

BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

LUIS SANTIAGO KINA; HECTOR) CASE NOS.: 05-70415 KR; 05-70416 KR;
GUSTAVO GIL; SALVADOR FELIPE) 05-70413 KR; 05-71168 KR; 05-71167 KR;
CARMONA ORTIZ; JULIO MENJIBAR;) 05-70411 KR; 05-70414 KR; 05-71170 KR;
ANGEL GARCIA; MANUEL F.) 05-71172 KR; AND 05-70412 KR.
BELETON SAGASTUME; EDWIN)
GARCIA; RAMON PEREZ REYES; JESUS)
RAMOS; AND RONALD ROSALES,)

Plaintiffs,)

v.)

ORDER, DECISION, OR AWARD OF
THE LABOR COMMISSIONER

CALIFORNIA MULTIMODAL, LLC, a)
California Limited Liability Company;)
CM2931, LLC, a California Limited)
Liability Company; Robert A. Curry, an)
individual; and Oscar Venegas, an)
individual,)

Defendants.)

Hearings for the above-referenced matters were conducted in Long Beach, California, from August 6, 2018 through August 14, 2018, before the undersigned hearing officer designated by the Labor Commissioner to hear this matter.

Plaintiffs Salvador Felipe Carmona Ortiz, Julio Menjibar, Luis Santiago Kina, Hector Gustavo Gil, Ramon Perez Reyes, Manuel F. Beleton Sagastume, Edwin Garcia, Angel Garcia, Jesus Ramos and Ronald Rosales appeared and were represented by Jean Choi, attorney at Los Angeles Alliance for a New Economy.

California Multimodal, LLC, a California Limited Liability Company dba CMI, CM2931, LLC, a California Limited Liability Company dba CMI; Robert A. Curry, an

1 individual, and Oscar Venegas, an individual ("Defendants") were represented by John H.
2 Haney and Samuel Stone, attorneys at Holland & Knight LLP.

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

5 Moshe Rodriguez provided Spanish translation services.

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

9 BACKGROUND

10 Plaintiff Luis Santiago Kina (Case No. 05-70415 KR) filed an initial claim with the
11 Labor Commissioner's Office on August 3, 2017 against Defendants. The Complaint alleges
12 that he is owed the following for the period of September 20, 2013 to April 11, 2017: (1)
13 unpaid wages, claiming \$21,250.65; (2) unlawful deductions, claiming \$128,424.76; (3)
14 expenses, claiming \$51,375.93; (4) meal period premiums, claiming \$27,436.03; (5) rest period
15 premiums, claiming \$27,436.03; and (6) wages for rest periods taken during hours worked
16 earning a piece-rate, claiming \$3,197.56; (7) liquidated damages in an amount to be
17 determined; (8) additional wages pursuant to Labor Code Section 203 as a penalty amount to
18 be determined; and (9) attorney's fees to be determined.

19 Plaintiff Hector Gustavo Gil (Case No. 05-70416 KR) filed an initial claim with the
20 Labor Commissioner's Office on August 3, 2017 against Defendants. The Complaint alleges
21 that he is owed the following for the period of September 20, 2013 to up and through the date
22 of the hearing for: (1) unpaid wages, claiming \$21,717.00; (2) unlawful deductions, claiming
23 \$153,110.53; (3) expenses, claiming \$48,872.43; (4) meal period premiums, claiming \$29,197.91;
24 (5) rest period premiums, claiming \$21,717.00; and (6) wages for rest periods taken during
25 hours worked earning a piece-rate, claiming \$3,498.70; (7) liquidated damages in an amount
26 to be determined; (8) additional wages pursuant to Labor Code Section 203 as a penalty
27 amount to be determined; and (9) attorney's fees to be determined.

1 Plaintiff Salvador Felipe Carmona Ortiz (Case No. 05-70413 KR) filed an initial claim
2 with the Labor Commissioner's Office on August 3, 2017 against Defendants. The Complaint
3 alleges that he is owed the following for the period of September 20, 2013 to November 30,
4 2014 for: (1) unpaid wages, claiming \$4,803.00; (2) unlawful deductions, claiming \$192,696.34;
5 (3) expenses, claiming \$12,146.56; (4) meal period premiums, claiming \$16,694.61; (5) rest
6 period premiums, claiming \$16,694.61; and (6) wages for rest periods taken during hours
7 worked earning a piece-rate, claiming \$1,185.61; (7) liquidated damages in an amount to be
8 determined; (8) additional wages pursuant to Labor Code Section 203 as a penalty amount to
9 be determined; and (9) attorney's fees to be determined.

10 Plaintiff Julio Menjibar (Case No. 05-71168 KR) filed an initial claim with the Labor
11 Commissioner's Office on October 20, 2017 against Defendants. The Complaint alleges that
12 he is owed the following for the period of September 20, 2013 to November 20, 2017 for: (1)
13 non-production work while earning a piece rate, claiming \$2,079.00; (2) unlawful deductions,
14 claiming \$126.00; (3) expenses, claiming \$5,000.00; (4) meal period premiums, claiming
15 \$1,791.97; (5) rest period premiums, claiming \$1,791.97; and (6) wages for rest periods taken
16 during hours worked earning a piece-rate, claiming \$677.55; (7) liquidated damages in an
17 amount to be determined; and (8) additional wages pursuant to Labor Code Section 203 as a
18 penalty amount to be determined.

19 Plaintiff Angel Garcia (Case No. 05-71167 KR) filed an initial claim with the Labor
20 Commissioner's Office on October 20, 2017 against Defendants. The Complaint alleges that
21 he is owed the following for the period of April 17, 2017 to up and through the date of the
22 hearing for: (1) non-production work while earning a piece rate, claiming \$2,803.50; (2)
23 unlawful deductions, claiming \$241.00; (3) expenses, claiming \$6,982.21; (4) meal period
24 premiums, claiming \$3,052.05; (5) rest period premiums, claiming \$3,052.05; and (6) wages for
25 rest periods taken during hours worked earning a piece-rate, claiming \$677.56; (7) liquidated
26 damages in an amount to be determined; and (8) additional wages pursuant to Labor Code
27 Section 203 as a penalty amount to be determined.

1 Plaintiff Manuel F. Beleton Sagastume (Case No. 05-70411 KR) filed an initial claim
2 with the Labor Commissioner's Office on August 3, 2017 against Defendants. The Complaint
3 alleges that he is owed the following for the period of September 20, 2013 to December 15,
4 2016 for: (1) unpaid wages, claiming \$3,437.00; (2) unlawful deductions, claiming \$102,876.38;
5 (3) expenses, claiming \$29,697.73; (4) meal period premiums, claiming \$10,888.48; (5) rest
6 period premiums, claiming \$10,888.48; and (6) wages for rest periods taken during hours
7 worked earning a piece-rate, claiming \$2,949.52; (7) liquidated damages in an amount to be
8 determined; (8) additional wages pursuant to Labor Code Section 203 as a penalty amount to
9 be determined; and (9) attorney's fees to be determined.

10 Plaintiff Edwin Garcia (Case No. 05-70414 KR) filed an initial claim with the Labor
11 Commissioner's Office on August 3, 2017 against Defendants. The Complaint alleges that he
12 is owed the following for the period of September 20, 2013 to December 31, 2015 for: (1)
13 unpaid wages, claiming \$2,998.00; (2) unlawful deductions, claiming \$83,805.84; (3) expenses,
14 claiming \$15,046.76; (4) meal period premiums, claiming \$7,347.64; (5) rest period premiums,
15 claiming \$7,347.64; and (6) wages for rest periods taken during hours worked earning a piece-
16 rate, claiming \$1,253.02; (7) liquidated damages in an amount to be determined; (8) additional
17 wages pursuant to Labor Code Section 203 as a penalty amount to be determined; and (9)
18 attorney's fees to be determined.

