Villa could not negotiate the rate of pay. He asked Mr. Degraw if it is possible
14 to negotiate the rate per movement and Mr. Degraw responded in the negative. Plaintiff
15 Villa was paid according to the rates published in the settlement statements. He did not see
16 such rates published anywhere else.

17 According to Plaintiff Villa's evidence, Defendants deducted the following for LNG
18 physical damage, electronic logging device, maintenance operating equipment and trip
19 deduction: a total of \$7,299.15 (Exhibit 15).

20 Plaintiff Villa claims reimbursement of expenses incurred. A detailed review of the
21 receipts submitted into evidence show that his fuel, DMV payments, truck repair, and
22 insurance payments during the claim period were \$98,962.71 (Exhibit 16).

23 Plaintiff Villa takes one 30-minute meal break per day. He generally takes his meal
24 breaks on his way from Mojave to the port. He does not take more than one (1) meal break
25 per day.

26 Plaintiff Villa does not take two uninterrupted 10-minute rest breaks. He has not time
27 to take another break on the way to the port, and he cannot walk around the harbor inside

1 the terminal.

2 Plaintiff Villa testified to the following under cross-examination. He signed the
3 independent contractor agreement under Del Mar Transport. He filed taxes for business
4 expenses separate from his personal taxes, and claimed those expenses. He was paid for
5 waiting time at the port, after the first hour of waiting. He is aware of the Department of
6 Transportation driving limitation of no more than 14 hours per day, and ten (10) hour rest
7 between driving. He informed the dispatcher about this limitation, and this is why the
8 dispatchers stopped giving him work on Fridays. Sometimes, he receives the envelope
9 number before he gets to the Borax plant. The only time he refused an assignment was when
10 the load is bad and he knows that the terminal is not going to accept the load. Defendants
11 changed the assignment and did not retaliate. He can choose the insurance carrier but has to
12 get approval from the safety department. Plaintiff Villa can choose where to go for diesel
13 pump and truck repair. He considers himself a professional driver. He has a hazmat
14 endorsement certificate, and he has to follow special rules to haul hazmat. He can sell the
15 truck anytime. He performs his services exclusively for Defendants. Defendants are not
16 listed as owners of the truck. Defendants never trained him on meal or rest breaks.
17 Defendants did not explain to him that he was allowed to take two (2) meal breaks per 14
18 hours of drive. Defendants did not tell him to take or not take lunch or rest breaks.

19 **E. Plaintiff Rodolfo Rodriguez**

20 Plaintiff Rodolfo Rodriguez ("Plaintiff Rodriguez") performed personal services for
21 Defendants as a truck driver in the County of Los Angeles, California from December 1, 2006
22 to present. Plaintiff Rodriguez testified that he worked an average of 12 hours per day, four
23 (4) days per week, at a piece rate per load.

24 Plaintiff Rodriguez testified that Defendants' dispatcher, Ricardo, Victor and Sergio,
25 set his schedule. Plaintiff Rodriguez was dispatched through text messages. After he was
26 dispatched, he took an empty from the yard to the Borax plant. He was dispatched to the
27 port terminal, and sometimes to the plant. He had to make sure the empty he delivered to

1 the plant was clean. Plaintiff Rodriguez had to regularly clean the empty before taking it to
2 the plant. He performed pre-trip inspections on the truck every day. At the plant, he
3 received an envelope number. He had to wait approximately 30 minutes per day to receive
4 an envelope number. On average, he spent approximately 45 minutes per day to clean,
5 perform pre-inspections, and wait at the plant.

6 Plaintiff Rodriguez could not choose an envelope number. The only time he refused
7 an assignment was when he could not find the load. He received a replacement assignment
8 when he notified the dispatcher he could not find the load. Then, he delivered the load to the
9 port. At the port, Defendants told him which empty to pick up to take to the yard. He
10 regularly received hot cargo and loads with appointment times.

11 Plaintiff Rodriguez did not drive for another company while working for Defendants.
12 He did not get paid for movement from the yard to the terminal when he had to deliver the
13 following day. Also, he did not get paid for chassis movements from port to port. He
14 complained to the secretary and to the dispatcher. The dispatcher, Sergio, told him to bring
15 proof that the company ever paid for those movements. He was paid previously at the rate
16 of \$60.00 per movement. He remembers making a total of four (4) movements which he did
17 not get paid.

18 According to Plaintiff Rodriguez' evidence, Defendants deducted the following for
19 LNG physical damage, electronic logging device, trip deductions, parking, and maintenance
20 operating equipment: a total of \$37,428.81 (Exhibit 19).

21 Plaintiff Rodriguez understands that he was paid a fuel surcharge as an incentive of
22 his fuel price. He received a driver incentive for each load he moved. He cannot negotiate
23 the price of the loads. He collected the settlement statements with his paychecks at Mr.
24 Degraw's office.

25 Plaintiff Rodriguez claims reimbursement of expenses incurred. A detailed review of
26 the receipts submitted into evidence show that his fuel, DMV payments, truck repair, and
27 telephone expense during the claim period were \$331,036.96 (Exhibit 20).

1 Plaintiff Rodriguez testified that he did not receive a company card. His truck runs on
2 diesel and he does not have any other personal vehicle that runs on diesel. He had to take
3 and pay for a drug test, which was required by Defendants. He paid for truck registration
4 every three (3) months. He paid road tax every year. In 2012, he was assigned to deliver
5 loads to Yuma, AZ.

6 Prior to 2016, Plaintiff Rodriguez did not take 30-minute uninterrupted meal periods,
7 and he ate while driving. Since 2016, Defendants required him to take one 30-minute meal
8 period per day. He does not take more than one meal break per day.

9 Plaintiff Rodriguez did not take an uninterrupted 10-minute rest break. He felt
10 pressure to continue driving and the company did not have a policy on rest breaks.

11 Plaintiff Rodriguez testified to the following under cross-examination. He was not
12 punished for refusing a dispatch. He chooses where to stop for his lunch breaks and where
13 to take the truck for repairs. He considers himself a professional driver. He did not try to
14 hire another driver. Defendants did not tell him and he did not ask if he could hire another
15 driver. He signed an independent contractor agreement every three (3) months. He claimed
16 the expenses on his tax returns. He used the phone for both business and personal use. He
17 owns the truck and Defendants are not registered in his truck. He purchased the truck
18 through his brother. It was his choice not to take rest breaks, and no one from Defendants
19 told him not to take meal breaks.

20 **F. Plaintiff Jose Garcia**

21 Plaintiff Jose Garcia ("Plaintiff Garcia") performed personal services for Defendants as
22 a truck driver in the County of Los Angeles, California from December 2005 to present.
23 Plaintiff Garcia testified that he worked an average of 11 hours per day, four (4) days per
24 week, at a piece rate per load. Plaintiff Garcia is still employed.

25 Plaintiff Garcia testified that Defendants' dispatchers, Victor and Sergio, set his
26 schedule. Plaintiff Garcia was dispatched through text messages. After he is dispatched, he
27 takes an empty from the yard to the Borax plant. Sometimes, dispatchers tell him to pick up

1 an empty from the port terminal and take it to the Borax plant. He has to make sure that the
2 empty is clean. If he finds nails on the floor, or the walls are rusted, he has to repair and
3 paint the walls before taking the empties to the plant. Mr. Degraw told him to take the
4 empty clean, otherwise, he cannot drop off the empty at the plant. Mr. Degraw is the person
5 who gives orders to the drivers. After dropping off the empty, he goes to the office at the
6 plant and receives an envelope number. He is not given an opportunity to choose an
7 envelope number. Sometimes, he has to wait until he receives an envelope number. On
8 average, he waits one (1) hour, two (2) times per week at the plant. He performs daily pre-
9 trip inspections before driving his truck, and it takes approximately 15 minutes per day.

10 Plaintiff Garcia made extra lease chassis movements from the yard to the City of
11 Commerce, which took a total of one and one-half hour round trip. He also had to make
12 bobtail movements from the yard to the port. Defendants did not pay for two (2) extra lease
13 movements of \$60.00 per movement, and three (3) tire movements from Long Beach to
14 Mojave Desert. Plaintiff Garcia made a total of four (4) tire movements to Mojave but was
15 only paid once. He asked Mr. Degraw why he was not being paid for such movements, and
16 Mr. Degraw replied that the tires are for the drivers when they need to replace them, and
17 therefore, he is not paying for the movement of tires.

18 Plaintiff Garcia has been disciplined for refusing an assignment. Mr. Degraw makes
19 comments when he thinks Plaintiff Garcia worked too much or too little. Mr. Degraw makes
20 the majority of decisions, such as hiring and firing, pay, and assigning drivers.

21 Mr. Degraw made Plaintiff Garcia obtain a new clean lng truck through Defendants in
22 2015. Mr. Degraw told Plaintiff Garcia that if he does not accept the truck, there is no more
23 for him. Plaintiff Garcia was not given an option to choose a truck he wanted. Defendants
24 brought him to the dealership and the bank, and chose a truck for him. Plaintiff Garcia uses
25 Defendants' permits on his truck. Plaintiff Garcia hired a driver to drive his second truck.
26 Defendants' dispatchers give assignments and instructions to his driver. Defendants decide
27 whether his driver works or not. His driver also uses Defendants' company logo. He

1 purchased his second truck personally.

2 According to Plaintiff Garcia's evidence, Defendants deducted the following for fuel,
3 LNG physical damage, advance, radio usage, parking, electronic logging device and trip
4 deductions: a total of \$114,283.72 (Exhibit 23).

5 Plaintiff Garcia did not negotiate the price per load. He did not see the load prices
6 published anywhere else besides the settlement statement.

7 Plaintiff Garcia claims reimbursement of expenses incurred. A detailed review of the
8 receipts submitted into evidence show that his fuel, DMV payments, truck repair, telephone
9 expense, drug & alcohol test, scale fees, and insurance payments during the claim period
10 were \$284,571.60 (Exhibit 24).

11 Plaintiff Garcia uses the phone to access the phone application trinium and to receive
12 text messages from Defendants.

13 Plaintiff Garcia did not take 30-minute uninterrupted meal periods until last year.
14 Starting in 2017, the company had a new policy to take one meal break before the 8th hour.
15 Plaintiff Garcia does not take a second meal break. He was instructed to return to the port as
16 quickly as possible to deliver the load. Plaintiff Garcia received loads with appointment
17 times, and the dispatchers instructed him to deliver the load before the port appointment
18 time. Defendants installed a gps device on his truck.

19 Plaintiff Garcia did not take two (2) 10-minute uninterrupted rest periods. He takes
20 short brakes when he gets to the port, waiting in line to enter the port, inside the truck.

21 Plaintiff Garcia testified to the following under cross-examination. There was a group
22 of drivers who got together to request an increase in the amount paid per load. Defendants
23 increased the price sometime after the request. He never refused an assignment. He signed
24 independent contractor agreements. Defendants pay him for waiting inside the port, after
25 the first hour. He chooses where to take the truck to fuel, or for maintenance. It is his
26 understanding that he cannot simultaneously work for Defendants and other companies. He
27 can take his truck if he leaves Defendants. He has a CA number, however, he is currently not

1 using this number. Defendants did not tell him he could not take meal breaks or rest breaks.

2 **G. Plaintiff Jose Vidal**

3 Plaintiff Jose Vidal ("Plaintiff Vidal") performed personal services for Defendants as a
4 truck driver in the County of Los Angeles, California from July 1, 2006 to present. Plaintiff
5 Vidal testified that he worked an average of 10.5 hours per day, four (4) to five (5) days per
6 week, at a piece rate per load. Plaintiff Vidal is still employed.

7 Plaintiff Vidal testified that Defendants' dispatchers, Victor, Ricardo and Sergio, set his
8 schedule. Plaintiff Vidal was dispatched through text messages. After he was dispatched, he
9 picked up the empty from the day before, and took it to the Borax plant. He had to make
10 sure that the empty was clean, and regularly cleaned them. After he drops off the empty, he
11 picks up the envelope number and uses the phone application trinium to receive the
12 envelope number. He does not have an option to choose the envelope number. One time, he
13 received a container with flat tires and asked the dispatcher if his container could be replaced.
14 Dispatchers did not replace the container, and he waited hours for a mechanic to fix the tires.

15 Plaintiff Vidal testified that it took him approximately one (1) hour per day waiting at
16 the Borax plant, performing pre-inspection on his truck, chassis inspection and cleaning the
17 empties. Plaintiff Vidal spent on average 30 minutes per week to fuel the truck.

18 It is Plaintiff Vidal's understanding that Mr. Degraw has the authority to hire and fire,
19 can choose who to give work and how much, and has authority to decide whether a
20 movement will be paid by the company.

21 Plaintiff Vidal could not negotiate the rate of pay.

22 Plaintiff Vidal obtained the 2009 truck through Defendants. He could not choose the
23 truck. He leased the truck for seven (7) years and he currently owns the truck. He cannot
24 use the truck to drive for other companies. Plaintiff Vidal asked Mr. Degraw if he could
25 drive for another company when work was slow, and Mr. Degraw replied he could not.
26 Plaintiff Vidal never hired another driver to drive his truck.

27 According to proof, Defendants deducted the following for fuel, LNG physical

1 damage, maintenance operating equipment, parking and electronic logging device: a total of
2 \$14,355.14 (Exhibit 28).

3 Plaintiff Vidal picks up the settlement statement and paychecks at Mr. Degraw's office.
4 Mr. Degraw makes comments regarding his work. One time, Mr. Degraw told him to take
5 two (2) days off because he made too many movements. He made some chassis movements
6 that were not paid. He complained to Mr. Degraw, who responded that only movements
7 that show on the gps will be paid. If the dispatchers don't have records on the gps, he cannot
8 get paid. Plaintiff Vidal recorded the movements in the manifests, and he witnesses the
9 dispatcher notate \$0 next to the chassis movement. Since 2012, he made on average of one (1)
10 chassis movement every two (2) months, which he was not compensated. When he does get
11 paid, he receives \$35.00 per chassis movement. Mr. Degraw makes the determination
12 whether to pay him or not for the chassis movement.

13 Plaintiff Vidal made bobtail movements from the yard to the City of Commerce, and
14 Defendants did not pay him for the return trip. It took him approximately 45 minutes each
15 way to make the bobtail movement, and he made on average one (1) bobtail movement per
16 week.

17 Plaintiff Vidal claims reimbursement of expenses incurred. A detailed review of the
18 receipts submitted into evidence show that his fuel and maintenance expenses during the
19 claim period were \$268,522.86 (Exhibit 29).

20 Plaintiff Vidal testified that he regularly takes two (2) 30-minute meal breaks per day.
21 He takes the first meal break on his way from the Borax plant to the port. He takes his
22 second meal break inside the port.

23 Plaintiff Vidal did not regularly take uninterrupted 10 minute rest breaks. He decided
24 not to take rest breaks.

25 Plaintiff Vidal testified to the following under cross-examination. He was paid for the
26 chassis movement. He was paid \$35.00 per movement, and since the driver meeting with the
27 employer approximately five (5) years ago, he was paid \$45.00 per movement. He was not

1 paid for all the movements. Plaintiff Vidal was paid \$60.00 from yard to the port. He was
2 not always paid for the movements from the yard to the port. Now, he gets paid \$30.00 per
3 movement. He entered the truck lease agreement with City National Bank. He refinanced
4 his truck after paying lease for five (5) years, and he paid for another two (2) years. He
5 understands that if he finishes paying, he would own the truck. He is the only one listed as
6 the title holder in his truck. He could not haul for another company while he is on a lease
7 with Defendants. He can choose the insurance carrier. He does not understand the content
8 of the independent contractor agreement he signed. He is free to choose where to take his
9 truck for maintenance and fuel. He agreed to get deducted for tires. He considers himself a
10 professional driver. He takes his lunch after he is dispatched. He could refuse a load.
11 Defendants partially reimbursed him for parking expenses. He takes his meal breaks every
12 day. He takes the rest breaks every 15 days. He decides not to take the rest breaks.

13 **H. Plaintiff Flavio Acosta**

14 Plaintiff Flavio Acosta ("Plaintiff F. Acosta") performed personal services for
15 Defendants as a truck driver in the County of Los Angeles, California from December 28,
16 2006 to present. Plaintiff F. Acosta testified that he worked an average of 12 hours per day,
17 four (4) days per week, at a piece rate per load. Plaintiff F. Acosta is still employed.

18 Plaintiff F. Acosta testified that Defendants' dispatchers set his schedule. Plaintiff F.
19 Acosta was dispatched through text messages. After he gets dispatched, he takes the truck to
20 the Borax plant, with an empty attached he picked up the previous day. He had to clean the
21 empty before he took it to the plant. Dispatchers instructed to have the empties presentable,
22 otherwise, the empty would be rejected and he has to bring back the empty to the port. One
23 time, his empty was rejected and he brought the empty back to the port, without
24 compensation for the entire trip he made to the plant and back to the port. On average, it
25 takes him 15 minutes per day to perform pre-trip inspection, and one (1) hour per day to
26 inspect and clean the empties. After he drops off the empty at the plant, and waits for the
27 envelope number. He normally tells the dispatchers ten (10) miles before he gets to the plant

1 so he has to wait less time at the plant. Sometimes he gets dispatched right away, and
2 sometime he has to wait up to two (2) hours. On average, he waits a total of 45 minutes from
3 the time he drops off the empty and the time he receives the envelope number for the
4 container. Dispatchers give him the envelope number through the phone application
5 trinium. Once a week, he found equipment issues with the chassis and informed the
6 dispatchers. Sometimes, he gets replacements, but for the most part, he has to wait until a
7 mechanic arrives at the plant and fixes the tail lights or the flat tires. On average, he has to
8 wait 45 minutes to resolve the chassis issue before he makes his trip back to the port. Once he
9 gets to the port, he identifies the company name as California Cartage Express, and enters the
10 port to drop off the container. On September 14, 2018, he wrote down in the manifest that he
11 waited for 2.5 hours, and was not paid (Exhibit 34). He is aware that Defendants monitor his
12 truck through a gps installed in his truck, check for waiting time at the port, and compensate
13 for his waiting time. However, on September 14, 2018, he was not paid for his waiting time.

14 Plaintiff F. Acosta did not drive for another company while employed by Defendants.
15 When work was slow, dispatchers asked him if he wants to work at CMI or K&R yards, and
16 arranges Plaintiff F. Acosta to meet somebody at CMI or K&R yard. This was the only time
17 he worked for another company, at the request of Defendants.

18 Plaintiff F. Acosta drives a 2010 Columbia Freightliner. Mr. Degraw told him to get a
19 new truck, and Defendants helped him with the lease paperwork. The bank presented the
20 lease paperwork, and John Cordoba was present. Plaintiff F. Acosta did not choose the truck.
21 He could not move cargo for another company. Plaintiff F. Acosta currently owns the truck,
22 he finished paying off in January 2018. The truck has Defendants' logo with USDOT and MC
23 numbers on it.

24 According to proof, Defendants deducted the following for fuel, LNG physical
25 damage, citations, trip deductions, parking, electronic logging device, maintenance operating
26 equipment, and advance: a total of \$199,828.83 (Exhibit 32).

27 Plaintiff F. Acosta understands that Defendants made payroll deductions for child

1 support, and he is not claiming this amount as unlawful deductions. Plaintiff F. Acosta could
2 not negotiate the price per load. Defendants do not publish the rates per load anywhere else.
3 For any discrepancies in pay, he was instructed to go talk to Terri, Mr. Degraw's personal
4 secretary, and it is his understanding that Terri relayed the information to Mr. Degraw.

5 Plaintiff F. Acosta claims reimbursement of expenses incurred. A detailed review of
6 the receipts submitted into evidence show that his fuel, DMV payments, truck repairs and
7 telephone expenses during the claim period were \$13,047.52 (Exhibit 33).

8 Plaintiff F. Acosta started taking 30-minute meal breaks in October 2017. Plaintiff F.
9 Acosta regularly works 12 hours per day, sometime over 14 hours. He did not take more
10 than one meal break per day. He takes his meal break outside the port, and then he eats
11 again inside the port while waiting or on the way to the port, driving. Before 2017, he did not
12 take any uninterrupted 30-minute meal breaks.

13 Plaintiff F. Acosta did not regularly take uninterrupted 10 minute rest breaks.
14 Defendants do not have a policy of rest breaks.

15 Plaintiff F. Acosta testified to the following under cross-examination. He does not take
16 a meal break while waiting at the Borax plant. He rejected assignments three (3) times
17 because of the chassis equipment issues, and was given a replacement envelope. Other times,
18 he did not get a replacement, and he had to wait until the mechanics came and fixed the
19 issues, while other drivers were being dispatched. It is his understanding that California
20 Cartage Express, CMI and K&R are owned by the same person or company, and this is why
21 Defendants allowed him to work for CMI and K&R when the work was slow. He was paid
22 for waiting inside the port, after the first hour. When he approached Terri to ask for a
23 discrepancy in pay, she said she will ask Mr. Degraw, and he knows that Mr. Degraw is the
24 person making decisions. He chooses what routes to take from the plant to the port, where
25 the fuel his truck, and where to take his truck for maintenance. He authorized Defendants to
26 deduct for gps, fuel and electronic log book, however, he was forced to authorized because
27 otherwise, he could not get work from Defendants. He can sell his truck at anytime. He

1 signed the independent contractor agreement every 90 days. Cindy writes down his name,
2 date and the truck number, and instructs him to sign the agreement. Cindy did not give him
3 time to review the contract. If he does not sign the contract, he cannot get work from
4 Defendants. One time, he did not sign the agreement on time, and Richard told him he was
5 out of service. If he takes the contract to review for a few days, he would probably be put out
6 of service for those days. Defendants did not prohibit him from taking meal breaks.
7 Defendants gave him assignments with appointment times, and he had to find the best time
8 to do the work. Before 2017, it was his choice to take the full 30-minutes meal break or less.
9 Defendants did not prohibit him to take the rest breaks.

10 **I. Plaintiff Julio Contreras**

11 Plaintiff Julio Contreras ("Plaintiff Contreras") performed personal services for
12 Defendants as a truck driver in the County of Los Angeles, California from September 1, 2013
13 to April 4, 2015, and from August 6, 2015 to April 28, 2016. Plaintiff Contreras testified that
14 he worked an average of 12 hours per day, four (4) days per week, at a piece rate per load.
15 Plaintiff Contreras quit on April 2016.

16 Defendants paid Plaintiff Contreras weekly and provided a settlement statement that
17 served as a detailed wage statement. According to proof, Plaintiff Contreras earned \$9,885.60
18 over the period of 16 workdays during the last four pay periods in March and April 2016,
19 equivalent to \$617.85 daily (Exhibit 37).

20 Plaintiff Contreras testified that Defendants' dispatchers set his schedule. Plaintiff
21 Contreras was dispatched through text messages. After he was dispatched, he took went to
22 Defendants' yard, inspected the truck and the empty from the day before, and cleaned the
23 empty if necessary. On average, it took him 45 minutes to an hour to inspect and clean the
24 truck and empty. Then, he took the empty to the Borax plant. After he dropped off the
25 empty, he waited to receive the envelope number. He waited approximately 40 minutes to
26 an hour. He received only one envelope number. He did not refuse an assignment. After he
27 received an envelope number, he inspected the chassis and hooked it up to the truck. If he

1 found issues with the chassis equipment, he had to call and wait for the mechanic to come
2 from Majave and fix the equipment. Every two months, he experienced issues with the
3 equipment and waited to be fixed. Drivers generally receive envelope numbers on a first
4 come first serve basis. He did not call the dispatcher in advance to receive envelope numbers
5 earlier.

6 Plaintiff Contreras did not drive for other companies while employed by Defendants.
7 He did not hire a second driver to drive his truck. He filled up the truck tank two (2) times
8 per week, and it took him approximately 20 minutes each time. Defendants instructed
9 Plaintiff Contreras to take the truck to Defendants' yard for safety inspection every 90 days.

10 Plaintiff Contreras drove a 2009 Peterbilt truck. He obtained the truck through a port
11 program and Defendants were not involved in the purchase of his truck. The truck has
12 Defendants' USDOT and MC numbers on it.

13 According to proof, Defendants deducted the following for truck maintenance: a total
14 of \$1,035.64 (Exhibit 37).

15 Plaintiff Contreras personally went to Mr. Degraw's office to pick up the paycheck and
16 the settlement statement. He understands that he receives a percentage of his fuel expenses
17 as fuel surcharge pay. He gets paid at the port terminal for waiting time, after the first hour.
18 Defendants did not publish the price per load anywhere else.

19 Plaintiff Contreras claims reimbursement of expenses incurred. A detailed review of
20 the receipts submitted into evidence show that his maintenance expenses during the claim
21 period were \$6,199.90 in 2013, \$83,049.41 in 2014 and \$2,283.00 in 2015 (Exhibit 38).

22 Plaintiff Contreras incurred expenses to wash his truck twice per month. Defendants
23 did not require him to clean the truck, however, he had to maintain the truck clean to
24 properly inspect it. Plaintiff Contreras did not have a personal car that used diesel.

25 Plaintiff Contreras testified that he was not provided with an uninterrupted meal
26 period of 30 minutes. He did not have time to take meal breaks and he ate while driving. He
27 had to arrive at the port timely.

1 Plaintiff Contreras testified that he could not take 10-minute rest breaks. He only took
2 short breaks while waiting inside the truck. Defendants did not inform him about the meal
3 and rest breaks.

4 Plaintiff Contreras testified to the following under cross-examination. When he left
5 Defendants for the first time, he worked for another company, Green Associates for a few
6 months and then came back. He purchased the truck in 2017. He made payments to the
7 credit union directly. He operated under his business name, Julio A Contreras Trucking. He
8 signed an independent contractor agreement every three (3) months. If he did not sign, he
9 was not permitted to work for Defendants. Defendants do not have any claim to his truck.
10 He reads and speaks English. However, he could not understand the content of the
11 agreement. He did not ask for help understanding the agreement. He understands that
12 some drivers call beforehand before they arrive at the plant to let the dispatchers know they
13 are on the way, however, he does not like to cheat. He does not think he would have been
14 reprimanded if he called in advance. Defendants did not require him to clean the truck but
15 having the truck clean helps him properly inspect the truck to check issues with the motor
16 and any oil or air leakage. He did not try to hire a second driver. He considers himself a
17 professional driver. He obtained a Class A driver's license and he had to go to school to take
18 the test. He was free to take the truck for maintenance and free to choose the insurance
19 carrier. When he went to work for Green Associates for a while, he removed Defendants'
20 logo from the truck and used their logo. He could easily remove the logo sticker. He did not
21 have to wear Defendants' uniform. He was not free to decide what days of the week he
22 would work. He did not take vacation days while working for Defendants. He did not make
23 enough money to take a vacation. He was regularly given three (3) days off. Sometimes, he
24 was given four (4) consecutive days off. It was Defendants' decision to give him days off. He
25 claimed the expense receipts on his tax returns. He did not refuse an assignment because he
26 knew that he would not get a replacement assignment if he refused the assignment. No one
27 told him he could not take a meal or a rest break.

1 **J. Plaintiff Jesus Maldonado**

2 Plaintiff Jesus Maldonado ("Plaintiff Maldonado") performed personal services for
3 Defendants as a truck driver in the County of Los Angeles, California from December 1, 2013
4 to present. Plaintiff Maldonado testified that he worked an average of 12 hours per day, four
5 (4) or five (5) days per week, at a piece rate per load. He is still employed.

6 Plaintiff Maldonado testified that Defendants' dispatchers, Victor, Macias and Sergio,
7 set his schedule. Plaintiff Maldonado was dispatched through text messages or phone calls.
8 After he is dispatched, he performs a pre-trip inspection on his truck, inspects the empty
9 from the previous day to see if it is in a good condition. If they are not in a good condition,
10 he has to return back to the port or clean. He also makes repairs and paints the containers.
11 He understands that the orders that the empties must be clean came from Mr. Degraw. He
12 was disciplined once for taking a dirty empty and was not paid for his trip back. He was laid
13 off by Mr. Degraw.

14 Plaintiff Maldonado took the empty to the Borax plant and dropped off the empty.
15 Then, he waited until he received his assignment. On average, he waited one (1) hour per
16 day, three (3) times per week from the time he dropped off the empty until he received the
17 envelope number. Plaintiff Maldonado cannot refuse an assignment. Sometimes, he receives
18 a "free day" around 5:00PM, after spending the whole day waiting to be dispatched. He
19 fueled his truck two (2) times per day, and took him 30 minutes each time.

20 Plaintiff Maldonado did not get paid for chassis movements. He wrote down the
21 chassis movements in the manifests, but Defendants decided not to pay him. On average, he
22 made one (1) chassis movement per month, for which he was not compensated. He was
23 supposed to get paid \$35.00 per chassis movement.

24 Plaintiff Maldonado did not get paid for bobtail movement from yard to port or port
25 to port. On average, he made two (2) bobtail movements, 15 minutes each, for which he was
26 not compensated.

27 It is Plaintiff Maldonado's understanding that Mr. Degraw makes decisions regarding

1 drivers' work, working conditions, complaints raised, and hiring and firing drivers. Mr.
2 Degraw fired him because he took the container to the plant with the floor broken, without
3 fixing it himself.

4 Plaintiff Maldonado obtained the lng truck through Defendants. He wanted a diesel
5 truck but Mr. Degraw told him to take the lng truck or leave. He did not hire another driver
6 to drive his truck. He currently owns the truck. His truck has Defendants' logo with USDOT
7 and MC numbers on it.

8 According to proof, Defendants deducted the following for fuel, LNG physical
9 damage, parking, maintenance operating equipment, and electronic logging device: a total of
10 \$155,243.34 (Exhibit 41).

11 Plaintiff Maldonado could not negotiate the price per load and he tried getting a raise
12 but Mr. Degraw did not give him a raise. He understands that he received a percentage of
13 fuel prices as fuel surcharge. He has not seen the price per load published anywhere else
14 besides the settlement statements. He picked up the paychecks and settlement statements at
15 Mr. Degraw's office. Mr. Degraw made comments about his work, whether he worked too
16 much or too little.

17 Plaintiff Maldonado claims reimbursement of expenses incurred. A detailed review of
18 the receipts submitted into evidence show that his maintenance expenses during the claim
19 period were \$67,720.81 (Exhibit 42).

20 Plaintiff Maldonado testified that Defendants did not require him to wash his truck,
21 but he wanted to keep the truck clean. He paid for road tax every year, and registration.

22 Plaintiff Maldonado testified that he only took one (1) 30-ominute meal break per day.
23 Occasionally, he took two (2) meal breaks per day.

24 Plaintiff Contreras testified that he took his rest breaks waiting inside the port. He
25 took 10-minute rest breaks three (3) times per week. He also inspects the truck while taking
26 the break. Defendants did not tell him to take rest breaks.

27 Plaintiff Contreras testified to the following under cross-examination. He signed an

1 independent contractor agreement every three (3) months. He can read English. He did not
2 pay attention to the content of the contract, he had not time. He did not haul hazmat. He did
3 not try to drive for another company while employed by Defendants. He knew some drivers
4 who drove for other companies while employed by Defendants. He never hired another
5 driver. He did not try to own multiple trucks. He understands that he is categorized as
6 owner-operator in the workers' compensation waiver (Exhibit Z). In 2008, he worked for
7 CMI, which is the same company as Defendants, and after a few months, he got a call back
8 from Defendants to come back. He considers himself a professional driver, he can take the
9 truck to work for another company if he wants to. Defendants had control over the truck.
10 He could choose where to take the truck for maintenance. One time, he refused to work at
11 night, and he felt he was given less work after he refused. He determines the routes to take
12 from the plant to the port. He did not set the days of the week he would work. He
13 completed one trip per day. He took one (1) week vacation per year. He had to notify
14 Defendants when he wants to take a vacation. He always informed Defendants. He did not
15 wear Defendants' uniform. He could choose where to park his truck. He currently owns the
16 truck. Defendants were involved in the transaction, however, he leased the lng truck
17 through Bush Company. He does not recall what the receipt in the amount of \$1,570.00 is for
18 (page 163, Exhibit 42). He understands he cannot work for more than 14 hours per day
19 consecutively. He has to take 30 minute break per day. Sometimes, he takes a second meal
20 break. On average, he was able to take two (2) meal breaks, one (1) time per week.

21 **K. Plaintiff Ramon Perez**

22 Plaintiff Ramon Perez ("Plaintiff Perez") performed personal services for Defendants
23 as a truck driver in the County of Los Angeles, California from July 1, 2016 to present.
24 Plaintiff Perez testified that he worked an average of 12 hours per day, four (4) days per
25 week, at a piece rate per load. He is still employed.

26 Plaintiff Perez testified that Defendants' dispatchers set his schedule. Plaintiff Perez
27 was dispatched through text messages or phone calls. After he was dispatched, he went to

1 the yard to pick up the empty from the previous day. He had to inspect and clean the
2 empties before he took them to the plant. It took him approximately 45 minutes inspecting
3 and cleaning the empty, and 30 minutes inspecting and cleaning the truck. Sometimes, he
4 was sent to the port to pull an empty before heading to the Borax plant. Other times, he was
5 instructed to move a bobtail to get an extra lease chassis from the yard to Garfield. He made
6 a total of five (5) movements for which he was not compensated. It took him approximately
7 two (2) hours to drive and wait for the extra lease chassis.

8 After Plaintiff Perez delivered the empty to the Borax plant, he went to the office to get
9 the envelope number. He could not choose an envelope number. He regularly had to wait
10 two (2) to three (3) times per week, five (5) hours per week, between the time he informed the
11 dispatchers he was at the plant, and the time he received an envelope number. He did not
12 refuse an assignment. If he refused, Defendants would punish him by not giving him work
13 for a few days.

14 After Plaintiff Perez receives the envelope number, he inspected the chassis and
15 equipment, and it took him approximately 30 minutes per day. When the equipment was
16 defective, he had to wait for the mechanic to come and fix it. Three (3) times per month, he
17 had to wait for an hour.

18 Plaintiff Perez received last free day and hot cargo assignments every week, and when
19 the traffic was heavy, he was unable to deliver the cargo on time before the port closed.
20 Then, the dispatchers arranged another appointment with the port the following day, and he
21 had to deliver the next day without any extra pay.

22 Plaintiff Perez had to fuel the tank every two (2) days, and spent approximately 40
23 minutes to fuel the tank each time.

24 Plaintiff Perez was not paid for bobtail movements from port to yard, or port to port.
25 He wrote down the movements in the manifest and submitted to Defendants, however, he
26 was not paid for such movements. He made approximately ten (10) bobtail movements
27 which he was not compensated.

1 One time, Plaintiff Perez was suspended by Mr. Degraw for three (3) days, for not
2 wearing a seat belt at the Borax plant entrance. He took off his seat belt to put on the safety
3 belt when the truck was idling, and the security guard saw him he was not wearing a seat
4 belt. Mr. Degraw had Plaintiff Perez exit the plant and enter again, and suspended him for
5 three (3) days.

6 Plaintiff Perez drives a 2010 Freightliner, which he owned since 2016. He finished
7 paying off the truck in 2016. He cannot drive for another company while employed by
8 Defendants. It became an issue when the company was slow, and he witnesses several
9 drivers who started driving for other companies while employed by Defendants and were
10 fired. Mr. Degraw told him that because the insurance is for the company, he does not
11 permit drivers to drive for another company, and does not permit drivers to hire a second
12 driver.

13 According to proof, Defendants deducted the following for electronic logging device: a
14 total of \$211,60 (Exhibit 45).

15 Plaintiff Perez could not negotiate the rate of pay. He tried to negotiate with some co-
16 workers, and Mr. Degraw told him that he cannot raise the rate, and if he is not happy with
17 the rate, there is the door out. Plaintiff Perez understands that he received a percentage of his
18 fuel through fuel surcharge.

19 Plaintiff Perez claims reimbursement of expenses incurred. A detailed review of the
20 receipts submitted into evidence show that his maintenance expenses during the claim period
21 were \$73,911.08 (Exhibit 46).

22 Defendants and the CHP officer told him that the truck had to be in clean condition at
23 all times. He submitted receipts for truck wash. Defendants set truck inspections every 90
24 days, and requires Plaintiff Perez to renew the contract every 90 days. Plaintiff Perez does
25 not have a personal car that runs on diesel.

26 Plaintiff Perez testified that now, he takes one (1) 30-minute meal break per day.
27 Defendants force him to take a 30-minute meal break per day, and they check through the

1 gps device and tablet that is installed in his truck. When the 30-minute meal break is over,
2 the tablet turns green and he is able to move the truck. He does not take two (2) meal breaks
3 per day.

4 Plaintiff Perez testified that he could not take 10-minute rest breaks. Defendants did
5 not have a policy on rest breaks, only meal breaks.

6 Plaintiff Perez testified to the following under cross-examination. He has not refused
7 an assignment, he has witnessed some co-workers who refused assignments, and were put
8 out of service. The dispatchers often tell him that he cannot drive for another company.
9 When he started, Mr. Degraw warned him not to drive for another company. The logos on
10 the truck are exclusively for the company. He does not haul hazmat. Plaintiff Perez heard
11 from dispatchers, other drivers, and Mr. Degraw himself that he cannot hire a second driver
12 to drive for the night shift. He is not paid for bobtail movements. He chooses who to get
13 from the port to the plant. He is free to choose where to fuel his truck. He does not wear a
14 CCX uniform. He is the lawful owner of the truck, and can leave the company with the
15 truck. Sometimes, after waiting for half a day, he was told there was no more work for the
16 day, around 3:00PM. He had been waiting at home to receive dispatched. The Borax plant
17 refuses empties with dirty containers, or empties with nails or holes in it. He gets
18 reprimanded from Defendants if the people in Borax reports to Defendants. The CHP officer
19 will warn him if the truck was not clean, it is the law, and it is the same whether he works for
20 Defendants or anyone else. No one told him he cannot take rest breaks. There is no place to
21 stop, he is driving on the freeway. Also, there is no time to take the rest break, he is running
22 late to go to the port and wait in line to drop off the cargo.