19 Plaintiff Ramon Perez Reyes (Case No. 05-71170 KR) filed an initial claim with the
20 Labor Commissioner's Office on October 20, 2017 against Defendants. The Complaint alleges
21 that he is owed the following for the period of October 20, 2013 to June 1, 2016 for: (1) non-
22 production work while earning a piece rate, claiming \$15,642.00; (2) unlawful deductions,
23 claiming \$31,019.44; (3) expenses, claiming \$71,299.23; (4) meal period premiums, claiming
24 \$22,290.56; (5) rest period premiums, claiming \$22,290.56; and (6) wages for rest periods taken
25 during hours worked earning a piece-rate, claiming \$2,122.06; (7) liquidated damages in an
26 amount to be determined; and (8) additional wages pursuant to Labor Code Section 203 as a
27 penalty amount to be determined.

1 Plaintiff Jesus Ramos (Case No. 05-71172 KR) filed an initial claim with the Labor
2 Commissioner's Office on October 20, 2017 against Defendants. The Amended Complaint
3 alleges that he is owed the following for the period of October 20, 2013 to April 16, 2018 for:
4 (1) non-production work while earning a piece rate, claiming \$31,926.00; (2) unlawful
5 deductions, claiming \$142,263.11; (3) expenses, claiming \$68,946.35; (4) meal period
6 premiums, claiming \$48,032.13; (5) rest period premiums, claiming \$48,032.13; and (6) wages
7 for rest periods taken during hours worked earning a piece-rate, claiming \$3,304.11; (7)
8 liquidated damages in an amount to be determined; (8) additional wages pursuant to Labor
9 Code Section 203 as a penalty amount to be determined; and (9) attorney's fees to be
10 determined.

11 Plaintiff Ronald Rosales (Case No. 05-70412 KR) filed an initial claim with the Labor
12 Commissioner's Office on August 3, 2017 against Defendants. The Complaint alleges that he
13 is owed the following for the period of September 20, 2013 to up and through the date of the
14 hearing for: (1) unpaid wages, claiming \$16,893.00; (2) unlawful deductions, claiming
15 \$46,706.96; (3) expenses, claiming \$39,087.87; (4) meal period premiums, claiming \$25,354.43;
16 (5) rest period premiums, claiming \$25,354.43; and (6) wages for rest periods taken during
17 hours worked earning a piece-rate, claiming \$3,809.92; (7) liquidated damages in an amount
18 to be determined; (8) additional wages pursuant to Labor Code Section 203 as a penalty
19 amount to be determined; and (9) attorney's fees to be determined.

20 21 FINDINGS OF FACT

22 A. Plaintiff Luis Santiago Kina

23 Plaintiff Luis Santiago Kina ("Plaintiff Kina") performed personal services for
24 Defendant California Multimodal, LLC, a California Limited Liability Company dba CMI
25 (hereinafter "Defendant CMI") as a truck driver in the County of Los Angeles, California
26 from June 1, 2010 to April 11, 2017. Plaintiff Kina testified that he worked an average of 12
27 hours per day, five (5) days per week, at a piece rate per load.

1 Defendant CMI paid Plaintiff Kina weekly and provided a settlement statement that
2 served as a detailed wage statement. According to proof, Plaintiff Kina earned \$8,178.33 over
3 the period of 20 workdays during the last four pay periods in March 2017, equivalent to
4 \$408.92 daily (Exhibit 2).

5 Plaintiff Kina testified that he usually reported to work around 3:00PM, and wrote
6 down his name on the waiting list. Plaintiff Kina waited between two (2) to three (3) hours
7 before getting dispatched. Defendant CMI dispatched drivers on a first come first serve
8 basis, depending on what time the drivers reported to work. Plaintiff Kina worked during
9 the night shift.

10 Plaintiff Kina waited at Defendant CMI company yard before getting dispatched, and
11 could not leave the room. If Plaintiff Kina was not physically at the yard when his name was
12 called by the dispatcher, he would not get work.

13 Plaintiff Kina received load assignments from the dispatcher through hand tickets.
14 The printed hand tickets included the driver number, client name, and load information at
15 the port. Plaintiff Kina received hot loads, meaning that the loads had to be pulled out before
16 the end of the day. If Plaintiff Kina failed to pull the load within the same day, Plaintiff Kina
17 had to pay for the penalties that the clients charged to Defendant CMI.

18 Plaintiff Kina performed pre-trip inspection on the truck, which took him
19 approximately 20 to 30 minutes per day.

20 Plaintiff Kina identified Defendant CMI's name to enter the port. Plaintiff Kina picked
21 up the load, delivered to the customer. After the delivery, Plaintiff Kina picked up an empty
22 container and returned to the port. Plaintiff contacted the dispatcher to get more work
23 assigned or returned back to Defendant CMI's yard to see if he would receive more work.

24 Plaintiff Kina could rarely refuse the work assigned from the dispatcher. He refused
25 his assignments occasionally, and noticed that his work assignment was reduced the next
26 day. Plaintiff Kina felt pressured to complete as many assignments as possible per day.

27 Plaintiff Kina had to complete a log book and a manifest to have a record of what he

1 did. The log books included the starting time after he was dispatched, time he left the
2 company yard, time spent driving, time he arrived at the client yard. Plaintiff Kina filled out
3 one manifest per day. Plaintiff Kina waited in line to submit the manifest to the dispatcher
4 and have them approved. On average, he spent 2 hours to complete and turn in the manifest
5 per day. Plaintiff Kina turned in the manifest while waiting to be dispatched.

6 Plaintiff Kina could not drive for other companies. The dispatcher told him not to
7 drive for other companies.

8 Plaintiff Kina obtained his 2009 freightliner truck in 2013 through Defendant CMI.
9 Plaintiff Kina's supervisors, Israel and Oscar, offered Plaintiff the truck. Plaintiff Kina paid
10 monthly lease payments in the amount of \$1,348.00 from 2013 to 2017, and paid off the
11 remaining balance of the truck at the end of the lease in the amount of \$15,000.00. Plaintiff
12 Kina currently owns the truck. Plaintiff Kina was not given the opportunity to choose the
13 truck.

14 According to Plaintiff Kina's evidence, Defendant CMI deducted the following for
15 fuel, physical damage, materials, supplies and services, advance and parking: (1) a total of
16 \$10,140.58 in 2013; (2) a total of \$32,873.24 in 2014; (3) a total of \$23,010.77 in 2015; (4) a total
17 of \$13,087.63 in 2016; and (5) a total of \$4,438.31 in 2017 (Exhibit 2).

18 Plaintiff Kina understands that he received fuel surcharge from Defendant CMI as an
19 incentive for his diesel. Plaintiff Kina did not know how much he would get paid per load
20 until he saw his settlement statement.

21 Plaintiff Kina claims reimbursement of expenses incurred. A detailed review of the
22 receipts submitted into evidence show that his fuel, DMV payments, insurance and
23 maintenance expenses during the claim period were \$2,159.09 in 2013, \$11,244.29 in 2014,
24 \$8,604.00 in 2015, \$5,853.18 in 2016, and \$7,386.14 in 2017 (Exhibit 3).

25 Plaintiff Kina was not provided with an uninterrupted meal period of 30 minutes.
26 Plaintiff Kina ate inside the truck while driving. The loads had delivery appointments and
27 Plaintiff Kina did not have time to sit and eat. Plaintiff Kina felt that there was time pressure

1 and had to keep driving. Many times, Plaintiff Kina he bought lunch from the lunch trucks,
2 and sometimes he waited to go back home to eat. Plaintiff Kina was not permitted to stop on
3 the road. Plaintiff Kina did not take two uninterrupted ten minute rest breaks. Plaintiff Kina
4 was paid per movement, and he felt pressure to keep driving and pulling loads.