23 **L. Plaintiff Gabriel Acosta**

24 Plaintiff Gabriel Acosta ("Plaintiff G. Acosta") performed personal services for
25 Defendants as a truck driver in the County of Los Angeles, California from December 28,
26 2006 to present. Plaintiff G. Acosta testified that he worked an average of 11 hours per day,
27 five (5) days per week, at a piece rate per load.

1 Plaintiff G. Acosta testified that Defendants' dispatcher, Victor, set his schedule.
2 Plaintiff G. Acosta was dispatched through text messages. Sometimes, the dispatcher notifies
3 him today is "your free day" after 4:00PM, meaning there is no more work, after he has been
4 waiting at home for half a day.

5 After Plaintiff G. Acosta is dispatched, he picks up the truck, performs pre-trip
6 inspection for 15 minutes, inspects the empty from the previous day, cleans and paints the
7 empty if necessary, and takes the truck to the Borax plant. Mr. Degraw told him to clean the
8 empties, and one time a total of \$27.00 was deducted from his paycheck, for not cleaning the
9 empty.

10 At the Borax plant, he dropped off the empty, and waited to receive an envelope
11 number. He waited on average 40 minutes, three (3) times per week before he received an
12 envelope number. He only received one (1) envelope number, and did not have an option to
13 choose an envelope number. He only refused work when the trailer was damaged and
14 needed to be replaced. His assignment was replaced. He performed daily inspections on the
15 chassis to make sure they were in good condition before departing to the port.

16 He picked up his paychecks at Mr. Degraw's office. One time, Plaintiff G. Acosta saw
17 that Defendants deducted from his paycheck for "tires" and he asked Mr. Degraw why. Mr.
18 Degraw explained that Defendants incurred extra expense because Plaintiff G. Acosta picked
19 up the load early in the morning, had flat tires, and had fix the tires early in the morning,
20 which was more expensive than fixing it during the day. Plaintiff G. Acosta explained to Mr.
21 Degraw that he cannot go home with a flat tire, and had no option but to call the tire guy.
22 Mr. Degraw explained the company charged him for this extra expense.

23 Plaintiff G. Acosta was never paid for making bobtail movements. When the port
24 refused a container, he had to wait until the next day, and re-deliver to the port. It took
25 approximately 45 minutes to deliver the cargo the next day, and he made approximately two
26 (2) bobtail movements per month, which he was not compensated.

27 Plaintiff G. Acosta was not paid for chassis movement he made the previous week,

1 which he noted in the manifest. Victor, the dispatcher, told him not to enter in the manifest
2 because he was not going to be paid for it. It took him one (1) hour to make the delivery.

3 Plaintiff G. Acosta received hot loads with appointment times at the port. He did not
4 move tires.

5 Beginning in 2015, Plaintiff G. Acosta started driving for another vendor owner-
6 operator. He is not claiming deductions and business expenses starting in 2015. His duties
7 and the manner he was dispatched (namely, through Defendants' dispatchers via text
8 messages) did not change.

9 It is his understanding that Mr. Degraw is the boss, has power to hire and fire drivers,
10 and disciplining drivers.

11 Plaintiff G. Acosta purchased his truck in 2011. He did not choose the truck. When
12 the work was slow, Defendants sent him to work for CMI, and when the work picked up,
13 Defendants told him to return to Defendants' yard. He finished making truck payments in
14 2015. He cannot use the truck to work for other companies while employed by Defendants.
15 He can hire other drivers if he wants to, however, he has not hired another driver.

16 According to proof, Defendants deducted the following for fuel, LNG physical
17 damage, trip deductions, maintenance operating equipment and radio usage: a total of
18 \$63,719.44 (Exhibit 49).

19 Plaintiff G. Acosta testified that he could not negotiate the price per load. He did not
20 try to negotiate, but he understands that if he wants to negotiate, he has to ask Mr. Degraw.
21 He has not seen the prices published anywhere else besides the settlement statements.

22 Plaintiff G. Acosta claims reimbursement of expenses incurred. A detailed review of
23 the receipts submitted into evidence show that his maintenance expenses during the claim
24 period were \$25,563.71 (Exhibit 50).

25 He used his personal phone to access Defendants' phone application trinium, and to
26 receive phone calls and messages. Defendants required Plaintiff G. Acosta to do a drug test
27 every year, and did not pay for it. He washed his truck once per month. Plaintiff G. Acosta

1 believed that it was necessary to have the truck clean in order to perform the inspections, to
2 see if anything was leaking or broken. He spent 15 minutes every 2 days to pump diesel.

3 Plaintiff G. Acosta testified that he was not provided with an uninterrupted meal
4 period of 30 minutes. He normally ate inside the port, while waiting in line. If he left the
5 port early, he ate after he finished the delivery. He did not have a second meal break.

6 Plaintiff G. Acosta testified that he could only take 10-minute rest break per day, three
7 (3) times per week. When he is taking his rest breaks, he also checked the tires. He did not
8 stop to take the rest breaks. He took them while waiting in line.

9 Plaintiff G. Acosta testified to the following under cross-examination. When he was
10 dispatched, he prepared his lunch and left home immediately. He picked up his truck in
11 Lancaster and headed to the Borax plant. It took him approximately three (3) to four (4)
12 hours for him to pick up a load at the plant and deliver to the port. He only refused work
13 when the chassis was damaged, he was not punished for refusing the load. He does not own
14 the truck, the current owner is Salvador Valdivia, and Plaintiff G. Acosta drives for him. He
15 traded in an old truck through a government program and received a check from the
16 government. He was working for CMI at the time. When the work at Defendants was slow,
17 they arranged Plaintiff G. Acosta to haul for CMI. He asked for a raise through a group of
18 co-workers and received an increase in pay. He is paid for chassis movements from port to
19 port, \$35.00 per movement. He uses his cell phone for both business and personal use. Mr.
20 Degraw sometimes tells him to work more hours. The truck driver pays him to drive his
21 truck. The truck owner is not a manager or director of Defendants. He chooses how to drive,
22 where to pump diesel and take the truck for maintenance. He does not have to wear a
23 uniform. He considers himself a professional driver, he has more than 50 years driving a
24 truck. It is his choice not to take rest breaks, the 10-minute rest break is mainly to check his
25 tires.

26 **M. Plaintiff Miguel Cano**

27 Plaintiff Miguel Cano ("Plaintiff Cano") performed personal services for Defendants as

1 a truck driver in the County of Los Angeles, California from January 23, 2012 to May 2018.
2 Plaintiff Cano testified that he worked an average of 12.5 hours per day, four (4) days per
3 week, at a piece rate per load. Plaintiff Cano testified that he worked a total of 130 weeks,
4 and was paid \$500.00 to \$550.00 per trip.

5 Plaintiff Cano testified that Defendants' dispatchers, Ricardo, set his schedule.
6 Plaintiff Cano was dispatched through text messages or phone calls.

7 Mr. Degraw hired Plaintiff Cano to drive for another driver at Defendants. Then in
8 2015, Plaintiff Cano purchased a truck and started driving his own truck.

9 After Plaintiff Cano was dispatched, he took an empty from the previous day to the
10 Borax plant. He performed a pre-trip inspection on his truck, chassis and empty, which took
11 approximately 20 to 30 minutes per day. He also had to clean the empty two (2) times per
12 week, 45 minutes per day. He was required to clean the empty before taking it to the plant,
13 otherwise the plant would not accept his empty. One time, the plant refused his empty and
14 he had to return it to the port. He was not paid for his trip to Borax and his trip back to the
15 port.

16 At the plant, Plaintiff Cano had to wait between 20 minutes to three (3) hours to
17 receive an envelope number. Then, the dispatcher texted him the envelope number. He
18 could not reject an assignment. He only refused when the equipment was broken, and the
19 dispatchers arranged a mechanic to fix the equipment. On average, he waited for one (1)
20 hour, two (2) times per month to get his equipment fixed. He also rejected if he had to
21 deliver the load the next day, he could not return home with the load. He received hot loads
22 with appointment times.

23 After Plaintiff Cano delivered the load at the port, the dispatcher texted him the empty
24 booking number for pick up at the port and take it home.

25 Defendants did not paid for chassis movements, if those movements were not on the
26 trinium system. Plaintiff Cano made a total of four (4) chassis movements which Defendants
27 did not pay. It took him 20 minutes to deliver the chassis. He was also not paid for two (2)

1 movements from the yard to the port, which took two (2) hours each trip. He did not
2 complain at the time for fear, because he had just started driving as an owner-operator.

3 Plaintiff Cano complained to Mr. Degraw about the chassis movements he did not get
4 paid. Mr. Degraw responded that he only pays if they are on the system, and he should
5 notify the dispatchers to put it on the system. He talked to the dispatchers but they did not
6 listen to him. It was Plaintiff Cano's understanding that Mr. Degraw authorized the
7 payments, and Terri, the secretary, made the payments based on Mr. Degraw's authorization.
8 Once the dispatcher, Ricardo, told Plaintiff Cano that Mr. Degraw's rule is that when a driver
9 makes five (5) trips per week, the following week, he can only make four (4) trips at most.

10 Plaintiff Cano purchased a 2012 lng truck. He did not purchase through Defendants.
11 He could not drive for another company while employed by Defendants. He was only
12 permitted to drive for CMI or K&N, companies under the same owner. Mr. Degraw told him
13 multiple times, he could not drive for other companies. He did not drive for other
14 companies, and he did not hire second drivers. He currently owns the truck. His truck had
15 Defendants' logo with their USDOT and MC numbers.

16 Plaintiff Cano did not submit copies of his settlement statements. Plaintiff Cano
17 testified that he worked every week of the year while he was employed. He worked a total
18 of 50 weeks per year. He worked from June 2012 to June 2013 as someone else's driver, left
19 the company, and returned in March 2016 as an owner-operator until May 2018. He worked
20 approximately 130 weeks in total, three (3) to four (4) days per week, which is approximately
21 520 days. He was paid \$500.00 to \$550.00 per trip.

22 Plaintiff Cano claims reimbursement of expenses incurred. A detailed review of the
23 receipts submitted into evidence show that his fuel, DMV payments, truck repairs and
24 telephone expenses during the claim period were \$67,831.86 (Exhibit 53).

25 Plaintiff Cano used his phone to contact the dispatches and receive assignments. He
26 had to perform drug test every year, per Defendants' instructions. He washed his truck, he
27 does not know if Defendants required him to wash the truck.

1 Plaintiff Cano testified that from 2012 to 2013, he did not take a meal break. When he
2 did take, he only took one (1) meal break, 25-30 minutes. He did not take a second meal
3 break. Defendants did not have a policy on meal breaks. This year, Defendants required him
4 to take one (1) 30 minute meal break.

5 Plaintiff Cano testified that he could not take 10-minute rest breaks. He wanted to get
6 to the port early to finish the load. Defendants only paid for the trip and did not pay him for
7 taking rest breaks, so he felt he had to finish the delivery as soon as possible. Defendants did
8 not have a policy on rest breaks.

9 Plaintiff Cano testified to the following under cross-examination. It takes
10 approximately three and half hours from the Borax plant to the port. He does not haul
11 hazmat. One time in 2016, he refused a load and was suspended for two (2) days. One time,
12 he rejected a load because he was supposed to deliver the load the next day to the port.
13 When he was employed as an owner-operator, since 2016, he signed independent contractor
14 agreements. He did not sign such agreements when he drove for another driver. He was
15 free to select the routes to the plant and the port, and free to choose where to take his truck
16 for maintenance and fuel. He did not have to wear Defendants' uniform. He considers
17 himself a professional driver, he understands that it takes more skill to drive compared to a
18 regular driver. He had to take a class and pass a test. After he stopped hauling for
19 Defendants, he obtained his own USDOT number, about one month ago. He was paid per
20 day approximately \$550.00. Defendants were not involved in obtaining his truck. He went
21 to the dealership himself to buy the truck. He is the sole owner of the truck. From 2016 to
22 2018, he had to take one meal break before the eight hour, so he normally took his lunch
23 break near the port. It was his choice to select the place to take his lunch break. Defendants
24 did not prohibit him from taking his lunch or rest breaks. He was told not to take breaks
25 when he was delivering a hot load. Once per week, he was assigned a hot load.

26 **N. Plaintiff Manuel Martinez**

27 Plaintiff Manuel Martinez ("Plaintiff M. Martinez") performed personal services for

1 Defendants as a truck driver in the County of Los Angeles, California from November 25,
2 2002 to June 30, 2017. Plaintiff M. Martinez testified that he worked an average of 1 hours per
3 day, five (5) days per week, at a piece rate per load. Plaintiff M. Martinez quit on June 30,
4 2017 and gave 15-day notice.

5 Defendants paid Plaintiff M. Martinez weekly and provided a settlement statement
6 that served as a detailed wage statement. According to proof, Plaintiff M. Martinez earned
7 \$6,431.80 over the period of 20 workdays during the last four pay periods in May and June
8 2017, equivalent to \$321.59 daily (Exhibit 56).

9 Plaintiff M. Martinez testified that Defendants' dispatchers, Ricardo Morales and
10 Victor Macias, set his schedule. Plaintiff M. Martinez was dispatched through text messages
11 or phone calls. He had to wait until he was dispatched. Many days, he received a "free day"
12 notice after 4:00PM, after he waited for half a day to be dispatched. After he was dispatched,
13 he went to the yard to perform pre-inspection on the truck for 15 minutes, and to inspect and
14 clean the empties. Mr. Degraw had instructed him to clean the empties before he went to the
15 plant. It took him about 45 minutes to inspect and clean the equipment. After he finished
16 inspecting and cleaning the truck and the empty, he drove the truck to the Borax plant and
17 dropped off the empty. He had to wait many times before he received an envelope number.
18 He was not paid for waiting time at the plant. He complained to Mr. Degraw regarding the
19 payment of waiting time at the plant, and Mr. Degraw responded that he does pay for
20 waiting time at the plant. On average, he waited four (4) hours, two (2) times per week.
21 After he received an envelope number, he had to inspect the chassis and equipment, which
22 took him one (1) hour on average. He fueled his tank two (2) times per week, and it took 45
23 minutes each time.

24 Plaintiff M. Martinez was not allowed to drive for another company while employed
25 by Defendants. Around 2016, he was punished about three (3) times for driving for another
26 company. He asked dispatchers how they knew he drove for another company, and they
27 replied they checked the gps system. Mr. Degraw told him he knew because the gps system

1 tracked the truck. One time, when Defendants found out Plaintiff M. Martinez was driving
2 for another company, they suspended him for a few days. Plaintiff M. Martinez told them he
3 had no choice because he did not get enough work through Defendants and he had to
4 support his family. Plaintiff M. Martinez knew that Defendants had a policy not to allow
5 drivers to drive for other companies. Plaintiff M. Martinez did not hire other drivers.

6 Mr. Degraw handed him his paychecks and made comments regarding his work when
7 he gave the checks.

8 Plaintiff M. Martinez was not paid for movements he made from the port to the yard,
9 and he recalls making approximately eight (8) movements per year, for three (3) years, and
10 took him approximately one and a half hour in making the movements. He was not paid for
11 such movements.

12 Plaintiff M. Martinez also made bobtail movements once per week, and he was not
13 compensated. It took him approximately one (1) hour to make such movements.

14 Plaintiff M. Martinez had to haul tires for the company from Defendants' yard in
15 Wilmington to the Borax plant. He was not paid for delivering the tires, for a total of three
16 (3) times, three (3) hour drive. He remembers receiving orders from Cordoba, Mr. Degraw
17 and Cesar to deliver those tires.

18 Plaintiff M. Martinez could not refuse a dispatch. He would be retaliated if he did not
19 accept the load. He never refused an assignment. He was not given an option to choose an
20 envelope number.

21 Plaintiff M. Martinez could not negotiate the price per load. If he wanted to negotiate
22 the rate, he had to talk to Mr. Degraw. He did not see the prices per load published
23 anywhere else besides the settlement statements which he received weekly with his
24 paychecks.

25 Mr. Degraw controlled the dispatchers, administered security, told the drivers what to
26 do, hires and fires the drivers. Mr. Degraw told Plaintiff M. Martinez to pick up only two (2)
27 manifests at a time, at his office. One time, Plaintiff M. Martinez picked up three (3)

1 manifests by mistake, and Mr. Degraw took one (1) away.

2 Plaintiff M. Martinez obtained a 2010 Columbia Freightliner through Defendants. He
3 had a meeting with Cordoba and Mr. Degraw, and they notified Plaintiff M. Martinez to drop
4 off the old truck in Fontana and pick up the new truck at the dealership. Plaintiff M.
5 Martinez did not have an option to choose his truck and could not opt out of the program.
6 To keep his job, he had to lease the truck as instructed by Defendants. Defendants notified
7 that when he goes to the dealership, they will be a unit number ready for him. The truck has
8 Defendants logo on it, and had gps installed in it. John Cordoba told Plaintiff M. Martinez
9 that it was a requirement from the bank to have the gps installed, that the owner of the truck
10 was the bank. Plaintiff M. Martinez started leasing the truck in 2010, and he ended up paying
11 off the balance. Three (3) months ago, he traded in to a dealer.

12 According to proof, Defendants deducted the following for LNG physical damage,
13 and maintenance operating equipment: a total of \$11,494.53 (Exhibit 56).

14 Defendants made weekly deductions on maintenance operating equipment, which he
15 understand was for the tires he bought on credit.

16 Plaintiff M. Martinez claims reimbursement of expenses incurred. A detailed review
17 of the receipts submitted into evidence show that his maintenance expenses during the claim
18 period were \$290,324.25 (Exhibit 55).

19 Plaintiff M. Martinez washed his truck regularly. Vasquez at Defendants' safety
20 department told him that the truck was dirty. Plaintiff M. Martinez was required to take the
21 truck to Defendants' yard for regular inspection and he had to have his truck clean. He paid
22 road tax every year.

23 Plaintiff M. Martinez testified that he was not provided with an uninterrupted meal
24 period of 30 minutes. Starting in 2017, Defendants instructed him to take one meal break of
25 30 minutes, but he did not stop from the plant to the port. He normally ate while waiting in
26 line at the port. Plaintiff M. Martinez did not take his second lunch break.

27 Plaintiff M. Martinez testified that he could not take 10-minute rest breaks. He had to

1 be moving with his loads.

2 Plaintiff M. Martinez testified to the following under cross-examination. He continued
3 using the truck in 2016 and 2017 to drive for other companies. He signed the independent
4 contractor agreement every 90 days, however, he did not read the content of the agreement.
5 Mr. Degraw made comments on his work, but he was not punished for working too much or
6 too little. He understands that CHP requires Defendants to do safety inspections on the
7 trucks every 90 days. He was required to take the truck to Defendants' yard for the
8 inspection. After he received the dispatch text, he had to get moving right away, he could
9 not take a break in the morning. He chose which route to take, where to fuel his truck, and
10 where to take his truck for maintenance. He chose the insurance carrier, Defendants set the
11 minimums for the insurance, but he was free to choose the carrier. He was not retaliated for
12 refusing a dispatch. He leased the truck through City National Bank, and understood at the
13 time, that if he finished making the lease payments, he would ultimately own the truck. He
14 was required to have a CA number while driving for Defendants. He could not park the
15 truck at home, and received \$20.00 from Defendants as parking reimbursement starting in
16 2013. He does not recall whose truck expenses was for the receipts on pages 479 and 480 of
17 Exhibit 55. He was free to stop before getting to the port. Defendants did not tell him he was
18 not allowed to take a meal or a rest break. It was his choice to take a rest break. However, he
19 had to be moving with this load.