5 Plaintiff Kina testified to the following under cross-examination. Plaintiff Kina learned
6 from his co-workers how to get to the port from the company yard. Plaintiff Kina could take
7 days off if he wanted. Plaintiff took a day off when he was sick or when his truck needed a
8 repair. He took vacation when the work was less busy, up to a month. Plaintiff Kina was
9 paid for waiting at the port, after the second hour. Plaintiff Kina signed the contract (Exhibit
10 A) once every three months. Plaintiff does not understand higher level of English, and did
11 not ask Defendant for translation when he signed the contract. Plaintiff Kina paid off the
12 truck in 2017. Plaintiff obtained the truck after he was terminated by Defendant CMI and he
13 drove for other companies. The truck registration is under Plaintiff Kina's name. Plaintiff
14 Kina has a Class A driver's license, which he obtained in 2006. Plaintiff Kina went to school
15 for three months, took the Class A driver's license exam in Spanish and English, and passed
16 the exam. Plaintiff Kina considers himself to be a professional driver, and understands that
17 driving a truck requires more skill and is more dangerous than driving a regular car.
18 Defendant CMI did not prohibit him from hiring drivers to drive his truck. To Plaintiff's
19 understanding, some drivers who had leased the trucks through Defendant CMI and drove
20 for other companies were fired. Plaintiff Kina leased the truck with an intention to purchase
21 the truck. Plaintiff Kina believed the truck lease to be an investment. Defendant CMI
22 required Plaintiff Kina to go through company's inspection. Plaintiff Kina was free to choose
23 the insurance company for this truck, the truck repair shops and the gas stations to fuel his
24 truck. Defendant CMI had a fuel pipe at the yard, Plaintiff Kina entered a code to fuel the
25 truck, and the expense was deducted from his wages. Plaintiff Kina also purchased fuel
26 outside the company yard, using his own money. Plaintiff Kina did not have to wear a
27 uniform. Plaintiff Kina wore an orange vest that was required by the company. No one

1 prohibited Plaintiff Kina from taking the meal of rest breaks.

2 **B. Plaintiff Hector Gustavo Gil**

3 Plaintiff Hector Gustavo Gil ("Plaintiff Gil") performed personal services for
4 Defendant CMI as a truck driver in the County of Los Angeles, California from June 1, 2009
5 to present. Plaintiff Gil testified that he worked an average of 14 hours per day, five (5) days
6 per week, at a piece rate per load.

7 Plaintiff Gil generally checked in at Defendant CMI's yard at 2:00PM, he waited for the
8 dispatch to call him, and then he was dispatched between 4:00PM and 5:00PM. Plaintiff Gil
9 testified that he had to check in early in order for him to get dispatched around 4:00PM, and
10 that drivers were generally dispatched in the order they arrived. When the dispatcher called
11 Plaintiff Gil, he was given a hand ticket, showing where to go. Starting approximately five
12 years ago, Defendant gave Plaintiff Gil the assignment through a phone application system.

13 Plaintiff Gil received assignments with appointment times, and he also received last
14 free day and hot cargo assignments. If Plaintiff Gil did not pull the loads on the day he
15 received the last free day or the hot cargo assignments, he would not get work the next day.
16 Plaintiff Gil was not paid more for pulling loads on hot cargos. When Plaintiff Gil received
17 work assignments with appointment times, he had to pull the loads within a certain period of
18 time.

19 After Plaintiff Gil was dispatched, he performed a pre-trip inspection on his truck,
20 which took approximately 20 to 30 minutes. After the inspection, he drove to the port,
21 picked up the container and delivered to Defendant CMI clients. After the delivery, Plaintiff
22 Gil had to call dispatch to see if he had another assignment, otherwise, he picked up an
23 empty from Defendant CMI's client yard, and returned back to the port. To Plaintiff Gil's
24 understanding, one of the plaintiffs, Ronald, was fired because Defendant CMI found out
25 that he drove for another company. It was Plaintiff Gil's understanding that he could not
26 drive for another company while employed by Defendant CMI.

27 Plaintiff Gil completed the daily log book, manifest, and submitted the documents,

1 along with the hand tickets, to dispatch. He submitted the documents daily at Defendant
2 CMI yard, while waiting to be dispatched.

3 Plaintiff Gil obtained the truck in 2009 through Defendant CMI and he made monthly
4 payments.

5 According to Plaintiff Gil's evidence, Defendant deducted the following for fuel,
6 physical damage, materials, supplies and services, advance, parking, and trip deductions: (1)
7 a total of \$17,746.15 in 2013; (2) a total of \$39,524.53 in 2014; and (3) a total of \$31,546.62 in
8 2015; (4) a total of \$18,295.33 in 2016; (5) a total of \$17,229.86 in 2017; and (6) a total of
9 \$4,829.39 in 2018 (Exhibit 5).

10 Plaintiff Gil understands that he received fuel surcharge from Defendant CMI as a
11 percentage of the diesel he paid. Defendant CMI deducted fuel charges from his paycheck
12 under the item "petro fuel." He had to input the driver number when pumping at the yard,
13 and he did not receive any receipt for fuel at the yard.

14 Plaintiff Gil received regular notices to change the truck oil (Exhibit 7) by Defendant
15 CMI. Hernan Colindres from the safety department told Plaintiff Gil that if did not change
16 his truck's oil by the scheduled date set by Defendant CMI, he was taken out of service and
17 could not work until he changed his oil.

18 Defendant CMI regularly scheduled a truck inspection, Plaintiff Gil had to take the
19 truck to Defendant CMI for periodic truck inspection. Defendant CMI scheduled the date
20 and time for Plaintiff Gil's truck inspection. If he missed the truck inspection, Hernan
21 Colindres would put him out of service.

22 Plaintiff Gil had to renew his contract every three months. Plaintiff Gil received a
23 notice to renew the contract. Plaintiff Gil was not allowed to work until he signed the
24 contract.

25 Plaintiff Gil claims reimbursement of expenses incurred. A detailed review of the
26 receipts submitted into evidence show that his fuel, DMV payments, insurance and
27 maintenance expenses during the claim period were \$3,775.03 in 2013, \$15,981.95 in 2014,

1 \$16,508.85 in 2015, \$9,340.74 in 2016, \$5,933.27 in 2017, and \$1,198.30 in 2018 (Exhibit 6).

2 Plaintiff Gil testified that he did not take uninterrupted meal breaks of at least 30
3 minutes. He had to continue to work to go in and out of the port, and be on time for
4 assignments with appointments. Approximately six (6) to eight (8) months ago, Defendant
5 CMI started implementing a system, whereby he has to enter a 30 minute meal break through
6 the electronic log book, otherwise, the phone application would not allow him to work.
7 However, he takes only one (1) 30 minute meal break per day.