20 **O. Plaintiffs' Records**

21 Plaintiffs' Representatives, Jean Choi and Erika Villasenor, submitted Plaintiffs'
22 Closing Brief (Exhibit 58).

23 **P. Defendants' Records**

24 Defendants' representative confirmed that Defendant CCX2931, LLC, a California
25 Limited Liability Company, was formerly known as Defendant California Cartage Express,
26 LLC, a Delaware Limited Liability Company, and they are essentially the same companies.

27 John H. Haney and Samuel Stone, attorneys representing Defendants, submitted the

1 following documents as exhibits:

- 2 • Juan Lara, Independent Contractor Agreement – Exhibit A
- 3 • Juan Lara, driver log book – Exhibit B
- 4 • Juan Lara, workers' compensation insurance – Exhibit C
- 5 • Valente Luna, Independent Contractor Agreement – Exhibit D
- 6 • Valente Luna, Lease Agreement – Exhibit E
- 7 • Valente Luna, Letter-Clean Truck – Exhibit F
- 8 • Valente Luna, Addendum to Independent Contractor Agreement – Exhibit G
- 9 • Gerardo Martinez, Independent Contractor Agreement – Exhibit H
- 10 • Gerardo Martinez, GPS waiver – Exhibit I
- 11 • Gerardo Martinez, Truck Lease Agreement – Exhibit J
- 12 • Gustavo Villa, Independent Contractor Agreement – Exhibit K
- 13 • Gustavo Villa, Articles of Incorporation – Exhibit L
- 14 • Gustavo Villa, GPS and electronic book – Exhibit M
- 15 • Rodolfo Rodriguez, Independent Contractor Agreement – Exhibit N
- 16 • Rodolfo Rodriguez, GPS – Exhibit O
- 17 • Jose Garcia, Independent Contractor Agreement – Exhibit P
- 18 • Jose Garcia, workers' compensation waiver – Exhibit Q
- 19 • Jose Garcia, workers' compensation waiver, second driver – Exhibit R
- 20 • Jose Vidal, truck lease – Exhibit S
- 21 • Jose Vidal, Independent Contractor Agreement – Exhibit T
- 22 • Jose Vidal, GPS authorization agreement – Exhibit U
- 23 • Flavio Acosta, lease agreement – Exhibit V
- 24 • Flavio Acosta, Independent Contractor Agreement – Exhibit W
- 25 • Julio Contreras, Independent Contractor Agreement – Exhibit X
- 26 • Jesus Maldonado, Independent Contractor Agreement – Exhibit Y
- 27 • Jesus Maldonado, workers' compensation waiver – Exhibit Z

- Ramon Perez, Independent Contractor Agreement – Exhibit AA
- Miguel Cano, Independent Contractor Agreement – Exhibit BB
- Manuel Martinez, Independent Contractor Agreement – Exhibit CC
- Defendants’ Answers – Exhibit DD
- Defendants’ Closing Brief – Exhibit EE

LEGAL ANALYSIS

A. Burden of Proof

Plaintiff, as the party asserting the affirmative, has the initial burden of proof to establish by a preponderance of the evidence the validity of his or her claims. (Evid. Code, § 115.) However, there are defenses, if raised, that shift the burden to the party seeking to avoid liability. (Evid. Code, § 500.) Asserting that one is an independent contractor is one such burden-shifting defense. (*S. G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341, 349.)

Employment is defined broadly and there is a general presumption that any person “rendering service for another” is an employee. (Lab. Code, § 3357; *Borello, supra*, 48 Cal.3d at p. 354.) The party seeking to avoid liability has the burden of proving that the individual whose services he or she has retained are independent contractors rather than employees. (*Borello, supra*, 48 Cal.3d at p. 349.) Here, Defendants raised the defense that Plaintiffs were at all times independent contractors and should not be considered employees. As such, Defendants hold the burden of proof on their affirmative defense.

B. Statute of Limitations

The statute of limitations for filing a claim based on a statutory right is three years from the date the right to reimbursement occurred. (Code Civ. Proc., § 338.) The purpose of a statute of limitations is to prevent the litigation of stale claims by providing defendants with notice in time to prepare a fair defense on the merits, and to require plaintiffs to diligently

1 pursue their claims. See *Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d 1131, 1136 (9th
2 Cir.2001) (en banc). However, to “ensure that a limitations period is not used to bar a claim
3 unfairly,” courts developed the doctrine of equitable tolling. See *Hatfield v. Halifax PLC*, 564
4 F.3d 1177, 1185 (9th Cir. 2009).

5 Under California law, equitable tolling has been broadly applied to avoid the injustice
6 of dismissing what would otherwise be time-barred claims, where three factors are met: “(1)
7 timely notice to the defendant in the filing of the first claim; (2) lack of prejudice to the
8 defendant in gathering evidence to defend against the second claim; and (3) good faith and
9 reasonable conduct by the plaintiff in filing the second claim.” *Hatfield*, 564 F.3d at
10 1185 (citing *Collier v. City of Pasadena*, 142 Cal. App. 3d 917, 924, 191 Cal. Rptr. 681, 685 (1983)).

11 In the instant case, Plaintiffs contend that the statute of limitations should be equitable
12 tolled on January 23, 2015, the date that similarly-situated workers filed a class action lawsuit
13 against the company (See Declaration of Jean Choi, referencing the *Campos et al. v. California*
14 *Cartage Company, LLC et al.*, Exhibit 58), alleging the same causes of actions, namely, to recoup
15 illegal deductions, unreimbursed business expenses, minimum wages, meal break premiums,
16 rest break premiums, and waiting time penalties, and similar facts to those in the *Campos*
17 case. Plaintiffs argue that they excluded themselves from the *Campos* class action, signaling
18 their intent to individually file claims against Defendants (Exhibits 8, 10, 14, 18, 22, 26, 31, 36,
19 40, 44, 48, and 52). Plaintiffs filed their claims with the Labor Commissioner on or around
20 August 2018, five (5) months after they submitted the request for exclusion from the *Campos*
21 settlement (Exhibit 58). Therefore, Plaintiffs argued that they acted reasonably and in good
22 faith by excluding themselves from the class action lawsuit and not substantially delaying the
23 filing of claims against Defendant in this forum.

24 Defendants did not directly address Plaintiffs’ equitable tolling argument and thus
25 have not explained how the filing in this forum did not “insure timely notice to [Defendants]”
26 regarding Plaintiffs’ claims, such that they were prevented from “assembl[ing] a defense
27 when the facts are still fresh.” *Elkins v. Derby*, 12 Cal.3d at p. 410, 412 (1974). Likewise,

Defendants have not shown it would be prejudiced if Plaintiffs' claims were equitably tolled with respect to wages, meal periods, rest periods, unlawful deductions, and failure to reimburse for business expenses, among other violations, between January 23, 2015, the date the class action was filed, and August 2, 2018, the earliest date Plaintiffs filed for action in this forum. Evidence shows that the conduct of Plaintiffs' have been reasonable and in good faith. Accordingly, equitable tolling is appropriate in this case. Plaintiffs' claims for wages, unlawful deductions under Labor Code section 221, meal period premiums under Industrial Welfare Commission, Order No. 9, section 11, rest period premiums under Industrial Welfare Commission Order No. 9, section 12, unreimbursed business expenses under Labor Code Section 2802 and liquidated damages under Labor Code section 1194.2 are subject to a three-year statute of limitations back from the date the *Campos* class action lawsuit was filed, which was January 23, 2015, commencing from January 23, 2012.

C. Independent Contractor or Employee

The determination of whether an individual providing service to another is an employee or an independent contractor does not rest on a single determinative factor. Prior to 1970, the principle test was whether the person to whom the service was rendered had the right to control the manner and means of accomplishing the result desired. *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 brought a departure from the focus on control over the work details as the determinative factor in analyzing an employee-employer relationship.

The *Borello* court identified the following additional factors that must be considered: (1) whether the person performing services is engaged in an occupation or business distinct from that of the principal; (2) whether or not the work is part of the regular business of the principal; (3) whether the principal or the worker supplies the instrumentalities, tools, and the place for the person doing the work; (4) the alleged employee's investment in the equipment or materials required by his or her task or his or her employment of helpers; (5) whether the service rendered requires a special skill; (6) the kind of occupation, with

1 reference to whether, in the locality, the work is usually done under the direction of the
2 principal or by a specialist without supervision; (7) the alleged employee's opportunity for
3 profit or loss depending on his or her managerial skill; (8) the length of time for which the
4 services are to be performed; (9) the degree of permanence of the working relationship; (10)
5 the method of payment, whether by time or by the job; and (11) whether or not the parties
6 believe they are creating an employer-employee relationship. (*Borello, supra*, 48 Cal.3d at p.
7 351.)¹

8 The individual factors cannot be applied mechanically as separate tests; they are
9 intertwined and their weight depends often on particular combinations. (*Id.* at p. 352.) Even
10 if the parties expressly agree in writing that an independent contractor relationship exists, the
11 label that parties place on their employment relationship "is not dispositive and will be
12 ignored if their actual conduct establishes a different relationship." (*Estrada v. FedEx Ground*
13 *Package System, Inc.* (2007) 154 Cal.App.4th 1, 10.)

14 1. Control

15 By statute, the question of control remains highly pertinent to the distinction between
16 employees and independent contractors. (See Lab. Code, § 3353.) The statutory test of
17 control may be satisfied even where "complete control" or "control over details" is lacking
18 when an employer retains pervasive control over the operation as a whole, the worker's
19 duties are an integral part of the operation, and the nature of the work makes detailed control
20 unnecessary. (*Yellow Cab Cooperative, Inc. v. Workers' Compensation Insurance Appeals Board*
21

22 ¹ The California Supreme Court has issued its decision in *Dynamex Operations W. v. Superior Court*
23 (2018) 4 Cal.5th 903, 912, reh'g denied (June 20, 2018). *Dynamex* sets forth a simplified alternative to
24 *Borello*, the "ABC" test, for determining whether a worker is an employee under the "suffer or permit"
25 prong of the IWC wage orders. However, in *Cal. Trucking Ass'n v. Su*, the court it made clear that
26 *Dynamex* did not purport to replace the *Borello* standard in every instance. See *Cal. Trucking Ass'n v.*
27 *Su*, 903 F.3d 953, 959, fn. 4. (9th Cir. 2018). In this case, the hearing officer has applied the *Borello*
standard in determining that the claimants were employees of Defendants. Therefore, it is unnecessary
for the hearing officer to also determine the various issues of applicability of the *Dynamex* case in the
instant matter.

1 (1991) 226 Cal.App.3d 1288.)

2 The evidence shows Defendants retained pervasive control over the drayage operation
3 as a whole. Defendant obtained the customers and the customers paid Defendants directly.
4 Plaintiffs did not have the authority to negotiate prices with customers or with Defendants.
5 Defendants determined the rates paid to Plaintiffs, and did not inform the price per load until
6 Plaintiffs received their weekly settlement statements. Plaintiffs drove exclusively for
7 Defendants, except when Defendant exclusively authorized certain Plaintiffs to drive for
8 companies affiliate to Defendants. Plaintiffs did not have their own businesses independent
9 of Defendants business. Defendants implemented a dispatch system, whereby Plaintiffs were
10 dispatched through phone calls or text messages stating to come up to the Borax plant. All
11 Plaintiffs testified that they had to take the trucks to the Borax plant after they were
12 dispatched, and drop off the empties from the previous day. Most of them testified that they
13 had to wait for hours to receive an envelope number after they dropped off the empties, and
14 many times, Plaintiffs received hot loads with appointment times at the port terminal.
15 Moreover, Plaintiffs could not refuse any assignments, most of them testified that they feared
16 retaliation if they refused an assignment. The only times Plaintiffs were able to refuse an
17 assignment were when Plaintiffs noticed a flaw in the chassis equipment. Plaintiffs testified
18 that most of the times, when the equipment was broken, they had to wait for hours for a
19 mechanic to come and fix the equipment. The only decision Plaintiffs could make was to
20 determine which route to take to deliver the loads. Defendants imposed mandatory truck
21 inspections every 90 days to make sure the drivers maintained their truck to Defendants'
22 standards. Defendants also required Plaintiffs to sign the independent contractor agreement
23 every 90 days to be able to operate the trucks. Thus, Defendants retained all necessary
24 control over its operations. (See *JKH Enterprises, Inc. v. Dept. of Industrial Relations* (2006) 142
25 Cal.App.4th 1046, 1064 ["By obtaining the clients in need of the service and providing the
26 workers to conduct it, JKH retained all *necessary* control over the operation as a whole."].)

27 Plaintiffs' duties of truck driving and transporting cargo are an integral part of

1 Defendants' motor carrier business of transporting commodities. Without truck drivers,
2 Defendants' trucking business would not exist. Based on the foregoing, Defendants exercised
3 all necessary control over Plaintiffs' work, and the statutory test of control was satisfied.

4 2. Additional Factors

5 a. *Distinct Occupation or Work Part of Principal's Regular Business*

6 Plaintiffs were not engaged in a distinct occupation or business from that of
7 Defendants. Plaintiffs delivered goods solely for Defendants' customers during their claim
8 periods and Plaintiffs' work was an integral part of Defendants' regular business of
9 transporting commodities. Indeed, Plaintiffs' work is the basis for Defendants' business.
10 Defendant obtains customers who are in need of delivery services and provide the workers
11 who conduct the service on behalf of Defendants. Without drivers, Defendants would not be
12 able to operate its trucking business.

13 b. *Instrumentalities, Tools, and Place of Work*

14 Plaintiffs Luna, G. Martinez, Garcia, Vidal, F. Acosta, Maldonado, G. Acosta, and M.
15 Martinez testified that they leased their trucks through Defendants. These Plaintiffs testified
16 that Defendants assigned the trucks to Plaintiffs, regardless of Plaintiffs' preferences on the
17 trucks, and arranged the truck leases through the dealer and the banks on behalf of Plaintiffs.

18 Plaintiff Lara testified that he obtained the truck prior to working for Defendants.
19 Plaintiff Villa testified that he purchased the truck in 2014 and no deductions were made
20 from his paychecks. Plaintiff Rodriguez testified that he purchase the truck through his
21 brother. Plaintiff Contreras testified that he obtained the truck through a port program and
22 Defendants were not involved in the purchase of his truck. Plaintiff Perez testified that he
23 obtained his truck 2016, and did not testify whether he obtained the truck through
24 Defendants. Plaintiff Cano testified that he purchased his truck in 2012, and Defendants were
25 not involved in the purchase of this truck.

26 Defendants deducted insurance costs from Plaintiffs' weekly compensation. The
27 trucks had Defendants' placard on them, along with Defendants' MC and USDOT numbers.

1 Plaintiffs were required to check in at the Borax plant in Boron, CA to receive envelope
2 numbers. Most Plaintiffs had to park the trucks at Defendants' yard in Wilmington, CA.

3 c. *Investment in Equipment or Materials*

4 Most Plaintiffs made an investment in the equipment used to transport commodities
5 for Defendants' customers. Plaintiffs paid off their trucks and obtained title to the trucks.

6 d. *Skill Required*

7 Although a significant level of expertise or specialized skill is not required for the job
8 of truck driving, the job does require abilities beyond that of a general laborer or those
9 possessed by a regular driver with an ordinary driver's license. Plaintiffs' work requires a
10 Class A Commercial Driver License, but little other skill. Accordingly, this factor does not
11 favor either party.

12 e. *Work under Principal's Direction or without Supervision*

13 In the locality, personal services of a truck driver are performed by both employees
14 and independent contractors. The actual task of driving is usually performed without
15 supervision. However, this independence from supervision is inherent in the work itself, and
16 not necessarily because the work is highly specialized. (See *Yellow Cab, supra*, 226 Cal.App.3d
17 at p. 1299 [the work "is usually done without supervision whether the arrangement was
18 lessee or employee, and the skill required on the job is such that it can be done by employees
19 rather than specially skilled independent workmen."].) Moreover, Plaintiffs received
20 instructions from dispatchers to get dispatched in the morning, to pick up an envelope
21 number for the load, and to pick up an empty from the port terminal. Many Plaintiffs
22 received assignments with appointment times and hot loads. Most Plaintiffs were asked to
23 make chassis movements, bobtail movements, extra lease movements, and tire deliveries
24 without any compensation. Dispatchers could decide which assignments to give to a driver,
25 and Plaintiffs did not have an opportunity to choose an envelope number. Defendants
26 required Plaintiffs to submit manifests and daily logs on a daily basis in order to get paid.

27 f. *Opportunity for Profit or Loss*

1 Plaintiffs did not have any opportunity for profit or loss depending on their
2 managerial skill. They were simply paid by the number of loads they hauled. Defendants
3 controlled the work assignments, and Plaintiffs performed whatever work was assigned to
4 them each day. Mr. Degraw made comments regularly to Plaintiffs regarding their work.
5 Plaintiffs could not refuse an assignments, with the exception of loads with broken
6 equipment. Plaintiffs could not negotiate the price of a load. The rates set by Defendants
7 were published in the weekly settlement when Plaintiffs were paid. Plaintiffs could not drive
8 for another company while employed by Defendants, except when Defendants explicitly
9 authorized certain Plaintiffs to drive for companies affiliated to Defendants. Plaintiffs did
10 not have their own customers. Thus, Plaintiffs' opportunity to earn more compensation was
11 entirely dependent on what jobs Defendants assigned and how much Defendants decided to
12 pay for the jobs. Plaintiffs' own entrepreneurial skills and judgment did not determine how
13 much money they could make.

14 g. *Length of Time for Services and Degree of Permanence of Working Relationship*

15 The longer the working relationship, or if it is for an indefinite period of time, the more
16 likely the existence of an employment relationship. Plaintiffs worked full-time for
17 Defendants and regularly worked from ten (10) to fourteen (14) hours per day, three (3) to
18 five (5) days per week. Plaintiffs were not allowed to work for another company while
19 employed by Defendants, except when authorized by Defendants to work for companies
20 affiliated with Defendants. Plaintiff Perez testified he witnessed some of his co-workers
21 getting fired for hauling loads for other companies while employed by Defendants. Plaintiff
22 M. Martinez testified that he was put out of service for a few days when Defendants learned
23 that he had been hauling loads for other companies. Plaintiffs worked anywhere from two
24 (2) to 15 years for Defendants. The regularity of their work and length of time for which
25 Plaintiffs performed services for Defendants are indicative of a permanent relationship that is
26 commonly associated with employment.