8 Plaintiff Gil did not take an uninterrupted rest break. He felt time pressure to continue
9 working.

10 Plaintiff Gil testified to the following under cross-examination. He took vacation time
11 once a year and he notified Defendant CMI. Defendant CMI did not require him to notify
12 that he was taking a vacation. He uses the phone application, which has been effective for
13 about four (4) years, to sign in, to check the assignment's time, place and container number,
14 to enter the time he left from the port, and delivery time. He could reject an assignment but
15 he did not reject an assignment through the phone application. Defendant CMI implemented
16 the electronic log book five (5) months ago, and now he enters the time as he drives, he does
17 not spend time at the end of the day to fill out the log books. Plaintiff Gil still goes to
18 Defendant CMI's yard in the morning to check in and to wait to get dispatched. Plaintiff
19 could call in the morning to put down his name. However, about three (3) weeks ago, he
20 called dispatched to put his name down, then he came to the yard and waited, then he
21 noticed that all drivers were dispatched except for him. Plaintiff has a Class A license, he
22 went to school and took a test to get the license. Plaintiff Gil can understand basic English
23 and understands that the Class A license requires more skill and is more dangerous to drive a
24 truck than a regular car. Plaintiff was off duty on vacation from April 7, 2017 to April 25,
25 2017. Plaintiff Gil signed the independent contractor agreement every three (3) months. The
26 contract was in English and he asked Anna from the safety department if he could get a copy
27 of the contract in Spanish or if someone can explain in Spanish the terms of the contract. No

1 one explained to him the terms of the contract. He could ask an attorney but he did not.
2 Plaintiff Gil made truck lease payments on a monthly basis and he currently owns the truck.
3 The truck is registered under his name, and he can now leave Defendant CMI and take the
4 truck to drive for another company or hire a driver to drive his truck. It is his understanding
5 that he gets paid an incentive for "DR diesel CL and truck" by Defendant CMI as an incentive
6 for each load completed. Plaintiff Gil could decide where to take the truck for maintenance,
7 but he could not opt out of the oil change maintenance program (Exhibit 7). Plaintiff Gil did
8 not get instructions to take the ten (10) minute rest break.

9 **C. Plaintiff Salvador Felipe Carmona Ortiz**

10 Plaintiff Salvador Felipe Carmona Ortiz ("Plaintiff Ortiz") performed personal services
11 for Defendant CMI as a truck driver in the County of Los Angeles, California from March 1,
12 2011 to November 1, 2014. Plaintiff Ortiz testified that he worked an average of 14 hours per
13 day, five (5) days per week, at a piece rate per load. He quit around November 14, 2014.

14 Defendant CMI paid Plaintiff Ortiz weekly and provided a settlement statement that
15 served as a detailed wage statement. According to proof, Plaintiff Ortiz earned \$11,576.22
16 over the period of 20 workdays during the last four pay periods in October and November
17 2014, equivalent to \$578.81 daily (Exhibit 10).

18 Plaintiff Ortiz regularly reported to work between 7:00AM and 7:30AM. Plaintiff
19 Ortiz signed on the waiting list and waited to get dispatched. Plaintiff Ortiz was regularly
20 dispatched after waiting three (3) to four (4) hours. To his knowledge, there were
21 approximately 40 drivers on the wait list, and the dispatcher dispatched one driver at a time.
22 Plaintiff Ortiz tried to get in early to work to be high up on the list. Plaintiff Ortiz could not
23 leave the premise after he signed on. If he left and the dispatcher called his name, he would
24 lose his assignment.

25 When Plaintiff Ortiz was dispatched, he received a hand ticket with his driver number,
26 client information, and appointment times. He could not choose the work or reject any
27 assignment. If he refused an assignment, the dispatcher would not give him another

1 assignment until the next day. Plaintiff Ortiz witnessed that a co-worker, Marlon Ruiz, was
2 denied work for refusing an assignment. Plaintiff Ortiz received both "last free day" and
3 "hot cargo" assignments. According to Gustavo, a dispatcher, if Plaintiff Ortiz did not pull
4 the load on the day of the "last free day" cargo, he would be charged the fee that the port
5 charges Defendant CMI. Plaintiff Ortiz did not have the opportunity to negotiate the rate of
6 pay per load. Plaintiff Ortiz did not have the opportunity to obtain his own clients.

7 After Plaintiff Ortiz was dispatched, he performed a pre-trip inspection, which took
8 approximately 15 to 20 minutes, went to the port, picked up the load and delivered to the
9 client. After delivery, he called dispatch, picked up an empty from the client's yard and
10 returned to the port. Plaintiff Ortiz was generally assigned to deliver to clients in Visalia, CA,
11 and the round trip drive was approximately 12 to 14 hours per day.

12 Plaintiff Ortiz never drove for another company while employed by Defendant CMI.
13 On one occasion, Roberto Loya accused him of making movements for another company and
14 told Plaintiff Ortiz that he will start an investigation. Plaintiff Ortiz felt threatened even
15 though he was not driving for another company, and decided to quit.

16 Plaintiff Ortiz had to complete daily log books and manifests. Plaintiff Ortiz received
17 instructions from Defendant CMI not to enter more than 11 hours per day on the log sheet
18 because it was illegal to drive for more than 11 hours daily. His round trip to Visalia, CA
19 was longer than 11 hours. Hernan, the safety manager, and the secretaries knew that Plaintiff
20 Ortiz was driving more than 11 hours per day. Plaintiff Ortiz submitted the log sheets daily,
21 and submitted another sheet complimenting the hours actually worked. He also returned the
22 manifests daily and placed them in a box at the yard when he returned back from the port at
23 night.

24 Plaintiff Ortiz filled up the gas tank once per day, and it took him approximately 30
25 minutes.

26 Plaintiff Ortiz drove a 2010 freightliner truck he leased from Defendant CMI. Israel
27 Gonzalez offered Plaintiff Ortiz the truck for lease and helped him fill out the application for

1 financing at the bank. Plaintiff Ortiz did not have an opportunity to choose the truck, could
2 not use the truck for personal use, and could not drive for another company while employed
3 by Defendant CMI. Plaintiff Ortiz does not currently own the truck he leased through
4 Defendant CMI.

5 Plaintiff Ortiz signed the contract with Defendant CMI once every three (3) months. If
6 he did not sign the contract, Defendant CMI would put him out of service.

7 Plaintiff Ortiz used Defendant CMI's USDOT number and MC number. Plaintiff Ortiz
8 used his own CA number.

9 According to Plaintiff Ortiz's evidence, Defendant deducted the following for truck
10 payment, fuel, physical damage, materials, supplies and services, advance, parking and trip
11 deductions: (1) a total of \$33,296.22 in 2013; and (2) a total of \$157,375.24 in 2014 (Exhibit 10).

12 Plaintiff Ortiz received weekly settlement statements on Thursdays with his paychecks
13 and manifests. Plaintiff Ortiz did not learn about his rate per load until he received the
14 settlement statements. Plaintiff Ortiz understands that he was paid "fuel surcharge" by
15 Defendant CMI as a percentage of the estimated diesel cost. Plaintiff Ortiz understands that
16 he was paid "clean truck" from the port as a way to pay for this truck.

17 Plaintiff Ortiz 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 \$1,656.00 in 2013, and \$9,949.56 in 2014 (Exhibit 11).

20 Plaintiff Ortiz was required by the safety manager to have his truck inspected by
21 Defendant CMI every three (3) months. Plaintiff Ortiz incurred expenses for his truck's car
22 washes, Defendant CMI required him to keep his truck clean. Defendant CMI also required
23 him to take drug tests regularly and he paid for the drug tests.

24 Plaintiff Ortiz testified that he did not take 30 minutes for uninterrupted meal periods.
25 He ate in the truck while working and driving. He usually purchased his lunch at the lunch
26 truck inside the port. He had to keep an eye on the truck while purchasing his lunch, which
27 took approximately 20 minutes. He normally got off the truck to purchase a meal three (3)

1 times per day.

2 Plaintiff Ortiz testified that he could not take 10-minute rest breaks. He had to keep
3 moving because the assignments had appointment times and he felt time pressure to deliver
4 on time.