27 h. *Payment by Time or by Job*

1 Defendant paid Plaintiffs by the job, which is typically indicative of an independent
2 contractor relationship. However, "payment may be measured by time, by the piece, or by
3 successful completion of the service, instead of a fixed salary, and still constitute employee
4 wages if other factors indicate an employer-employee relationship." (*Germann v. Workers'*
5 *Compensation Appeals Board* (1981) 123 Cal.App.3d 776, 787.)

6 i. Parties' Belief

7 Plaintiffs entered into independent contractor agreements and signed such agreements
8 every three (3) months. Even if the parties expressly agree in writing that an independent
9 contractor relationship exists, the label that parties place on their employment relationship "is
10 not dispositive and will be ignored if their actual conduct establishes a different relationship."
11 (*Estrada, supra*, 154 Cal.App.4th at p. 10.) Plaintiffs generally believed they were being treated
12 as employees rather than independent contractors. Plaintiffs were required to wait until they
13 were dispatched in the morning, and sometimes, they received "free day" notice in the
14 afternoon after waiting for half a day. Plaintiffs were also required to take an empty from
15 the previous day to the Borax plant, drop off the empty, and wait until dispatchers gave them
16 an envelope number with information about their loads. Plaintiffs were required to inspect
17 and clean the empty before taking it to the Borax plant. Many times, they had to sweep, fix,
18 and paint the empties. Plaintiff were not paid for inspecting and cleaning the empties.
19 Plaintiff testified that if they took the dirty empties to the plant, the staff at the plant rejected
20 the empties, and Plaintiffs had to return the empties to the port, at their own expense. When
21 this happened, they did not receive compensation for the trip to the Borax plant and back to
22 the port. Plaintiffs testified that many times, they had to wait for hours at the plant to receive
23 envelope numbers. Generally, Plaintiffs could not refuse an assignment, with the rare
24 exception when Plaintiffs noticed the chassis equipment on the load were broken. Plaintiffs
25 could choose which route to take, but were not free to choose the end destination or the
26 clients. Plaintiffs had to identify themselves as drivers for Defendants to be able to enter the
27 port terminal. Plaintiffs could not negotiate the rate of pay per load. Plaintiffs could not

1 obtain their own customers, or drive for another company while employed by Defendants,
2 except as authorized by Defendants. Plaintiffs had to maintain the trucks to Defendants'
3 standards and had to comply with the 90-day truck inspection. Defendants required
4 Plaintiffs to take a drug test, and pay for the expense. Plaintiffs were paid on a weekly basis,
5 and had to turn in their manifest and daily logs in order to get paid. Plaintiffs could not pick
6 up more than two (2) manifests at a time, and were required to go to Mr. Degraw's office to
7 pick up the paychecks. Plaintiffs who leased the truck through Defendants could not choose
8 the type of truck they wanted to lease. Defendants determined the type of trucks and the
9 lease payment amounts in these cases. If Plaintiffs leased the trucks through Defendants, the
10 truck lease payments were deducted from their paychecks.

11 Further, independent contractor agreements can be and often amount to subterfuge to
12 avoid paying payroll and income taxes as well as workers' compensation insurance liability.
13 Whether a person who provides services is paid as an independent contractor without
14 payroll deductions and with income reported through an IRS 1099 form, instead of a W-2
15 form, is irrelevant. "These are merely the legal consequences of an independent contractor
16 status not a means of proving it. An employer cannot change the status of an employee to
17 one of independent contractor by illegally requiring him to assume burdens which the law
18 imposes directly on the employer." (*Toyota Motor Sales v. Superior Court* (1990) 220
19 Cal.App.3d 864, 877.)

20 The existence of a written agreement purporting to establish an independent
21 contractor relationship is not determinative. The Labor Commissioner and courts will look
22 behind any such agreement in order to examine the facts that characterize the parties' actual
23 relationship and make their determination as to employment status based upon their analysis
24 of such facts and application of the appropriate law.

25 *j. Conclusion*

26 Taking into consideration all of the above factors, Defendants has not met its burden
27 of proof on its affirmative defense that Plaintiffs were independent contractors. Defendants

1 retained pervasive control over the operation as a whole, and Plaintiffs' services were an
2 integral part of Defendants' business. Substantial evidence supports the finding that
3 Plaintiffs were functioning as employees rather than as true independent contractors.

4 **D. Joint Employer**

5 It is undisputed that Plaintiffs performed work as drivers for California Cartage
6 Express, LLC. On October 10, 2017, California Cartage Express, LLC changed its legal name
7 to CCX2931, LLC, according to the amendment to Articles of Organization on the Secretary of
8 State website. Therefore, Defendant CCX2931, LLC is liable for Plaintiffs' claims.

9 Plaintiffs' representative failed to provide any supporting evidence that Plaintiffs
10 worked for Defendant Cal Cartage Transportation Express, LLC. Therefore, all claims filed
11 against Defendant Cal Cartage Transportation Express, LLC are hereby dismissed without
12 prejudice.

13 Under Labor Code Section 558.1, any employer or other person acting on behalf of an
14 employer who violates, or causes to be violated, any provision regulating minimum wages
15 or hours and days of work in any order of the Industrial Welfare Commission, or violates,
16 or causes to be violated, Labor Code Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
17 liable as the employer for such violation. For purposes of Labor Code Section 558.1, the
18 term "other person acting on behalf of an employer" is limited to a natural person who is an
19 owner, director, officer, or managing agent of the employer.

20 In the instant matter, Defendant Jim Degraw was the general manager and/or the
21 operations manager of Defendant CCX2931, LLC. Mr. Degraw had direct control over the
22 hiring, setting the rates of pay, disciplining, and deciding other employment aspects of
23 drivers. Plaintiff Luna testified that by instructions of Mr. Degraw, Defendants no longer
24 paid drivers for movements from the yard to the port. Plaintiffs Luna, Garcia, G. Acosta
25 and M. Martinez testified that Mr. Degraw frequently changed the company rules, and
26 drivers had to follow the rules set by Mr. Degraw, including the rule that drivers had to
27 keep the empty containers in a clean condition in order to be accepted at the plant. Plaintiff

1 G. Martinez , Villa and M. Martinez testified that they asked Mr. Degraw if they could be
2 compensated for time spent waiting to receive an envelope number at the plant, and Mr.
3 Degraw declined to compensate for such waiting time. Plaintiff G. Martinez also testified
4 that Mr. Degraw instructed him not to record the bobtail and chassis movement in the
5 manifests, because he would not approve payment for such movements. Plaintiff Villa
6 testified that Mr. Degraw mentioned that he does not pay for bobtail movements. Plaintiff
7 Vidal and Cano testified that Mr. Degraw told them the company does not pay for chassis
8 movement. Plaintiff Garcia testified that Mr. Degraw told him he does not pay for tire
9 movements. Plaintiffs G. Martinez, Vidal, Perez and Cano asked Mr. Degraw if they could
10 drive for another company while employed by Defendants, and Mr. Degraw replied that
11 the truck and insurance belonged to the company, and therefore, they were prohibited from
12 driving for another company. Plaintiff Perez testified that Mr. Degraw himself told him that
13 drivers could not hire a second driver. Multiple Plaintiffs testified that Mr. Degraw only
14 allowed drivers to pick up two (2) to three (3) manifests per day at this office and would
15 chastise the drivers if they grabbed more than the allowed manifests. Plaintiffs Villa,
16 Maldonado and Perez testified that Mr. Degraw told them that drivers cannot negotiate the
17 rate of pay. Multiple Plaintiffs testified that Mr. Degraw handed them the paychecks, and
18 made comments when he think the drivers made too many or too little movements per
19 week. Plaintiffs Garcia, A. Acosta and Maldonado all testified that Mr. Degraw had them
20 obtain a new truck through Defendants. Plaintiff Maldonado testified that he was
21 disciplined by Mr. Degraw for taking a dirty empty to the plant. Plaintiff Maldonado was
22 also laid off by Mr. Degraw. Plaintiff Perez testified that Mr. Degraw suspended him for
23 three (3) days for not wearing a seat belt at the plant entrance. Plaintiff G. Acosta testified
24 that Mr. Degraw charged him extra expense for calling the tire guy and fixing the truck tire
25 too early in the morning.
26
27

1 Mr. Degraw had violated the minimum wage requirements and the provisions of the
2 Industrial Welfare Commission. Therefore, Defendant Jim Degraw is individually liable for
3 any violations set forth herein.

4 **E. Regular Wages**

5 Defendants CCX2931, LLC and Jim Degraw are subject to the requirements of
6 Industrial Welfare Commission Wage Order 9-2001 (the "Order"), which regulates the wages,
7 hours, and working conditions for the Transportation Industry.

8 Section 4 of the Order requires payment of at least the minimum wage for all hours
9 worked in the payroll period: \$8.00 dollars per hour, effective January 1, 2008, \$9.00 dollars
10 per hour, effective July 1, 2014; \$10.00 dollars per hour, effective January 1, 2016; \$10.50 per
11 hour for employers with 26 employees or more, effective January 1, 2017; and \$11.00 per hour
12 for employers with 26 employees or more, effective January 1, 2018.

13 Section 2(H) of the Order defines "hours worked" as "the time during which an
14 employee is subject to the control of an employer, and includes all the time the employee is
15 suffered or permitted to work, whether or not required to do so."

16 Plaintiffs Lara, Luna, G. Martinez, Rodriguez, Vidal, Maldonado, Perez, G. Acosta,
17 Cano and M. Martinez testified that they were not compensated for performing chassis and
18 bobtail movements.

19 Plaintiffs Villa, Garcia, Vidal and Perez testified that they were not compensated for
20 performing extra lease movements.

21 Plaintiffs Garcia and M. Martinez testified that they were not compensated for
22 performing certain tire deliveries.

23 **Accordingly, Plaintiff Lara is awarded \$261.26 in earned, but unpaid piece rate**
24 **wages.**

25 **Accordingly, Plaintiff Luna is awarded \$600.00 in earned, but unpaid piece rate**
26 **wages.**

27 **Accordingly, Plaintiff G. Martinez is awarded \$1,590.45 in earned, but unpaid piece**

1 rate wages.

2 Accordingly, Plaintiff Villa is awarded \$4,106.00 in earned, but unpaid piece rate
3 wages.

4 Accordingly, Plaintiff Rodriguez is awarded \$240.00 in earned, but unpaid piece rate
5 wages.

6 Accordingly, Plaintiff Garcia is awarded \$270.00 in earned, but unpaid piece rate
7 wages.

8 Accordingly, Plaintiff Vidal is awarded \$6,066.45 in earned, but unpaid piece rate
9 wages.

10 Accordingly, Plaintiff Maldonado is awarded \$3,443.97 in earned, but unpaid piece
11 rate wages.

12 Accordingly, Plaintiff Perez is awarded \$651.88 in earned, but unpaid piece rate
13 wages.

14 Accordingly, Plaintiff G. Acosta is awarded \$1,740.20 in earned, but unpaid piece
15 rate wages.

16 Accordingly, Plaintiff Cano is awarded \$413.20 in earned, but unpaid piece rate
17 wages.

18 Accordingly, Plaintiff M. Martinez is awarded \$26,369.56 in earned, but unpaid
19 piece rate wages.

20 **F. Wages for Nonproduction Hours**

21 Labor Code section 226.2 requires employees who are compensated on a piece-rate
22 basis to be separately compensated for "other nonproductive time," which is defined as
23 "time under the employer's control, exclusive of rest and recovery periods, that is not
24 directly related to the activity being compensated on a piece-rate basis." (Lab. Code, § 226.2.)
25 Piece-rate wages for production work cannot be used to satisfy the employer's obligation to
26 pay for work not directly related to the production of pieces, and each hour of
27 nonproduction work must be separately compensated by an additional payment equal to or

1 exceeding the minimum wage. (*Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th
2 36.)

3 Defendants CCX2931, LLC and Jim Degraw paid Plaintiffs for work performed on a
4 piece-rate basis. Plaintiffs credibly testified that they were not paid for time spent performing
5 pre-trip inspections on their trucks, inspecting and cleaning empties, waiting at the Borax
6 plant to receive the envelope numbers, inspecting chassis equipment, waiting for mechanic
7 to arrive to fix the equipment, and fueling the tanks. Plaintiffs must be separately
8 compensated for these nonproduction hours.

9 According to proof, Plaintiff Lara worked a total of 556.48 nonproduction hours
10 during the claim period, for which he was not compensated. **Accordingly, Plaintiff Lara is**
11 **awarded \$5,940.19 in earned, but unpaid hourly wages for nonproduction hours worked.**

12 According to proof, Plaintiff Luna worked a total of 1600 nonproduction hours during
13 the claim period, for which he was not compensated. **Accordingly, Plaintiff Luna is**
14 **awarded \$14,948.00 in earned, but unpaid hourly wages for nonproduction hours worked.**

15 According to proof, Plaintiff G. Martinez worked a total 584 nonproduction hours
16 during the claim period, for which he was not compensated. **Accordingly, Plaintiff G.**
17 **Martinez is awarded \$4,672.00 in earned, but unpaid hourly wages for nonproduction**
18 **hours worked.**

19 According to proof, Plaintiff Villa worked a total of 1,599 nonproduction hours during
20 the claim period, for which he was not compensated. **Accordingly, Plaintiff Villa is**
21 **awarded \$15,312.50 in earned, but unpaid hourly wages for nonproduction hours worked.**

22 According to proof, Plaintiff Rodriguez worked a total of 867 nonproduction hours
23 during the claim period, for which he was not compensated. **Accordingly, Plaintiff**
24 **Rodriguez is awarded \$7,971.00 in earned, but unpaid hourly wages for nonproduction**
25 **hours worked.**

1 According to proof, Plaintiff Garcia worked a total of 897 nonproduction hours during
2 the claim period, for which he was not compensated. Accordingly, Plaintiff Garcia is
3 awarded \$8,161.50 in earned, but unpaid hourly wages for nonproduction hours worked.

4 According to proof, Plaintiff Vidal worked a total of 1,424.00 nonproduction hours
5 during the claim period, for which he was not compensated. Accordingly, Plaintiff Vidal is
6 awarded \$12,929.50 in earned, but unpaid hourly wages for nonproduction hours worked.

7 According to proof, Plaintiff F. Acosta worked a total of 1,384.75 nonproduction hours
8 during the claim period, for which he was not compensated. Accordingly, Plaintiff F.
9 Acosta is awarded \$13,079.00 in earned, but unpaid hourly wages for nonproduction hours
10 worked.

11 According to proof, Plaintiff Contreras worked a total of 80.04 nonproduction hours
12 during the claim period, for which he was not compensated. Accordingly, Plaintiff
13 Contreras is awarded \$780.39 in earned, but unpaid hourly wages for nonproduction hours
14 worked.

15 According to proof, Plaintiff Maldonado worked a total of 2,328 nonproduction hours
16 during the claim period, for which he was not compensated. Accordingly, Plaintiff
17 Maldonado is awarded \$22,044.00 in earned, but unpaid hourly wages for nonproduction
18 hours worked.

19 According to proof, Plaintiff Perez worked a total of 1,371.72 nonproduction hours
20 during the claim period, for which he was not compensated. Accordingly, Plaintiff Perez is
21 awarded \$14,354.07 in earned, but unpaid hourly wages for nonproduction hours worked.

22 According to proof, Plaintiff G. Acosta worked a total of 517.5 nonproduction hours
23 during the claim period, for which he was not compensated. Accordingly, Plaintiff G.
24 Acosta is awarded \$4,221.00 in earned, but unpaid hourly wages for nonproduction hours
25 worked.

1 According to proof, Plaintiff Cano worked a total of 871.25 nonproduction hours
2 during the claim period, for which he was not compensated. **Accordingly, Plaintiff Cano is**
3 **awarded \$8,020.25 in earned, but unpaid hourly wages for nonproduction hours worked.**

4 According to proof, Plaintiff M. Martinez worked a total of 4,660.5 nonproduction
5 hours during the claim period, for which he was not compensated. **Accordingly, Plaintiff**
6 **M. Martinez is awarded \$41,622.75 in earned, but unpaid hourly wages for nonproduction**
7 **hours worked.**

8 **G. Unlawful Deductions**

9 Labor Code section 221 prohibits an employer from making any deductions from an
10 employee's wages. Labor Code section 224 provides for four exceptions that allow an
11 employer to make deductions from an employee's wages:

- 12 1. Deductions authorized by state or federal law;
- 13 2. Deductions expressly authorized in writing by the employee to cover
14 insurance premiums, hospital or medical dues;
- 15 3. Deductions not amounting to a rebate or deduction from the standard
16 wage arrived at by collective bargaining or pursuant to wage agreement
17 or statute; and
- 18 4. Deductions to cover health and welfare or pension plan contributions that
are expressly authorized by a collective bargaining or wage agreement.

19 (Lab. Code, § 224.)

20 Defendants CCX2931, LLC and Jim Degraw made weekly deductions from Plaintiffs'
21 settlements for various truck related costs and business expenses incurred for Defendants'
22 benefit. These deductions do not fall within the narrow parameters of lawful deductions as
23 outlined in Labor Code section 224. Further, Labor Code section 2802 prohibits employers
24 from passing on the expenses related to their business to employees. Thus, Defendants
25 CCX2931, LLC and Jim Degraw must reimburse Plaintiffs for these business expenses that
26 were deducted from Plaintiffs' wages.