5 Plaintiff Ortiz testified to the following under cross-examination. He had to wait by
6 the bench in front of the dispatch office in order to be called and receive an assignment. He
7 had a cell phone and made personal phone calls while waiting to be dispatched. He pulled
8 one load per day. He could not call dispatch to write his name down on the wait list, and he
9 could not call a friend to write his name down on the wait list. He signed the contract in
10 English, and speaks little English. He did not ask for a translation of the contract. He did not
11 have an opportunity to negotiate the rate of pay per load. He received the rates as published
12 in the paychecks. He did not take any vacation. He obtained the truck on March 17, 2011
13 and began signing the independent contractor agreement on September 19, 2014. He did not
14 work for another company while employed by Defendant CMI and did not hire any driver to
15 drive his truck. He leased the truck with the intent to purchase the truck at some point, but
16 he does not currently own the truck. He signed the financing document for his truck with
17 Defendant CMI, he did not go to any bank to sign the document. He could decide where to
18 take the truck for repair and maintenance. He was not required to wear the Defendant CMI
19 uniform. Defendant CMI gave him the vest to enter the port, but he could wear any vest
20 without the Defendant CMI logo. He understands that the amount received for "dr diesel chl
21 truck incentive" under the settlement statement was an incentive to reduce the lease
22 payment, an incentive for taking a load in or pulling one out from the port. He took
23 advances from Defendant CMI to repair the truck and for personal uses. He did not sign a
24 written agreement with Defendant CMI on the advances he took. Defendant CMI had him
25 sign a receipt whenever he loaned the money, and he was deducted approximately \$300.00
26 per month from his wages on advances. He was not told not to take 30 minute meal breaks.
27 However, Defendant CMI gave him assignments with appointment times, and he had to

1 deliver at or before the appointment time. He was told by Defendant CMI not to take any
2 rest breaks.

3 **D. Plaintiff Julio Menjibar**

4 Plaintiff Julio Menjibar ("Plaintiff Menjibar") performed personal services for
5 Defendant CMI as a truck driver in the County of Los Angeles, California from January 1,
6 2001 to November 20, 2017. Plaintiff Menjibar testified that he worked an average of 10 hours
7 per day, five (5) days per week, at a piece rate per load. Plaintiff Menjibar was terminated on
8 November 20, 2017.

9 Defendant CMI paid Plaintiff Menjibar weekly and provided a settlement statement
10 that served as a detailed wage statement. According to proof, Plaintiff Menjibar earned
11 \$5,136.99 over the period of 20 workdays during the last four pay periods in September 2017,
12 equivalent to \$256.85 daily.

13 Plaintiff Menjibar settled his claim prior to April 17, 2017 with Defendant CMI through
14 a lawsuit. Therefore, all claims against Defendant CMI herein are after April 17, 2017.

15 Plaintiff Menjibar worked both day and night shifts. He generally checked in at
16 6:00AM. Sometimes, he was told to come back for the night shift.

17 After Plaintiff Menjibar checked with the dispatcher, he generally waited for four (4)
18 hours before he was dispatched. He had to physically be in the office to get dispatched or he
19 would lose his assignment. He preferred to work during the day due to his poor eyesight,
20 however, Defendant CMI told him to work night shifts as well and told him that it was the
21 only work available at the time. His schedule fluctuated based on the work available. When
22 he was told to come back for the night shift, he checked in again around 3:00PM to get
23 dispatched for the night shift.

24 Plaintiff generally received a hand ticket when he was dispatched, and after the first
25 delivery, he called dispatch to see if there was more work. When he received a second
26 assignment through phone, he wrote down the assignment information in the hand ticket
27 (Exhibit 13).

1 About two (2) years ago, Defendant CMI implemented a new phone application
2 "trinium" to dispatch drivers. However, Plaintiff Menjibar was still required to come to the
3 company yard to put down his name on the wait list and wait.

4 Plaintiff Menjibar received both "hot cargo" and "last free day" assignments. It is his
5 understanding that he was required to pull the loads from the port in an urgent manner
6 when received these assignments.

7 Plaintiff Menjibar could not negotiate the rate of pay and he has not seen any other
8 driver negotiate the rate of pay per load.

9 After he was dispatched, he went to the port, picked up the load and delivered to
10 Defendant CMI's clients. After delivery, he picked up an empty container from the client's
11 yard and delivered it back to the port. If he did not find an empty contained, he called the
12 dispatcher to see if they had more assignments. He could not obtain his own clients.

13 Plaintiff Menjibar filled up his truck's gas tank every day, and it took between half
14 hour to an hour to fill up.

15 Plaintiff Menjibar could not reject an assignment. The managers, Loya and Venegas,
16 showed him a list identifying as a list of drivers who refused assignments, and told him that
17 if he refuses an assignment he would not get work.

18 Plaintiff Menjibar turned in the manifests and the log books to the dispatcher the day
19 after he performed the work, while he was waiting to be dispatched. Sometimes the process
20 took between one (1) to two (2) hours to turn in. Seven (7) months he left Defendant CMI, the
21 company implemented an electronic log book, and he stopped turning in the log books in
22 person.

23 Plaintiff Menjibar leased the LNG 2012 truck from Defendant CMI. He completed
24 payments in 2017 and he currently owns the truck. Oscar Venegas offered him the option to
25 lease the truck, however, he did not give Plaintiff Menjibar an opportunity to choose the
26 truck. Plaintiff Menjibar preferred a diesel truck with a sleeper, but instead, Defendant CMI
27 gave him an LNG truck without a sleeper. Plaintiff Menjibar could not use the truck to drive

1 for another company. If he tried to drive the truck for another company, Robert Loya, office
2 manager, and Oscar Venegas would call him to the office and scold him.

3 Plaintiff Menjibar was terminated because he was late on signing the contract he was
4 supposed to sign every three (3) months. Oscar Venegas also told Plaintiff Menjibar that he
5 was not working enough.

6 According to Plaintiff Menjibar's evidence, Defendant deducted the following for
7 materials, supplies and services, and parking: (1) a total of \$270.00 in 2017 (Exhibit 14).

8 Plaintiff Menjibar understands that he was paid "fuel surcharge" by Defendant CMI as
9 an incentive to help pay for fuel. Loya and Venegas told him that he was paid "dr lng truck
10 incentive" as an incentive to help pay the truck or any repairs on the truck. Plaintiff Menjibar
11 was deducted \$7.00 per week for parking at the company's yard.

12 Plaintiff Menjibar did not take 30-minute uninterrupted meal periods. He was not
13 informed that he was allowed to take a 30 minute meal break. He brought food from home,
14 and he ate at the port, inside his truck.

15 Plaintiff Menjibar did not take two uninterrupted 10-minute rest breaks. He was paid
16 very little and felt pressure to continue moving to earn more money.

17 Plaintiff Menjibar testified to the following under cross-examination. He could set the
18 number of days he drove per week. He did not take any vacation. No one at Defendant CMI
19 told him how to get to the port from the company yard. Defendant CMI told him what shifts
20 to drive. When he arrived at the company yard in the morning, the dispatcher would tell
21 him whether he would work for the day shift or the night shift that day. If he worked for the
22 night shift, he had to come back at night. He called someone to put his name on the list
23 approximately five (5) times per week. According to the log books (Exhibit H), Plaintiff
24 Menjibar recorded 15 mintues for the pre-trip inspection. While he was waiting to get
25 dispatched, he could not take rest breaks and he could not make personal calls. He filled out
26 the log books at the end of the day, even after Defendant CMI switched over to electronic log
27 books. He was required to record both the electronic and the manual log books. He obtained

1 the truck that Defendant CMI assigned to him, after the company told him that the do not
2 want him to operate his old truck. He leased the truck through CMI and City National Bank.
3 He paid a balance of \$11,000 at the end of the lease and obtained the title for the truck. He
4 signed the contract every three (3) months. He could decide where to go for new tires,
5 repairs, oil change and to obtain insurance for the truck. He took the Class A license test in
6 Spanish. He understands little English. He did not understand the independent contractor
7 agreement (Exhibit G) when he signed it. He was required to wear a vest to the port, but did
8 not have to have Defendant CMI logo. Defendant CMI provided the vest. Defendant CMI
9 did not tell him he could not take a 30 minute meal break or a 10 minute rest break.

10 **E. Plaintiff Angel Garcia**

11 Plaintiff Angel Garcia ("Plaintiff A. Garcia") performed personal services for
12 Defendant CMI as a truck driver in the County of Los Angeles, California from April 17, 2017
13 to present. Plaintiff A. Garcia testified that he worked an average of 12 hours per day, five (5)
14 days per week, at a piece rate per load.

15 Plaintiff generally arrives at Defendant CMI company yard between 3:00PM and
16 3:30PM. The dispatcher arrives at the yard by 4:00PM and does not start calling the drivers
17 until 5:00PM. Plaintiff normally gets dispatched between 5:30PM and 6:00PM. He has to call
18 dispatched before 3:00PM so they can put him on the wait list. He normally makes the call
19 around 2:00PM or 2:30PM, and then goes to work. Dispatcher never gives work before
20 4:00PM, but he has to be present to submit the papers for work he performed the night
21 before. He needs to be at the yard to get dispatched. If the dispatcher does not see him, he
22 would not get dispatched. Plaintiff A. Garcia asked the dispatcher if he could receive the
23 assignment through phone in order to avoid coming to the company yard and checking in,
24 however, he never received an affirmative answer from the dispatcher. About five (5)
25 months ago, Defendant CMI implemented the phone application system called trinium. With
26 this new system, he could receive assignments through phone. However, Defendant CMI
27 still requires him to be in front of the office and wait to be dispatched in person.

1 Plaintiff A. Garcia was dispatched with appointment times set up in the application
2 order. He received "last free day" assignments, sometimes 30 minutes before the expiration
3 time, and he had to rush to the port to pull the load on time. If he was late to the port, then
4 the dispatcher complained that he was not able to pull the load.

5 Plaintiff A. Garcia never refused an assignment for fear that he would receive a late
6 assignment or would not receive an assignment at all the same day. He heard from his co-
7 workers that if he refuses work, Defendant CMI applies punishment by giving him a late
8 assignment.

9 Plaintiff A. Garcia did not have an option to negotiate the rate and he was not paid
10 more for pulling a "last free day" load.

11 After Plaintiff A. Garcia was dispatched, he performed a pre-trip inspection, which
12 took approximately 15 to 20 minutes, he left for the port terminal, obtained the load, and
13 went to the client yard. After unloading the container, he always called the dispatcher per
14 Defendant CMI's request. The dispatcher instructed him to look for an empty container to
15 bring back to the port or gave him another assignment.

16 Plaintiff A. Garcia entered the information in the electronic log book through his
17 phone. If he did not enter the information, Defendant CMI did not give him work the next
18 week. He filled out the manifest and the log book, and returned to the dispatcher.

19 When Plaintiff A. Garcia started working for Defendant CMI, he was approached by
20 Israel Gonzalez to return his old truck and lease a new truck through the government
21 program. Plaintiff A. Garcia applied to obtain a diesel, blue truck with a sleeper, and instead,
22 he received an LNG, white 2010 truck without sleeper. Plaintiff A. Garcia did not have an
23 opportunity to choose the truck. Plaintiff A. Garcia currently owns the same truck. Plaintiff
24 A. Garcia could not work for another company. He knows of other co-workers who were
25 fired for moving loads for other companies.

26 According to Plaintiff A. Garcia's evidence, Defendant deducted the following for
27 materials, supplies and services, and parking: (1) a total of \$504.00 in 2017; and (2) a total of

1 \$229.00 in 2018 (Exhibit 16).

2 Plaintiff A. Garcia claims reimbursement of expenses incurred. A detailed review of
3 the receipts submitted into evidence show that his fuel and maintenance expenses during the
4 claim period were \$14,908.94 in 2017, and \$10,639.52 in 2018 (Exhibit 17).

5 Prior to 2016, Plaintiff A. Garcia did not take 30-minute uninterrupted meal periods.
6 After 2016, Defendant CMI required him to take one 30-minute meal period per day at a
7 certain time, which Plaintiff A. Garcia had to enter in the new electronic log book through his
8 phone. Plaintiff A. Garcia was required to enter that he took the meal break at a certain time
9 in the log book even if he did not take the break or he took the break later in time.

10 Plaintiff A. Garcia did not take an uninterrupted 10-minute rest break. He felt
11 pressure to continue driving and did not have an opportunity to take a rest break. He was in
12 a rush to go to the port from the company yard around 7:00PM, to deliver the container to
13 the client, and back to the port before the port terminal closes at 2:30AM.

14 Plaintiff A. Garcia testified to the following under cross-examination. Plaintiff A.
15 Garcia mistakenly rejected an assignment on the hand ticket he received through his phone,
16 by pressing the "reject" button instead of "accept" button. Nelson Gonzalez from Defendant
17 CMI called Plaintiff A. Garcia the following day to ask him why he rejected an assignment.
18 Nelson Gonzalez told Plaintiff A. Garcia that if he refuses an assignment again, Defendant
19 CMI would put him out of service. Roberto Loyola, Defendant CMI's manager, told Plaintiff
20 A. Garcia that if he drives for another company, he runs the risk of being fired. Plaintiff A.
21 Garcia is receiving "fuel surcharge" by Defendant CMI as a payment for his fuel. Plaintiff A.
22 Garcia was told that if he does not enter the 30 minute meal break in the electronic log book,
23 he would be disciplined and would not get work the next day.

24 **F. Plaintiff Manuel F. Beleton Sagastume**

25 Plaintiff Manuel F. Beleton Sagastume ("Plaintiff Sagastume") performed personal
26 services for Defendant CMI as a truck driver in the County of Los Angeles, California from
27 January 1, 2005 to December 15, 2016. Plaintiff Sagastume testified that he worked an

1 average of 16 hours per day, five (5) days per week, at a piece rate per load. Plaintiff
2 Sagastume quit sometime in November 2016, and provided one week notice.

3 Defendant CMI paid Plaintiff Sagastume weekly and provided a settlement statement
4 that served as a detailed wage statement. According to proof, Plaintiff Sagastume earned
5 \$8,986.40 over the period of 20 workdays during the last four pay periods in October and
6 November 2015, equivalent to \$449.32 daily.

7 Plaintiff Sagastume was mostly assigned to deliver loads from the Defendant CMI
8 yard in Phoenix, AZ to the yard in Wilmington, CA. A round trip from Phoenix to
9 Wilmington took approximately 15 hours. Plaintiff Sagastume reported to the Wilmington
10 yard one or two times per week. When he reported to the yard in Wilmington, he arrived at
11 the yard around 7:00AM, put his name down on the wait list, waited to be dispatched and
12 was dispatched around 11:00AM. Plaintiff waited on average of four (4) hours at the yard
13 before he was dispatched. On occasion, he was not at the yard when the dispatcher called his
14 name, and he did not receive the assignment for the day. The wait list was visible to the
15 drivers and the dispatcher would cross off the name of the driver who was dispatched.
16 Plaintiff Sagastume had to be present to receive work.