27 According to proof, Defendants CCX2931, LLC and Jim Degraw deducted \$243.80
from Plaintiff Lara's compensation during the relevant claim period from 2017 through 2018

1 for electronic logging device (Exhibit 3). Specifically, deductions amounted to \$142.60 in
2 2017, and \$101.20 in 2018. **Accordingly, the evidence supports an award of \$243.80 for**
3 **unlawfully deducted wages.**

4 According to proof, Defendants CCX2931, LLC and Jim Degraw deducted \$38,047.29
5 from Plaintiff Luna's compensation during the relevant claim period from 2012 through 2017
6 for fuel, LNG physical damage, and maintenance operating equipment (Exhibit 6).
7 Specifically, deductions amounted to \$1,074.05 in 2012, \$4,271.05 in 2013, \$8,945.22 in 2014,
8 \$4,995.30 in 2015, \$6,138.43 in 2016 and \$12,623.24 in 2017. **Accordingly, the evidence**
9 **supports an award of \$38,047.29 for unlawfully deducted wages.**

10 According to proof, Defendants CCX2931, LLC and Jim Degraw deducted \$18,426.29
11 from Plaintiff G. Martinez' compensation during the relevant claim period from 2013
12 through 2014 for fuel, LNG physical damage, maintenance operating equipment, parking
13 and trip deductions (Exhibit 11). Specifically, deductions amounted to \$14,075.18 in 2013,
14 and \$4,351.11 in 2014. **Accordingly, the evidence supports an award of \$18,426.29 for**
15 **unlawfully deducted wages.**

16 According to proof, Defendants CCX2931, LLC and Jim Degraw deducted \$7,299.15
17 from Plaintiff Villa's compensation during the relevant claim period from 2014 through 2017
18 for LNG physical damage, electronic logging device, maintenance operating equipment, and
19 trip deduction (Exhibit 15). Specifically, deductions amounted to \$3,199.74 in 2014, \$3,463.16
20 in 2015, \$475.25 in 2016, and \$161.00 in 2017. **Accordingly, the evidence supports an award**
21 **of \$7,299.15 for unlawfully deducted wages.**

22 According to proof, Defendants CCX2931, LLC and Jim Degraw deducted \$37,428.81
23 from Plaintiff Rodriguez's compensation during the relevant claim period from 2012 through
24 2018 for LNG physical damage, electronic logging device, trip deductions, parking and
25 maintenance operating equipment (Exhibit 19). Specifically, deductions amounted to
26 \$4,141.50 in 2012, \$11,794.15 in 2013, \$9,663.44 in 2014, \$4,878.71 in 2015, \$343.00 in 2016,
27

1 \$3,609.93 in 2017, and \$2,998.08 in 2018. **Accordingly, the evidence supports an award of**
2 **\$37,428.81 for unlawfully deducted wages.**

3 According to proof, Defendants CCX2931, LLC and Jim Degraw deducted \$114,283.72
4 from Plaintiff Garcia's compensation during the relevant claim period from 2012 through
5 2018 for fuel, LNG physical damage, advance, radio usage, parking, electronic logging
6 device, and trip deductions (Exhibit 23). Specifically, deductions amounted to \$28,653.28 in
7 2012, \$24,135.29 in 2013, \$30,937.25 in 2014, \$28,292.09 in 2015, \$1,481.01 in 2016, \$529.60 in
8 2017, and \$255.20 in 2018. **Accordingly, the evidence supports an award of \$114,283.72 for**
9 **unlawfully deducted wages.**

10 According to proof, Defendants CCX2931, LLC and Jim Degraw deducted \$14,355.14
11 from Plaintiff Vidal's compensation during the relevant claim period from 2012 through 2017
12 for fuel, LNG physical damage, maintenance operating equipment, parking and electronic
13 logging device (Exhibit 28). Specifically, deductions amounted to \$1,813.69 in 2012, \$1,634.22
14 in 2013, \$2,271.85 in 2014, \$3,899.87 in 2015, \$4,210.51 in 2016 and \$525.00 in 2017.
15 **Accordingly, the evidence supports an award of \$14,355.14 for unlawfully deducted wages.**

16 According to proof, Defendants CCX2931, LLC and Jim Degraw deducted \$199,828.83
17 from Plaintiff F. Acosta' compensation during the relevant claim period from 2013 through
18 2017 for fuel, LNG physical damage, citations, trip deductions, parking, electronic logging
19 device, maintenance operating equipment and advance (Exhibit 32). Specifically, deductions
20 amounted to \$1,375.02 in 2013, \$79,219.45 in 2014, \$49,361.31 in 2015, \$33,025.32 in 2016, and
21 \$36,847.73 in 2017. **Accordingly, the evidence supports an award of \$199,828.83 for**
22 **unlawfully deducted wages.**

23 According to proof, Defendants CCX2931, LLC and Jim Degraw deducted \$1,035.64
24 from Plaintiff Contreras' compensation during the relevant claim period in 2016 for
25 maintenance operating equipment (Exhibit 37). **Accordingly, the evidence supports an**
26 **award of \$1,035.64 for unlawfully deducted wages.**

1 According to proof, Defendants CCX2931, LLC and Jim Degraw deducted \$155,243.34
2 from Plaintiff Maldonado's compensation during the relevant claim period from 2013
3 through 2017 for fuel, LNG physical damage, parking, maintenance operating equipment
4 and electronic logging device (Exhibit 41). Specifically, deductions amounted to \$433.82 in
5 2013, \$36,692.77 in 2014, \$42,262.58 in 2015, \$37,459.81 in 2016 and \$38,394.36 in 2017.
6 Accordingly, the evidence supports an award of \$155,243.34 for unlawfully deducted
7 wages.

8 According to proof, Defendants CCX2931, LLC and Jim Degraw deducted \$211.60
9 from Plaintiff Perez' compensation during the relevant claim period from 2017 through 2018
10 for electronic logging device (Exhibit 45). Specifically, deductions amounted to \$128.80 in
11 2017 and \$82.80 in 2018. Accordingly, the evidence supports an award of \$211.60 for
12 unlawfully deducted wages.

13 According to proof, Defendants CCX2931, LLC and Jim Degraw deducted \$63,719.44
14 from Plaintiff G. Acosta's compensation during the relevant claim period from 2012 through
15 2014 for fuel, LNG physical damage, trip deductions, radio usage and maintenance operating
16 equipment (Exhibit 49). Specifically, deductions amounted to \$4,383.68 in 2012, \$10,638.08 in
17 2013, and \$48,697.68 in 2014. Accordingly, the evidence supports an award of \$63,719.44 for
18 unlawfully deducted wages.

19 According to proof, Defendants CCX2931, LLC and Jim Degraw deducted \$11,494.53
20 from Plaintiff M. Martinez' compensation during the relevant claim period from 2012
21 through 2016 for LNG physical damage and maintenance operating equipment (Exhibit 56).
22 Specifically, deductions amounted to \$3,030.95 in 2012, \$3,610.56 in 2013, \$3,763.08 in 2014,
23 \$253.18 in 2015 and \$836.76 in 2016. Accordingly, the evidence supports an award of
24 \$11,494.53 for unlawfully deducted wages.

25 H. Liquidated Damages

26 Section 4 of the Order, Minimum Wages, states in relevant part:

27 Every employer shall pay to each employee wages not less than the
following: (1) Any employer who employs 26 or more employees shall pay

1 to each employee wages not less than the following: (a) Ten dollars and fifty
2 cents (\$10.50) per hour for all hours worked, effective January 1, 2017; and
3 (b) Eleven dollars (\$11.00) per hour for all hours worked, effective January
4 1, 2018; (2) Any employer who employs 25 or fewer employees shall pay to
5 each employee wages not less than the following: (a) Ten dollars (\$10.00)
6 per hour for all hours worked, effective January 1, 2016 through December
7 31, 2017; and (b) Ten dollars and fifty cents (\$10.50) per hour for all hours
8 worked, effective January 1, 2018.²

9 Labor Code § 1194.2(a) states in relevant part:

10 In any action under Section 98, 1193.6, or 1194 to recover wages because of
11 the payment of a wage less than the minimum wage fixed by an order of the
12 commission or by statute, an employee shall be entitled to recover
13 liquidated damages in an amount equal to the wages unlawfully unpaid
14 and interest thereon. Nothing in this subdivision shall be construed to
15 authorize the recovery of liquidated damages for failure to pay overtime
16 compensation.

17 Plaintiffs' testimony was relied upon to establish the hours each of them worked
18 during the relevant claim period. To determine whether liquidated damages are due, the
19 applicable minimum wage hourly rate is multiplied by the average number of hours each
20 respective Plaintiff testified he worked per week. Liquidated damages were found due
21 where the Plaintiffs' total gross wages as shown in the settlement statements were less than
22 the total of the average hours per week worked multiplied by the applicable minimum wage
23 hourly rate.

24 According to proof, Plaintiff Lara worked an average of 10 hours, 4 days per week. A
25 review of the evidence submitted (Exhibit 3) shows that weekly wages were sometimes less
26 than the equivalent of minimum wage for a workweek of 40 hours. In summary, Plaintiff
27 Lara was underpaid \$6,041.99 during the relevant claimed period. **Therefore, he is awarded**

² It should be noted, the minimum wage in California was \$8.00 per hour in 2012 and 2013, increased to \$9.00 per hour, effective of July 1, 2014, \$10.00 per hour, effective January 1, 2016, \$10.50 per hour for employers with 26 employees or more, effective January 1, 2017, \$10.50 per hour for employers with 25 employees or less, effective January 1, 2018, and \$11.00 per hour for employers with 26 employees or more, effective January 1, 2018.

1 **liquidated damages in the amount of \$6,041.99.**

2 According to proof, Plaintiff Luna worked an average of 11 hours, 4.5 days per week.
3 A review of the evidence submitted (Exhibit 6) shows that weekly wages were sometimes less
4 than the equivalent of minimum wage for a workweek of 49.5 hours. In summary, Plaintiff
5 Luna was underpaid \$15,579.91 during the relevant claimed period. **Therefore, he is**
6 **awarded liquidated damages in the amount of \$15,579.91.**

7 According to proof, Plaintiff G. Martinez worked an average of 10 hours, 3 days per
8 week. A review of the evidence submitted (Exhibit 11) shows that weekly wages were
9 sometimes less than the equivalent of minimum wage for a workweek of 30 hours. In
10 summary, Plaintiff G. Martinez was underpaid \$4,672.00 during the relevant claimed period.
11 **Therefore, he is awarded liquidated damages in the amount of \$4,672.00.**

12 According to proof, Plaintiff Villa worked an average of 13 hours, 4 days per week. A
13 review of the evidence submitted (Exhibit 15) shows that weekly wages were sometimes less
14 than the equivalent of minimum wage for a workweek of 52 hours. In summary, Plaintiff
15 Villa was underpaid \$15,791.10 during the relevant claimed period. **Therefore, he is awarded**
16 **liquidated damages in the amount of \$15,791.10.**

17 According to proof, Plaintiff Rodriguez worked an average of 12 hours, 4 days per
18 week. A review of the evidence submitted (Exhibit 19) shows that weekly wages were
19 sometimes less than the equivalent of minimum wage for a workweek of 48 hours. In
20 summary, Plaintiff Rodriguez was underpaid \$9,860.86 during the relevant claimed period.
21 **Therefore, he is awarded liquidated damages in the amount of \$9,860.86.**

22 According to proof, Plaintiff Garcia worked an average of 11 hours, 4 days per week.
23 A review of the evidence submitted (Exhibit 23) shows that weekly wages were sometimes
24 less than the equivalent of minimum wage for a workweek of 44 hours. In summary, Plaintiff
25 Garcia was underpaid \$9,740.26 during the relevant claimed period. **Therefore, he is**
26 **awarded liquidated damages in the amount of \$9,740.26.**

27 According to proof, Plaintiff Vidal worked an average of 10.5 hours, 4.5 days per

1 week. A review of the evidence submitted (Exhibit 28) shows that weekly wages were
2 sometimes less than the equivalent of minimum wage for a workweek of 47.25 hours. In
3 summary, Plaintiff Vidal was underpaid \$12,929.50 during the relevant claimed period.
4 **Therefore, he is awarded liquidated damages in the amount of \$12,929.50.**

5 According to proof, Plaintiff F. Acosta worked an average of 12 hours, 4 days per
6 week. A review of the evidence submitted (Exhibit 32) shows that weekly wages were
7 sometimes less than the equivalent of minimum wage for a workweek of 48 hours. In
8 summary, Plaintiff F. Acosta was underpaid \$15,517.17 during the relevant claimed period.
9 **Therefore, he is awarded liquidated damages in the amount of \$15,517.17.**

10 According to proof, Plaintiff Contreras worked an average of 12 hours, 4 days per
11 week. A review of the evidence submitted (Exhibit 37) shows that weekly wages were
12 sometimes less than the equivalent of minimum wage for a workweek of 48 hours. In
13 summary, Plaintiff Contreras was underpaid \$780.39 during the relevant claimed period.
14 **Therefore, he is awarded liquidated damages in the amount of \$780.39.**

15 According to proof, Plaintiff Maldonado worked an average of 12 hours, 4 days per
16 week. A review of the evidence submitted (Exhibit 41) shows that weekly wages were
17 sometimes less than the equivalent of minimum wage for a workweek of 48 hours. In
18 summary, Plaintiff Maldonado was underpaid \$27,978.74 during the relevant claimed period.
19 **Therefore, he is awarded liquidated damages in the amount of \$27,978.74.**

20 According to proof, Plaintiff Perez worked an average of 12 hours, 4 days per week. A
21 review of the evidence submitted (Exhibit 45) shows that weekly wages were sometimes less
22 than the equivalent of minimum wage for a workweek of 48 hours. In summary, Plaintiff
23 Perez was underpaid \$14,354.07 during the relevant claimed period. **Therefore, he is**
24 **awarded liquidated damages in the amount of \$14,354.07.**

25 According to proof, Plaintiff G. Acosta worked an average of 11 hours, 5 days per
26 week. A review of the evidence submitted (Exhibit 49) shows that weekly wages were
27 sometimes less than the equivalent of minimum wage for a workweek of 55 hours. In

summary, Plaintiff G. Acosta was underpaid \$6,401.86 during the relevant claimed period. **Therefore, he is awarded liquidated damages in the amount of \$6,401.86.**

According to proof, Plaintiff Cano worked an average of 12.5 hours, 4 days per week. Plaintiff Cano was paid below the minimum wage due to nonpayment of nonproductive time worked and wages earned. In summary, Plaintiff Cano was underpaid \$8,216.38 during the relevant claimed period. **Therefore, he is awarded liquidated damages in the amount of \$8,216.38.**

According to proof, Plaintiff M. Martinez worked an average of 14 hours, 5 days per week. A review of the evidence submitted (Exhibit 56) shows that weekly wages were sometimes less than the equivalent of minimum wage for a workweek of 70 hours. In summary, Plaintiff M. Martinez was underpaid \$42,908.65 during the relevant claimed period. **Therefore, he is awarded liquidated damages in the amount of \$42,908.65.**

I. Reimbursable Business Expenses

Labor Code section 2802(a) provides:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Plaintiffs incurred out-of-pocket business expenses for fuel and maintenance in direct consequence of the discharge of their duties while employed by Defendants CCX2931, LLC and Jim Degraw. As such, Plaintiffs are entitled to reimbursement from Defendants CCX2931, LLC and Jim Degraw for these out-of-pocket expenses.

According to proof, Plaintiff Lara is owed reimbursement for out-of-pocket business expenses incurred. A detailed review of the receipts submitted into evidence show expenses during the claim period totaled \$47,511.77 in year 2017, \$22,180.59 in year 2018, for a subtotal of \$69,692.36, minus \$28,836.18 in Fuel Surcharge paid by Defendants CCX2931, LLC and Jim Degraw during the claim period, for a total of \$40,856.18 (Exhibit 4). **Therefore, Plaintiff**

1 Lara is awarded a total of \$40,856.18 for out-of-pocket business expenses incurred during
2 the relevant period of employment.

3 According to proof, Plaintiff Luna is owed reimbursement for out-of-pocket business
4 expenses incurred. A detailed review of the receipts submitted into evidence show expenses
5 during the claim period totaled \$106,924.26 in year 2013, \$4,246.92 in year 2014, \$54,721.68 in
6 year 2015, \$47,085.17 in 2016, \$58,416.93 in 2017 and \$42,286.83 in 2018, for a subtotal of
7 \$313,681.79, minus \$95,543.66 in Fuel Surcharge paid by Defendants CCX2931, LLC and Jim
8 Degraw during the claim period, for a total of \$218,138.13 (Exhibit 7). **Therefore, Plaintiff**
9 **Luna is awarded a total of \$218,138.13 for out-of-pocket business expenses incurred during**
10 **the relevant period.**

11 According to proof, Plaintiff G. Martinez is owed reimbursement for out-of-pocket
12 business expenses incurred. A detailed review of the receipts submitted into evidence show
13 expenses during the claim period totaled \$102,402.78 in year 2013, and \$18,618.11 in year
14 2014, for a subtotal of \$121,020.89, minus \$52,639.36 in Fuel Surcharge paid by Defendants
15 CCX2931, LLC and Jim Degraw during the claim period, for a total of \$68,381.53 (Exhibit 12).
16 **Therefore, Plaintiff G. Martinez is awarded a total of \$68,381.53 for out-of-pocket business**
17 **expenses incurred during the relevant period of employment.**

18 According to proof, Plaintiff Villa is owed reimbursement for out-of-pocket business
19 expenses incurred. A detailed review of the receipts submitted into evidence show, DMV
20 payments, truck repair and insurance payments during the claim period totaled \$2,666.00 in
21 year 2014, \$48,772.30 in year 2015, \$48,280.01 in year 2016, \$45,943.26 in year 2017, and
22 \$35,947.75 in year 2018, for a subtotal of \$181,609.32, minus \$93,866.58 in Fuel Surcharge paid
23 by Defendants CCX2931, LLC and Jim Degraw during the claim period, for a total of
24 \$87,742.74 (Exhibit 16). **Therefore, Plaintiff Villa is awarded a total of \$87,742.74 for out-**
25 **of-pocket business expenses incurred during the relevant period of employment.**

26 According to proof, Plaintiff Rodriguez is owed reimbursement for out-of-pocket
27 business expenses incurred. A detailed review of the receipts submitted into evidence show

1 expenses during the claim period totaled \$56,102.52 in year 2012, \$55,567.32 in year 2013,
2 \$68,108.87 in year 2014, \$42,252.69 in year 2015, \$40,011.36 in year 2016, \$45,015.02 in year
3 2017, and \$23,979.18 in year 2018, for a subtotal of \$331,036.96, minus \$150,343.52 in Fuel
4 Surcharge paid by Defendants CCX2931, LLC and Jim Degraw during the claim period, for a
5 total of \$180,693.44 (Exhibit 20). **Therefore, Plaintiff Rodriguez is awarded a total of**
6 **\$180,693.44 for out-of-pocket business expenses incurred during the relevant period of**
7 **employment.**

8 According to proof, Plaintiff Garcia is owed reimbursement for out-of-pocket business
9 expenses incurred. A detailed review of the receipts submitted into evidence show expenses
10 during the claim period totaled \$17,532.33 in year 2012, \$19,014.72 in year 2013, \$39,792.42 in
11 year 2014, \$69,629.00 in year 2015, \$58,036.99 in year 2016, \$52,343.05 in year 2017, and
12 \$28,223.09 in year 2018, for a subtotal of \$284,571.60, minus \$148,678.42 in Fuel Surcharge
13 paid by Defendants CCX2931, LLC and Jim Degraw during the claim period, for a total of
14 \$135,893.18 (Exhibit 24). **Therefore, Plaintiff Garcia is awarded a total of \$135,893.18 for**
15 **out-of-pocket business expenses incurred during the relevant period of employment.**

16 According to proof, Plaintiff Vidal is owed reimbursement for out-of-pocket business
17 expenses incurred. A detailed review of the receipts submitted into evidence show expenses
18 during the claim period totaled \$9,774.43 in year 2012, \$44,399.27 in year 2013, \$61,109.49 in
19 year 2014, \$40,019.09 in year 2015, \$43,700.10 in year 2016, \$47,990.34 in year 2017, and
20 \$21,530.14 in year 2018, for a subtotal of \$268,522.86, minus \$147,195.77 in Fuel Surcharge
21 paid by Defendants CCX2931, LLC and Jim Degraw during the claim period, for a total of
22 \$121,327.09 (Exhibit 29). **Therefore, Plaintiff Vidal is awarded a total of \$121,327.09 for**
23 **out-of-pocket business expenses incurred during the relevant period of employment.**

24 According to proof, Plaintiff F. Acosta is owed reimbursement for out-of-pocket
25 business expenses incurred. A detailed review of the receipts submitted into evidence show
26 expenses during the claim period totaled \$794.00 in year 2014, \$7,852.19 in year 2015, and
27 \$4,401.33 in year 2016, for a subtotal of \$13,047.52, minus \$3,991.44 in Fuel Surcharge paid by