17 When Plaintiff Sagastume was dispatched in Wilmington, he received a printed hand
18 ticket with his driver number and destination, appointment time, and whether the cargo was
19 a hot load. Then, he performed a pre-trip inspection on the truck, went to the port to pick up
20 the load, and delivered to the yard in Phoenix. Plaintiff Sagastume had to comply with the
21 time limits. Plaintiff Sagastume received special instructions from Israel and Roberto Loya
22 not to stop in the middle of the trip. His truck was being monitored and received constant
23 calls from the dispatcher to check on his location. Plaintiff Sagastume was told not to pull
24 over on the way because the truck or the container could be stolen. Plaintiff Sagastume was
25 expected to be in Phoenix within seven (7) hours after he left the yard in Wilmington. He
26 filled his truck once per day, and took him about 15 minutes.

27 Plaintiff Sagastume could not refuse the assignment. If he refused the work, he would

1 not get work for two (2) to three (3) days.

2 Plaintiff Sagastume could not negotiate the price of the load. Defendant CMI did not
3 publish the rates per load anywhere. He received the rate per load when he saw the
4 settlement statement. He did not have customers on his own. If the Defendant CMI
5 customer had a question, they would discuss it with dispatcher.

6 Plaintiff Sagastume was not allowed to drive for another company. Plaintiff
7 Sagastume signed the contract with Defendant CMI every three (3) months, and he was
8 reminded by Hernan Colindres in the safety department that he would be fired if he moves a
9 container from another company.

10 Plaintiff Sagastume turned in the log book once a week before he was paid. He was
11 warned multiple times by Hernan Colindres that he could not enter all the hours he drove on
12 the log book, and he was put out of service for doing so. He was instructed by Defendant
13 CMI not to enter more than certain number of hours per day driving.

14 Plaintiff Sagastume drove a 2010 columbia diesel freightliner with a sleeper, which he
15 obtained through Defendant CMI. Plaintiff Sagastume was told he had to lease a truck to
16 work for Defendant CMI, and Israel helped him apply for the clean truck program and took
17 him to the dealer to do the truck lease paperwork. Plaintiff Sagastume sold the truck in
18 December 2016 when he quit and he repaid the money he had borrowed from Defendant
19 CMI to pay the balance of the truck.

20 Every 90 days, Defendant CMI performed an inspection on his truck, and gave the
21 notification with his paycheck (Exhibit 22). Plaintiff Sagastume incorporated "B Trucking"
22 company, he filed with the Secretary of State in 2007. He had two (2) trucks registered under
23 this company name prior to working for Defendant CMI.

24 According to Plaintiff Sagastume's evidence, Defendant deducted the following for
25 truck payment, fuel, physical damage, advance, parking, trip deductions and maintenance
26 operating equipment: (1) a total of \$16,709.98 in 2014; and (2) a total of \$79,969.69 in 2015
27 (Exhibit 19).

1 Plaintiff Sagastume did not understand the meaning of "fuel surcharge" in the weekly
2 settlements he received. Plaintiff Sagastume understands that "dr diesel cln truck" is an
3 incentive he received for using a clean truck. Plaintiff Sagastume took advances to use for
4 repair and maintenance of the truck. Defendant CMI gave him a fuel card, and deducted the
5 fuel expenses from his paychecks. Defendant CMI charged him weekly parking fees.

6 Plaintiff Sagastume claims reimbursement of expenses incurred. A detailed review of
7 the receipts submitted into evidence show that his fuel, DMV payments, and truck repairs
8 during the claim period were \$5,114.98 in 2013, \$17,278.67 in 2014, and \$10,339.42 in 2015
9 (Exhibit 20).

10 Plaintiff Sagastume did not take 30-minute uninterrupted meal periods. He ordered
11 food to go, and ate while driving. He felt pressure to continue driving because he had to be
12 back in California to get work the next day. He was instructed not to stop on the way.

13 Plaintiff Sagastume did not take two (2) 10-minute uninterrupted rest periods. He
14 rarely took one (1) 10 to 15 minute break per day. He had to drive to Arizona, and head back
15 to California the same day. He was not allowed to stop on the way due to safety reasons.

16 Plaintiff Sagastume testified to the following under cross-examination. Plaintiff
17 Sagastume signed the contract (Exhibit J) every three (3) months. He received a fuel card,
18 and he was only allowed to go to certain gas stations that would take the fuel card. He chose
19 where to go for truck repairs and maintenance. Defendant CMI did not provide a uniform.
20 He cancelled the corporation "B Trucking" when he sold the truck in 2016. He did not haul
21 any load under "B Trucking" while working for Defendant CMI. The truck had the CMI logo
22 and had Defendant CMI's USDOT number. He could not move containers for other
23 companies. He took classes and passed an exam to obtain a Class A driver license. He
24 considers himself a professional driver and understands that driving a truck is more
25 complicated and requires special skill to drive a truck compared to a car. He did not know
26 the lease amount until he saw the amount deducted from his paycheck. Defendant CMI put
27 him out of service three (3) times for not following Defendant CMI's instruction to enter a

1 maximum of 11 hours of driving per day. His truck was stolen once in 2010 for leaving the
2 truck using the restroom on the way. The safety manager told drivers to drive in teams, if
3 possible, and not to stop on the way. He heard from Oscar that he could not stop while
4 driving for Defendant CMI.

5 **G. Plaintiff Edwin Garcia**

6 Plaintiff Edwin Garcia ("Plaintiff E. Garcia") performed personal services for
7 Defendant CMI as a truck driver in the County of Los Angeles, California from January 1,
8 2006 to December 31, 2015. Plaintiff E. Garcia testified that he worked an average of 12 hours
9 per day, five (5) days per week, at a piece rate per load. Plaintiff E. Garcia quit in December
10 2015.

11 Defendant CMI paid Plaintiff E. Garcia weekly and provided a settlement statement
12 that served as a detailed wage statement. According to proof, Plaintiff E. Garcia earned
13 \$8,818.70 over the period of 20 workdays during the last four pay periods in January and
14 February 2015, equivalent to \$576.71 daily.

15 Plaintiff E. Garcia worked both the day and night shifts.

16 Plaintiff E. Garcia generally reported to work at 5:00AM, put his name down on the
17 wait list, and was dispatched between 8:00AM and 9:00AM. A few times per month, he was
18 not dispatched after waiting for hours, and was told that there was no more work and to
19 come back the next day. Generally, the dispatcher assigned work to drivers as first come first
20 serve basis, but sometimes, they dispatched drivers who did not check in. He was assigned
21 to deliver to Visalia, CA, and there were approximately 25 to 30 drivers who signed in for
22 Visalia daily.

23 When Plaintiff E. Garcia was dispatched, he received a hand ticket with the driver
24 number, the work assignment and the appointment time. He also received "last free day"
25 cargo and "hot cargo", which are urgent deliveries.

26 Plaintiff E. Garcia could not refuse an assignment for fear of not receiving any other
27 work. If he refused the work, he would get local deliveries as a punishment. Sometimes, the

1 work was slow and the dispatcher told him there were no other alternatives if he refused the
2 work.

3 Plaintiff E. Garcia could not negotiate the price to be paid when he was being
4 dispatched. To his understanding, dispatchers did not have the authority to negotiate the
5 price per load.

6 After Plaintiff E. Garcia was dispatched, he performed a pre-trip inspection on the
7 truck, went to the port to pick up the load, and delivered the container to Visalia. The round
8 trip from the port to Visalia was approximately eight (8) hours, and he was not allowed to
9 stop on the way to Visalia for certain loads. After the delivery, he looked to see if he could
10 find an empty container to bring back to the port. He filled up his truck every day, and it
11 took approximately half an hour per day.

12 Plaintiff E. Garcia completed the manifests every day, and turned them in once per
13 week before he received his paycheck. He had to wait in line to turn in the manifests and get
14 it approved, this process took approximately 15 to 20 minutes.