1 Defendants CCX2931, LLC and Jim Degraw during the claim period, for a total of \$9,056.08
2 (Exhibit 33). **Therefore, Plaintiff F. Acosta is awarded a total of \$9,056.08 for out-of-pocket**
3 **business expenses incurred during the relevant period of employment.**

4 According to proof, Plaintiff Contreras is owed reimbursement for out-of-pocket
5 business expenses incurred. A detailed review of the receipts submitted into evidence show
6 expenses during the claim period totaled \$6,199.90 in year 2013, \$83,049.41 in year 2014, and
7 \$2,283.00 in year 2015, for a subtotal of \$91,532.31, minus \$2,807.90 in Fuel Surcharge paid by
8 Defendants CCX2931, LLC and Jim Degraw during the claim period, for a total of \$88,724.41
9 (Exhibit 38). **Therefore, Plaintiff Contreras is awarded a total of \$88,724.41 for out-of-**
10 **pocket business expenses incurred during the relevant period of employment.**

11 According to proof, Plaintiff Maldonado is owed reimbursement for out-of-pocket
12 business expenses incurred. A detailed review of the receipts submitted into evidence show
13 expenses during the claim period totaled \$1,916.00 in year 2013, \$20,278.94 in year 2014,
14 \$12,544.92 in year 2015, \$18,556.67 in year 2016, and \$14,424.28 in year 2017, for a subtotal of
15 \$67,720.81, minus \$3,574.54 in Fuel Surcharge paid by Defendants CCX2931, LLC and Jim
16 Degraw during the claim period, for a total of \$64,146.27 (Exhibit 42). **Therefore, Plaintiff**
17 **Maldonado is awarded a total of \$64,146.27 for out-of-pocket business expenses incurred**
18 **during the relevant period of employment.**

19 According to proof, Plaintiff Perez is owed reimbursement for out-of-pocket business
20 expenses incurred. A detailed review of the receipts submitted into evidence show expenses
21 during the claim period totaled \$21,434.87 in year 2016, \$34,815.36 in year 2017, and
22 \$17,660.85 in year 2018, for a subtotal of \$73,911.08, minus \$23,991.90 in Fuel Surcharge paid
23 by Defendants CCX2931, LLC and Jim Degraw during the claim period, for a total of
24 \$49,919.18 (Exhibit 46). **Therefore, Plaintiff Perez is awarded a total of \$49,919.18 for out-**
25 **of-pocket business expenses incurred during the relevant period of employment.**

26 According to proof, Plaintiff G. Acosta is owed reimbursement for out-of-pocket
27 business expenses incurred. A detailed review of the receipts submitted into evidence show

1 expenses during the claim period totaled \$11,037.21 in year 2012, \$5,938.20 in year 2013, and
2 \$8,588.30 in year 2014, for a subtotal of \$25,563.71, minus \$14,130.35 in Fuel Surcharge paid
3 by Defendants CCX2931, LLC and Jim Degraw during the claim period, for a total of
4 \$11,433.36 (Exhibit 50). **Therefore, Plaintiff G. Acosta is awarded a total of \$11,433.36 for**
5 **out-of-pocket business expenses incurred during the relevant period of employment.**

6 According to proof, Plaintiff Cano is owed reimbursement for out-of-pocket business
7 expenses incurred. A detailed review of the receipts submitted into evidence show expenses
8 during the claim period totaled \$24,542.34 in year 2016, and \$43,387.09 in year 2017, for a total
9 of \$67,831.86 (Exhibit 53). **Therefore, Plaintiff Cano is awarded a total of \$67,831.86 for**
10 **out-of-pocket business expenses incurred during the relevant period of employment.**

11 According to proof, Plaintiff M. Martinez is owed reimbursement for out-of-pocket
12 business expenses incurred. A detailed review of the receipts submitted into evidence show
13 expenses during the claim period totaled \$42,385.24 in year 2012, \$49,335.54 in year 2013,
14 \$66,873.08 in year 2014, \$61,553.69 in year 2015, \$42,518.66 in year 2016, and \$27,658.04 in year
15 2017, for a subtotal of \$290,324.25, minus \$128,793.10 in Fuel Surcharge paid by Defendants
16 CCX2931, LLC and Jim Degraw during the claim period, for a total of \$161,531.15 (Exhibit
17 55). **Therefore, Plaintiff M. Martinez is awarded a total of \$161,531.15 for out-of-pocket**
18 **business expenses incurred during the relevant period of employment.**

19 **J. Meal Period Premiums**

20 Section 11 of the Order provides:

21 (A) No employer shall employ any person for a work period of more than five (5)
22 hours without a meal period of not less than 30 minutes, except that when a
23 work period of not more than six (6) hours will complete the day's work the meal
period may be waived by mutual consent of the employer and the employee.

24 (B) An employer may not employ an employee for a work period of more than
25 ten (10) hours per day without providing the employee with a second meal
26 period of not less than 30 minutes, except that if the total hours worked is no
27 more than 12 hours, the second meal period may be waived by mutual consent of
the employer and the employee only if the first meal period was not waived.

1 (C) Unless the employee is relieved of all duty during a 30-minute meal period,
2 the meal period shall be considered an "on duty" meal period and counted as
3 time worked. An "on duty" meal period shall be permitted only when the nature
4 of the work prevents an employee from being relieved of all duty and when by
5 written agreement between the parties an on-the-job paid meal period is agreed
6 to. The written agreement shall state that the employee may, in writing, revoke
7 the agreement at any time.

8 (D) If an employer fails to provide an employee a meal period in accordance with
9 the applicable provisions of this order, the employer shall pay the employee one
10 (1) hour of pay at the employee's regular rate of compensation for each workday
11 that the meal period is not provided.

12 As the California Supreme Court held in *Brinker v. Superior Court* (2012) 53 Cal.4th
13 1004, an employer must provide a meal period to its employees, but need not ensure that
14 each employee takes his meal periods. "The employer satisfies this obligation if it relieves its
15 employees of all duty, relinquishes control over their activities and permits a reasonable
16 opportunity to take an uninterrupted 30-minute break, and does not impede or discourage
17 them from doing so." (*Id.* at p. 1040.) "The employer is not obligated to police meal breaks
18 and ensure no work thereafter is performed." (*Ibid.*) However, an employer may not
19 undermine a formal policy of providing meal breaks by pressuring employees to perform
20 their duties in ways that omit breaks. (*Ibid.*)

21 Section 7(A)(3) of the Order further requires an employer to maintain "[t]ime records
22 showing when the employee begins and ends each work period. Meal periods, split shift
23 intervals and total daily hours worked shall also be recorded." When an employer fails to
24 fulfill its statutory obligation to keep time records, testimony of the affected employee is
25 sufficient to establish the amount of hours worked even though the result may be only
26 approximate. (*Plaintiff Contreras v. Plaintiff F. Acosta* (1988) 199 Cal.App.3d 721, 727.) "If an
27 employer's records show no meal period for a given shift over five hours, a rebuttable
presumption arises that the employee was not relieved of duty and no meal period was
provided." (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1053 [concurring opinion].)

Here, all Plaintiffs, except Plaintiffs Lara, Vidal and Maldonado, testified that they

1 were unable to take uninterrupted meal periods of at least 30 minutes every five (5) hours. If
2 they took meal breaks, they did not take more than one (1) meal break per day. They were
3 instructed to return to the port as soon as possible, and some loads had appointment times at
4 the port. Some Plaintiffs ate while driving, while waiting in line at the ports, or while waiting
5 for loads. Based on the foregoing, Defendants CCX2931, LLC and Jim Degraw did not
6 provide Plaintiffs Luna, G. Martinez, Villa, Rodriguez, Garcia, F. Acosta, Contreras, Perez, G.
7 Acosta, Cano and M. Martinez with a reasonable opportunity to take uninterrupted meal
8 breaks relieved of all duty.

9 Plaintiff Lara testified that he took a meal break per day, and worked on average ten
10 (10) hours per day. Plaintiff Vidal testified that he took two (2) meal breaks per day, and
11 worked on average 10.5 hours per day. Plaintiffs Lara and Vidal are not awarded meal
12 period premiums. Plaintiff Maldonado testified that he generally took one (1) meal break per
13 day, and worked on average 12 hours per day. Plaintiff Maldonado testified that
14 occasionally, he took two (2) meal breaks per day. Accordingly, Plaintiff Maldonado is
15 awarded three (3) meal period premiums per week.

16 Accordingly, Plaintiffs Luna, G. Martinez, Villa, Rodriguez, Garcia, F. Acosta,
17 Contreras, Maldonado, Perez, G. Acosta, Cano and M. Martinez are awarded meal period
18 premium pay for their missed meal periods during their respective claim periods. The meal
19 period premium pay is calculated by multiplying the total number of days worked by the
20 respective hourly rate of each Plaintiff. The hourly rate is calculated by dividing the total
21 gross earnings during the claim period by the total number of days worked to obtain the
22 daily rate. The daily rate is then divided by the average number of hours worked per day to
23 arrive at the hourly rate.

24 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
25 Plaintiff Luna a bona fide meal period for 1,000 days at various hourly rates of pay (each
26 hourly rate of pay was calculated per weekly pay period). **As such, Plaintiff Luna is**
27 **awarded a total of \$57,751.48 for meal period premium pay.**

1 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
2 Plaintiff G. Martinez a bona fide meal period for 219 days at various hourly rates of pay (each
3 hourly rate of pay was calculated per weekly pay period). **As such, Plaintiff G. Martinez is**
4 **awarded a total of \$20,532.54 for meal period premium pay.**

5 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
6 Plaintiff Villa a bona fide meal period for 928 days at various hourly rates of pay (each hourly
7 rate of pay was calculated per weekly pay period). **As such, Plaintiff Villa is awarded a**
8 **total of \$46,017.28 for meal period premium pay.**

9 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
10 Plaintiff Rodriguez a bona fide meal period for 1,156 days at various hourly rates of pay (each
11 hourly rate of pay was calculated per weekly pay period). **As such, Plaintiff Rodriguez is**
12 **awarded a total of \$61,560.10 for meal period premium pay.**

13 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
14 Plaintiff Garcia a bona fide meal period for 1,196 days at various hourly rates of pay (each
15 hourly rate of pay was calculated per weekly pay period). **As such, Plaintiff Garcia is**
16 **awarded a total of \$74,566.96 for meal period premium pay.**

17 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
18 Plaintiff F. Acosta a bona fide meal period for 764 days at various hourly rates of pay (each
19 hourly rate of pay was calculated per weekly pay period). **As such, Plaintiff F. Acosta is**
20 **awarded a total of \$44,297.52 for meal period premium pay.**

21 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
22 Plaintiff Contreras a bona fide meal period for 44 days at various hourly rates of pay (each
23 hourly rate of pay was calculated per weekly pay period). **As such, Plaintiff Contreras is**
24 **awarded a total of \$2,208.95 for meal period premium pay.**

25 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
26 Plaintiff Maldonado a bona fide meal period for 568 days at various hourly rates of pay (each
27 hourly rate of pay was calculated per weekly pay period). **As such, Plaintiff Maldonado is**

1 awarded a total of \$31,492.11 for meal period premium pay.

2 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
3 Plaintiff Perez a bona fide meal period for 336 days at various hourly rates of pay (each
4 hourly rate of pay was calculated per weekly pay period). As such, Plaintiff Perez is
5 awarded a total of \$19,762.59 for meal period premium pay.

6 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
7 Plaintiff G. Acosta a bona fide meal period for 575 days at various hourly rates of pay (each
8 hourly rate of pay was calculated per weekly pay period). As such, Plaintiff G. Acosta is
9 awarded a total of \$27,612.03 for meal period premium pay.

10 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
11 Plaintiff Cano a bona fide meal period for 1,144 days at various hourly rates of pay (each
12 hourly rate of pay was calculated per weekly pay period). As such, Plaintiff Cano is
13 awarded a total of \$11,452.00 for meal period premium pay.

14 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
15 Plaintiff M. Martinez a bona fide meal period for 1,195 days at various hourly rates of pay
16 (each hourly rate of pay was calculated per weekly pay period). As such, Plaintiff M.
17 Martinez is awarded a total of \$45,147.28 for meal period premium pay.

18 **K. Rest Period Premiums**

19 Section 12 of the Order provides:

20 (A) Every employer shall authorize and permit all employees to take rest
21 periods, which insofar as practicable shall be in the middle of each work period.
22 The authorized rest period time shall be based on the total hours worked daily at
23 the rate of ten (10) minutes net rest time per four (4) hours or major fraction
24 thereof. However, a rest period need not be authorized for employees whose
25 total daily work time is less than three and one-half (3½) hours. Authorized rest
26 period time shall be counted as hours worked for which there shall be no
27 deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with
the applicable provisions of this order, the employer shall pay the employee one
(1) hour of pay at the employee's regular rate of compensation for each workday
that the rest period is not provided.

1 The employer's obligation under Section 12 of the Order is to "authorize and permit
2 all employees to take rest periods." "Authorize" means that employers have some
3 affirmative obligation to advise employees of the right to take rest periods in accordance with
4 the provisions of Section 12. "Permit" means that employers must allow employees to take
5 the rest periods to which they are entitled, and cannot deny permission to an employee or
6 make it impossible for an employee to exercise this right.

7 Plaintiffs testified that Defendant CCX2931, LLC did not have a rest period policy and
8 that they were unable to take 10-minute rest breaks because they had to attend to their trucks
9 at all times and did not have time to take rest breaks. Although Defendants CCX2931, LLC
10 and Jim Degraw did not inform Plaintiffs they could not take rest breaks, Defendants
11 CCX2931, LLC and Jim Degraw failed to authorize rest periods because Defendants
12 CCX2931, LLC and Jim Degraw did not advise Plaintiffs of the right to take rest breaks in
13 accordance with Section 12 of the Order.

14 Accordingly, Lara, Luna, G. Martinez, Villa, Rodriguez, Garcia, Vidal, F. Acosta,
15 Contreras, Maldonado, Perez, G. Acosta, Cano and M. Martinez are awarded rest period
16 premium pay for their missed rest periods during their respective claim periods. The rest
17 period premium is calculated by multiplying the total number of days worked by the
18 respective hourly rate of each Plaintiff. The hourly rate is calculated by dividing the total
19 gross earnings during the claim period by the total days worked to obtain the daily rate. The
20 daily rate is then divided by the average number of hours worked per day to arrive at the
21 hourly rate.

22 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
23 Plaintiff Lara a rest period for 252 days at various hourly rates of pay (each hourly rate of pay
24 was calculated per weekly pay period). **As such, Plaintiff Lara is awarded a total of**
25 **\$17,515.52 for rest period premium pay.**

26 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
27 Plaintiff Luna a rest period for 1,000 days at various hourly rates of pay (each hourly rate of

1 pay was calculated per weekly pay period). As such, Plaintiff Luna is awarded a total of
2 \$57,751.48 for rest period premium pay.

3 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
4 Plaintiff G. Martinez a paid rest period for 219 days at various hourly rates of pay (each
5 hourly rate of pay was calculated per weekly pay period). As such, Plaintiff G. Martinez is
6 awarded a total of \$20,532.54 for rest period premium pay.

7 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
8 Plaintiff Villa a rest period for 928 days at various hourly rates of pay (each hourly rate of pay
9 was calculated per weekly pay period). As such, Plaintiff Villa is awarded a total of
10 \$46,017.28 for rest period premium pay.

11 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
12 Plaintiff Rodriguez a rest period for 1,156 days at various hourly rates of pay (each hourly
13 rate of pay was calculated per weekly pay period). As such, Plaintiff Rodriguez is awarded
14 a total of \$61,560.10 for rest period premium pay.

15 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
16 Plaintiff Garcia a rest period for 1,196 days at various hourly rates of pay (each hourly rate of
17 pay was calculated per weekly pay period). As such, Plaintiff Garcia is awarded a total of
18 \$74,566.96 for rest period premium pay.

19 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
20 Plaintiff Vidal a paid rest period for 1,425 days at various hourly rates of pay (each hourly
21 rate of pay was calculated per weekly pay period). As such, Plaintiff Vidal is awarded a
22 total of \$84,345.86 for rest period premium pay.

23 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
24 Plaintiff F. Acosta a rest period for 764 days at various hourly rates of pay (each hourly rate
25 of pay was calculated per weekly pay period). As such, Plaintiff F. Acosta is awarded a
26 total of \$44,297.52 for rest period premium pay.

27 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide

1 Plaintiff Contreras a rest period for 44 days at various hourly rates of pay (each hourly rate of
2 pay was calculated per weekly pay period). **As such, Plaintiff Contreras is awarded a total**
3 **of \$2,208.95 for rest period premium pay.**

4 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
5 Plaintiff Maldonado a rest period for 190 days at various hourly rates of pay (each hourly rate
6 of pay was calculated per weekly pay period). **As such, Plaintiff Maldonado is awarded a**
7 **total of \$10,528.25 for rest period premium pay.**

8 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
9 Plaintiff Perez a rest period for 336 days at various hourly rates of pay (each hourly rate of
10 pay was calculated per weekly pay period). **As such, Plaintiff Perez is awarded a total of**
11 **\$19,762.59 for rest period premium pay.**

12 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
13 Plaintiff G. Acosta a rest period for 575 days at various hourly rates of pay (each hourly rate
14 of pay was calculated per weekly pay period). **As such, Plaintiff G. Acosta is awarded a**
15 **total of \$27,612.03 for rest period premium pay.**

16 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
17 Plaintiff Cano a rest period for 1,244 days at various hourly rates of pay (each hourly rate of
18 pay was calculated per weekly pay period). **As such, Plaintiff Cano is awarded a total of**
19 **\$11,452.00 for rest period premium pay.**

20 According to proof, Defendants CCX2931, LLC and Jim Degraw failed to provide
21 Plaintiff M. Martinez a rest period for 1,195 days at various hourly rates of pay (each hourly
22 rate of pay was calculated per weekly pay period). **As such, Plaintiff M. Martinez is**
23 **awarded a total of \$45,147.28 for rest period premium pay.**

24 L. **Wages for Rest Periods Taken During Hours Worked Earning Piece-Rate Wages**

25 In *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, the court held that the
26 piece-rate wages paid by the employer for piece-rate work cannot be used to satisfy the
27 employer's obligation to compensate the employee for the time spent taking a rest period.

1 *Bluford* establishes that, since piece-rate wages cover only actual piece-rate work, the time
2 spent taking a rest period must be separately compensated by an additional payment that
3 compensates the employee at the applicable rate of pay.

4 Plaintiffs testified that they did not take rest periods and seek rest period premiums
5 for missed rest periods. As no time was spent taking a rest period, no wages can be owed for
6 time spent taking a rest period for such Plaintiffs. Accordingly, Plaintiffs take nothing on
7 their claim for wages for rest periods taken during hours worked earning a piece rate.

8 **M. Interest**

9 Pursuant to Labor Code section 98.1, all awards granted pursuant to a hearing shall
10 accrue interest on all due and unpaid wages. Further, Labor Code section 1194.2 requires
11 that interest be awarded on any liquidated damages.

12 Plaintiff Lara is entitled to recover \$1,533.07 in interest accrued to date on the amount
13 due.

14 Plaintiff Luna is entitled to recover \$41,495.59 in interest accrued to date on the
15 amount due.

16 Plaintiff G. Martinez is entitled to recover \$63,927.44 in interest accrued to date on the
17 amount due.

18 Plaintiff Villa is entitled to recover \$4,872.03 in interest accrued to date on the amount
19 due.

20 Plaintiff Rodriguez is entitled to recover \$7,875.38 in interest accrued to date on the
21 amount due.

22 Plaintiff Garcia is entitled to recover \$9,150.30 in interest accrued to date on the
23 amount due.

24 Plaintiff Vidal is entitled to recover \$5,522.27 in interest accrued to date on the amount
25 due.

26 Plaintiff F. Acosta is entitled to recover \$7,146.86 in interest accrued to date on the
27 amount due.

1 Plaintiff Contreras is entitled to recover \$25,547.83 in interest accrued to date on the
2 amount due.

3 Plaintiff Maldonado is entitled to recover \$6,901.41 in interest accrued to date on the
4 amount due.

5 Plaintiff Perez is entitled to recover \$2,608.57 in interest accrued to date on the amount
6 due.

7 Plaintiff G. Acosta is entitled to recover \$3,128.55 in interest accrued to date on the
8 amount due.

9 Plaintiff Cano is entitled to recover \$6,207.77 in interest accrued to date on the amount
10 due.

11 Plaintiff M. Martinez is entitled to recover \$55,979.39 in interest accrued to date on the
12 amount due.

13 **N. Waiting Time Penalties**

14 Labor Code section 201 requires that if an employee is discharged, all earned wages
15 are due immediately upon termination. Labor Code section 202 requires that if an employee
16 quits without providing at least 72 hours' notice of his resignation, all earned wages are due
17 within 72 hours of his resignation.

18 Labor Code section 203 provides that if an employer willfully fails to pay any earned
19 wages of an employee in accordance with Labor Code sections 201 and 202, the wages of such
20 employee shall continue as a penalty from the due date thereof at the same rate until paid, up
21 to 30 days. The term "willful" as used in the statute has been defined by case law as an
22 intentional failure to perform an act that is required under the law. There is no requirement
23 of evil purpose or intent to defraud. (*Davis v. Morris* (1940) 37 Cal.App.2d 269.)

24 As of the date of his hearing, Plaintiffs Lara, Villa, Rodriguez, Garcia, Vidal, F. Acosta,
25 Maldonado, Perez, G. Acosta remained employed by Defendants. Accordingly, Plaintiffs
26 Lara, Villa, Rodriguez, Garcia, Vidal, F. Acosta, Maldonado, Perez, G. Acosta are not entitled
27 to waiting time penalties.

1 The remaining Plaintiffs quit or were discharged over 30 days ago. However, as of the
2 date of the hearings, none of them were paid their full and final wages by Defendants
3 CCX2931, LLC and Jim Degraw. Pursuant to Labor Code section 203, Plaintiffs are due the
4 maximum of 30 days waiting time penalties at their respective daily rates.

5 According to proof, Plaintiff Luna is due the maximum of 30 days waiting time
6 penalties at his daily rate of \$642.01 in the amount of \$19,260.30.

7 According to proof, Plaintiff G. Martinez is due the maximum of 30 days waiting time
8 penalties at his daily rate of \$1,060.28 in the amount of \$31,808.40.

9 According to proof, Plaintiff Contreras is due the maximum of 30 days waiting time
10 penalties at his daily rate of \$617.85 in the amount of \$18,535.50.

11 According to proof, Plaintiff Cano is due the maximum of 30 days waiting time
12 penalties at his daily rate of \$500.00 in the amount of \$15,000.00.

13 According to proof, Plaintiff M. Martinez is due the maximum of 30 days waiting time
14 penalties at his daily rate of \$321.59 in the amount of \$9,647.70.

15 **O. Attorney's Fees**

16 Labor Code section 2802(c) authorizes the recovery attorney's fees incurred by an
17 employee in connection with a claim for reimbursable business expenses. Plaintiffs retained
18 the services of an attorney to assist them in pursuit of their claim against Defendants,
19 including a claim for reimbursement of business expenses pursuant to Labor Code section
20 2802(a).

21 Plaintiffs were represented by Jean Choi ("Mr. Choi") and Erika Villasenor. Mr. Choi's
22 hourly rate is \$425.00 per hour. However, an appropriate hourly rate for these
23 administrative hearings is \$250.00. Mr. Choi claims the following hours were spent on each
24 Plaintiff: (1) 0.4 hours to discuss business expense claim with client; (2) 7.5 hours to review
25 and sort business expense receipts; (3) 5.0 hours to review and supervise calculation of
26 business expense claims; (4) 0.1 hours to review Labor Commissioner complaint form; (5) 1
27 hour spent on review of prevailing law on Labor Code 2802, review of preemption, statute of

1 limitations and other defenses; (6) 0.7 hours to prepare for hearing with client; and (7) 0.9
2 hours for hearing, presentation of business expense claims (Declaration of Jean Choi, Exhibit
3 58). All Plaintiffs are awarded attorney's fees for 15.6 hours per Plaintiff.

4 Plaintiff Lara is allowed recovery of 15.6 hours at the rate of \$250.00 per hour, for a
5 total of \$3,900.00. **Accordingly, Plaintiff Lara is awarded attorney's fees in the amount of**
6 **\$3.900.00.**

7 Plaintiff Luna is allowed recovery of 15.6 hours at the rate of \$250.00 per hour, for a
8 total of \$3,900.00. **Accordingly, Plaintiff Luna is awarded attorney's fees in the amount of**
9 **\$3.900.00.**

10 Plaintiff G. Martinez is allowed recovery of 15.6 hours at the rate of \$250.00 per hour,
11 for a total of \$3,900.00. **Accordingly, Plaintiff G. Martinez is awarded attorney's fees in the**
12 **amount of \$3.900.00.**

13 Plaintiff Villa is allowed recovery of 15.6 hours at the rate of \$250.00 per hour, for a
14 total of \$3,900.00. **Accordingly, Plaintiff Villa is awarded attorney's fees in the amount of**
15 **\$3.900.00.**

16 Plaintiff Rodriguez is allowed recovery of 15.6 hours at the rate of \$250.00 per hour,
17 for a total of \$3,900.00. **Accordingly, Plaintiff Rodriguez is awarded attorney's fees in the**
18 **amount of \$3.900.00.**

19 Plaintiff Garcia is allowed recovery of 15.6 hours at the rate of \$250.00 per hour, for a
20 total of \$3,900.00. **Accordingly, Plaintiff Garcia is awarded attorney's fees in the amount of**
21 **\$3.900.00.**

22 Plaintiff Vidal is allowed recovery of 15.6 hours at the rate of \$250.00 per hour, for a
23 total of \$3,900.00. **Accordingly, Plaintiff Vidal is awarded attorney's fees in the amount of**
24 **\$3.900.00.**

25 Plaintiff F. Acosta is allowed recovery of 15.6 hours at the rate of \$250.00 per hour, for
26 a total of \$3,900.00. **Accordingly, Plaintiff F. Acosta is awarded attorney's fees in the**
27 **amount of \$3.900.00.**

1 Plaintiff Contreras is allowed recovery of 15.6 hours at the rate of \$250.00 per hour, for
2 a total of \$3,900.00. Accordingly, Plaintiff Contreras is awarded attorney's fees in the
3 amount of \$3.900.00.

4 Plaintiff Maldonado is allowed recovery of 15.6 hours at the rate of \$250.00 per hour,
5 for a total of \$3,900.00. Accordingly, Plaintiff Maldonado is awarded attorney's fees in the
6 amount of \$3.900.00.

7 Plaintiff Perez is allowed recovery of 15.6 hours at the rate of \$250.00 per hour, for a
8 total of \$3,900.00. Accordingly, Plaintiff Perez is awarded attorney's fees in the amount of
9 \$3.900.00.

10 Plaintiff G. Acosta is allowed recovery of 15.6 hours at the rate of \$250.00 per hour, for
11 a total of \$3,900.00. Accordingly, Plaintiff G. Acosta is awarded attorney's fees in the
12 amount of \$3.900.00.

13 Plaintiff Cano is allowed recovery of 15.6 hours at the rate of \$250.00 per hour, for a
14 total of \$3,900.00. Accordingly, Plaintiff Cano is awarded attorney's fees in the amount of
15 \$3.900.00.

16 Plaintiff M. Martinez is allowed recovery of 15.6 hours at the rate of \$250.00 per hour,
17 for a total of \$3,900.00. Accordingly, Plaintiff M. Martinez is awarded attorney's fees in the
18 amount of \$3.900.00.

19 20 CONCLUSION

21 In regards to Plaintiff Juan Lara
22 State Case Number WC-CM-606912

23 For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant
24 CCX2931, LLC and Defendant Jim Degraw, an individual shall pay Plaintiff Juan Lara a total
25 of \$76,312.01, as follows:

- 26 1. \$6,201.45 for nonproduction hours worked and unpaid wages;
- 27 2. \$243.80 in unlawful deductions;
3. \$6,041.99 in liquidated damages pursuant to Labor Code section 1194.2;

4. \$40,856.18 for reimbursable business expenses;
5. \$17,515.52 in rest period premiums;
6. \$1,533.07 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or 2802(b); and
7. \$3,900.00 in attorney's fees.

In regards to Plaintiff Valente Luna
State Case Number WC-CM-606837

For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant CCX2931, LLC and Defendant Jim Degraw, an individual shall pay Plaintiff Valente Luna a total of \$467,472.18, as follows:

1. \$15,548.00 for nonproduction hours worked and unpaid wages;
2. \$38,047.29 in unlawful deductions;
3. \$15,579.91 in liquidated damages pursuant to Labor Code section 1194.2;
4. \$218,138.13 for reimbursable business expenses;
5. \$57,751.48 in meal period premiums;
6. \$57,751.48 in rest period premiums;
7. \$41,495.59 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or 2802(b);
8. \$19,260.30 in waiting time penalties pursuant to Labor Code section 203; and
9. \$3,900.00 in attorney's fees.

In regards to Plaintiff Gerardo Martinez
State Case Number WC-CM-606885

For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant CCX2931, LLC and Defendant Jim Degraw, an individual shall pay Plaintiff Gerardo Martinez a total of \$238,443.19, as follows:

1. \$6,262.45 for nonproduction hours worked and unpaid wages;

2. \$18,426.29 in unlawful deductions;
3. \$4,672.00 in liquidated damages pursuant to Labor Code section 1194.2;
4. \$68,381.53 for reimbursable business expenses;
5. \$20,532.54 in meal period premiums;
6. \$20,532.54 in rest period premiums;
7. \$63,927.44 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or 2802(b);
8. \$31,808.40 in waiting time penalties pursuant to Labor Code section 203; and
9. \$3,900.00 in attorney's fees.

In regards to Plaintiff Gustavo Villa
State Case Number WC-CM-606891

For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant CCX2931, LLC and Defendant Jim Degraw, an individual shall pay Plaintiff Gustavo Villa a total of \$231,058.08, as follows:

1. \$19,418.50 for nonproduction hours worked and unpaid wages;
2. \$7,299.15 in unlawful deductions;
3. \$15,791.10 in liquidated damages pursuant to Labor Code section 1194.2;
4. \$87,742.74 for reimbursable business expenses;
5. \$46,017.28 in meal period premiums;
6. \$46,017.28 in rest period premiums;
7. \$4,872.03 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or 2802(b); and
8. \$3,900.00 in attorney's fees.

In regards to Plaintiff Rodolfo Rodriguez
State Case Number WC-CM-606918

For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant

1 CCX2931, LLC and Defendant Jim Degraw, an individual shall pay Plaintiff Rodolfo
2 Rodriguez a total of \$371,089.69, as follows:

- 3 1. \$8,211.00 for nonproduction hours worked and unpaid wages;
- 4 2. \$37,428.81 in unlawful deductions;
- 5 3. \$9,860.86 in liquidated damages pursuant to Labor Code section 1194.2;
- 6 4. \$180,693.44 reimbursable business expenses;
- 7 5. \$61,560.10 in meal period premiums;
- 8 6. \$61,560.10 in rest period premiums;
- 9 7. \$7,875.38 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or
10 2802(b); and
- 11 8. \$3,900.00 in attorney's fees.

12
13 In regards to Plaintiff Jose Garcia
14 State Case Number WC-CM-606927

15 For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant
16 CCX2931, LLC and Defendant Jim Degraw, an individual shall pay Plaintiff Jose Garcia a
17 total of \$430,532.88, as follows:

- 18 1. \$8,431.50 for nonproduction hours worked and unpaid wages;
- 19 2. \$114,283.72 in unlawful deductions;
- 20 3. \$9,740.26 in liquidated damages pursuant to Labor Code section 1194.2;
- 21 4. \$135,893.18 for reimbursable business expenses;
- 22 5. \$74,566.96 in meal period premiums;
- 23 6. \$74,566.96 in rest period premiums;
- 24 7. \$9,150.30 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or
25 2802(b); and
- 26 8. \$3,900.00 in attorney's fees.

27 In regards to Plaintiff Jose Vidal

State Case Number WC-CM-606932

For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant CCX2931, LLC and Defendant Jim Degraw, an individual shall pay Plaintiff Jose Vidal a total of \$261,375.81, as follows:

1. \$18,995.95 for nonproduction hours worked and unpaid wages;
2. \$14,355.14 in unlawful deductions;
3. \$12,929.50 in liquidated damages pursuant to Labor Code section 1194.2;
4. \$121,327.09 for reimbursable business expenses;
5. \$84,345.86 in rest period premiums;
6. \$5,522.27 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or 2802(b); and
7. \$3,900.00 in attorney's fees.

In regards to Plaintiff Flavio Acosta

State Case Number WC-CM-606957

For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant CCX2931, LLC and Defendant Jim Degraw, an individual shall pay Plaintiff Flavio Acosta a total of \$337,122.98, as follows:

1. \$13,079.00 for nonproduction hours worked;
2. \$199,828.83 in unlawful deductions;
3. \$15,517.17 in liquidated damages pursuant to Labor Code section 1194.2;
4. \$9,056.08 for reimbursable business expenses;
5. \$44,297.52 in meal period premiums;
6. \$44,297.52 in rest period premiums;
7. \$7,146.86 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or 2802(b); and
8. \$3,900.00 in attorney's fees.

1 In regards to Plaintiff Julio Contreras
2 State Case Number WC-CM-606855

3 For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant
4 CCX2931, LLC and Defendant Jim Degraw, an individual shall pay Plaintiff Julio Contreras a
5 total of \$143,722.06, as follows:

- 6 1. \$780.39 for nonproduction hours worked;
- 7 2. \$1,035.64 in unlawful deductions;
- 8 3. \$780.39 in liquidated damages pursuant to Labor Code section 1194.2;
- 9 4. \$88,724.41 for reimbursable business expenses;
- 10 5. \$2,208.95 in meal period premiums;
- 11 6. \$2,208.95 in rest period premiums;
- 12 7. \$25,547.83 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or
13 2802(b);
- 14 8. \$18,535.50 in waiting time penalties pursuant to Labor Code section 203; and
- 15 9. \$3,900.00 in attorney's fees.

16 In regards to Plaintiff Jesus Maldonado
17 State Case Number WC-CM-606902

18 For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant
19 CCX2931, LLC and Defendant Jim Degraw, an individual shall pay Plaintiff Jesus Maldonado
20 a total of \$325,678.09, as follows:

- 21 1. \$25,487.97 for nonproduction hours worked and unpaid wages;
- 22 2. \$155,243.34 in unlawful deductions;
- 23 3. \$27,978.74 in liquidated damages pursuant to Labor Code section 1194.2;
- 24 4. \$64,146.27 for reimbursable business expenses;
- 25 5. \$31,492.11 in meal period premiums;
- 26 6. \$10,528.25 in rest period premiums;
- 27 7. \$6,901.41 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or

1 2802(b); and

2 8. \$3,900.00 in attorney's fees.

3
4 In regards to Plaintiff Ramon Perez
5 State Case Number WC-CM-615202

6 For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant
7 CCX2931, LLC and Defendant Jim Degraw, an individual shall pay Plaintiff Ramon Perez a
8 total of \$125,524.55, as follows:

- 9 1. \$15,005.95 for nonproduction hours worked and unpaid wages;
10 2. \$211.60 in unlawful deductions;
11 3. \$14,354.07 in liquidated damages pursuant to Labor Code section 1194.2;
12 4. \$49,919.18 for reimbursable business expenses;
13 5. \$19,762.59 in meal period premiums;
14 6. \$19,762.59 in rest period premiums;
15 7. \$2,608.57 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or
16 2802(b); and
17 8. \$3,900.00 in attorney's fees.

18
19 In regards to Plaintiff Gabriel Acosta
20 State Case Number WC-CM-615229

21 For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant
22 CCX2931, LLC and Defendant Jim Degraw, an individual shall pay Plaintiff Gabriel Acosta a
23 total of \$149,768.47, as follows:

- 24 1. \$5,961.20 for nonproduction hours worked and unpaid wages;
25 2. \$63,719.44 in unlawful deductions;
26 3. \$6,401.86 in liquidated damages pursuant to Labor Code section 1194.2;
27 4. \$11,433.36 for reimbursable business expenses;
5. \$27,612.03 in meal period premiums;

6. \$27,612.03 in rest period premiums;
7. \$3,128.55 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or 2802(b); and
8. \$3,900.00 in attorney's fees.

In regards to Plaintiff Miguel Cano
State Case Number WC-CM-615094

For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant CCX2931, LLC and Defendant Jim Degraw, an individual shall pay Plaintiff Miguel Cano a total of \$132,493.46, as follows:

1. \$8,433.45 for nonproduction hours worked and unpaid wages;
2. \$8,216.38 in liquidated damages pursuant to Labor Code section 1194.2;
3. \$67,831.86 for reimbursable business expenses;
4. \$11,452.00 in meal period premiums;
5. \$11,452.00 in rest period premiums;
6. \$6,207.77 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or 2802(b);
7. \$15,000.00 in waiting time penalties pursuant to Labor Code section 203; and
8. \$3,900.00 in attorney's fees.

In regards to Plaintiff Manuel Martinez
State Case Number WC-CM-615219

For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant CCX2931, LLC and Defendant Jim Degraw, an individual shall pay Plaintiff Manuel Martinez a total of \$443,748.29, as follows:

1. \$67,992.31 for nonproduction hours worked and unpaid wages;
2. \$11,494.53 in unlawful deductions;
3. \$42,908.65 in liquidated damages pursuant to Labor Code section 1194.2;

4. \$161,531.15 for reimbursable business expenses;
5. \$45,147.28 in meal period premiums;
6. \$45,147.28 in rest period premiums;
7. \$55,979.39 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or 2802(b);
8. \$9,647.70 in waiting time penalties pursuant to Labor Code section 203; and
9. \$3,900.00 in attorney's fees.

Dated: December 28, 2018



Melanie Do
Hearing Officer