15 Plaintiff E. Garcia obtained the 2010 diesel freightliner through Defendant CMI. He
16 met with Israel who told him he quailed for the truck lease, and went to the dealership with
17 15 other drivers to sign the lease. He did not have an opportunity to choose the truck. He
18 began paying for the truck lease in December 2009, and he is still making truck payments.
19 When he quit, he was given the option to take the truck with the condition of paying \$500.00
20 more, and now he is making direct payments to the Bank of the West. The truck is registered
21 under his name. While he was employed by Defendant CMI, he was not allowed to drive the
22 truck for other companies. Hernan told him that the truck had to be in good condition and
23 was not allowed to drive for other companies. He was reminded of this every three (3)
24 months when he was required to do an inspection through Defendant CMI. He used the
25 Defendant CMI's USDOT and MC numbers.

26 According to proof, Defendant deducted the following for fuel, physical damage,
27 materials, supplies and services, advance, parking and trip deduction: (1) a total of \$4,919.47

1 in 2013; (2) a total of \$54,410.31 in 2014; and (3) a total of \$11,727.374 in 2015. (Exhibit 25).

2 Plaintiff E. Garcia understands that was paid "fuel surcharge" as a discount that the
3 company gave him for diesel. He took advances from Defendant CMI for truck repairs. He
4 received a fuel card, and the fuel charge was deducted from his wages under "comdata fuel"
5 in the settlement statements.

6 Plaintiff E. Garcia claims reimbursement of expenses incurred. A detailed review of
7 the receipts submitted into evidence show that his fuel and maintenance expenses during the
8 claim period were \$6,682.15 in 2013, \$3,165.15 in 2014, and \$3,304.81 in 2015 (Exhibit 26).

9 Plaintiff E. Garcia testified that he only stopped once a day at most to get food. For
10 certain customers, he was not allowed to stop on the way to Visalia. When he could stop, he
11 took 20 to 30 minute meal break and he ate inside the truck.

12 Plaintiff E. Garcia did not take an uninterrupted 10 minute rest break. He had to get
13 back to the port as fast as possible before the port lunch time to grab an empty.

14 Plaintiff E. Garcia testified to the following under cross-examination. Plaintiff E.
15 Garcia was told by Defendant CMI that he could only sign up for the wait list for Visalia. He
16 was occasionally assigned to other locations. Whenever he stopped to fill up gas, he
17 inspected the truck, went to the restroom and left. He could not take a break because he had
18 to be back at the port before the port staff took a break. He holds a Class A license and he
19 considers himself a professional driver. He had to wear a vest to enter and exit the port but
20 no logo was required on it. He took vacation days and notified Defendant CMI. He did not
21 get instructions from Defendant CMI on what routes to take to deliver the loads. On average
22 of five (5) to six (6) times per month, Defendant CMI required Plaintiff E. Garcia to continue
23 driving without stopping on the way to Visalia while delivering the load to the client's yard.
24 Plaintiff E. Garcia stopped to get food on average of once per day when he was allowed to
25 stop on the way back to the port, and took two breaks per day when he was allowed to stop
26 both ways.

27 **H. Plaintiff Ramon Perez Reyes**

1 Plaintiff Ramon Perez Reyes ("Plaintiff Reyes") performed personal services for
2 Defendant CMI as a truck driver in the County of Los Angeles, California from June 1, 2011
3 to June 1, 2016. Plaintiff Reyes testified that he worked an average of 12 hours per day, five
4 (5) days per week, at a piece rate per load. Plaintiff Reyes was terminated in June 2016.

5 Defendant CMI paid Plaintiff Reyes weekly and provided a settlement statement that
6 served as a detailed wage statement. According to proof, Plaintiff Reyes earned \$9,153.87
7 over the period of 20 workdays during the last four pay periods from March 2016 to June
8 2016, equivalent to \$457.69 daily.

9 Plaintiff Reyes generally reported to work at 5:00AM, wrote down his name on the list,
10 and was dispatched on average three (3) to four (4) hours after he checked in. Sometimes, he
11 was not given work the same day after waiting for hours. To compensate for the lost work,
12 Defendant CMI gave him an assignment to Visalia the next day. He received hot loads.

13 Plaintiff Reyes could not reject an assignment, the dispatcher told him that no other
14 work was available. He could not negotiate the rate of pay per load.

15 When Plaintiff Reyes was dispatched, he received a printed hand ticket with
16 appointment times. Then, he performed a pre-trip inspection on the truck, went to the port,
17 picked up the load and delivered to Defendant CMI's clients. After the delivery, he was
18 instructed by the dispatcher to unload the load, took an empty and returned back to the port.

19 Plaintiff Reyes was placed out of service for three (3) days by the safety manager
20 because he failed to follow Defendant CMI's instruction to bring the truck for service by the
21 deadline or was delayed in turning in the mileage books.

22 Plaintiff Reyes filled out the log books and manifests every week. Defendant CMI
23 permitted Plaintiff Reyes to enter in the books only up to 11 hours per day, including the
24 hours he spent waiting at the port. If he was still at the port by the 11th hour, the dispatcher
25 required him to finish the job, but enter only 11 hours worked in the books. If he entered
26 more than 11 hours of driving per day in the books, he was punished by Oscar Venegas by
27 placing out of service for days. The dispatcher did not allow Plaintiff Reyes to cancel an

1 assignment. He had to deliver "hot load." If he failed to deliver a "hot load", Defendant
2 CMI deducted \$150.00 from his wages as a penalty.

3 Plaintiff Reyes leased a 2010 freightliner through Defendant CMI. He submitted an
4 application to obtain a truck and the bank approved the lease. He made truck payments for
5 six (6) years until he finally owned it. He currently owns the truck. He was not allowed to
6 drive for other companies while employed by Defendant CMI. He witnessed other drivers
7 being fired for driving for another company while employed by Defendant CMI, and took
8 away the trucks they leased. He drove the truck with Defendant CMI MC and USDOT
9 numbers.

10 According to proof, Defendant deducted the following for physical damage, materials,
11 supplies and service, advance, and parking: (1) a total of \$820.11 in 2013; (2) a total of
12 \$5,834.93 in 2014; (3) a total of \$647.72 in 2015; and (4) a total of \$558.45 in 2016 (Exhibit 29).

13 Plaintiff Reyes claims reimbursement of expenses incurred. A detailed review of the
14 receipts submitted into evidence show that his maintenance expenses during the claim period
15 were \$13,670.93 in 2013, and \$50,986.43 in 2014, \$46,534.82 in 2015, and \$44,993.32 in 2016
16 (Exhibit 30).

17 Plaintiff Reyes did not receive a company diesel card. He spent out-of-pocket
18 expenses on diesel, which he filled up every day or every other day. Defendant CMI
19 inspected Plaintiff Reyes' truck on a regular basis, and required him to replace parts or repair
20 the truck. He paid for yearly and monthly truck registration.

21 Plaintiff Reyes did not take 30 minutes for uninterrupted meal periods. He ate in the
22 truck while driving. He usually brought his food from home, or purchased his lunch at the
23 lunch truck inside the port or at the gas stations. Defendant CMI did not allow him to stop
24 on the way to Visalia, CA to deliver the loaded containers to clients. Juan and other
25 dispatchers told him not to stop.

26 Plaintiff Reyes testified that he could not take 10-minute rest breaks. On occasions, he
27 stopped by the restroom when he had an empty, and took a 10 minute break. However, he

1 only made emergency stops two (2) times per week, one time per day. He could not take
2 more breaks because he was in a rush to deliver the empty to the port from the client yard.

3 Plaintiff Reyes testified to the following under cross-examination. Plaintiff Reyes was
4 compensated for waiting time at the port, after the second hour. He tried to reject
5 assignments, however, Defendant CMI told him that those were the only assignments
6 available. He signed the independent contractor agreement (Exhibit L) every 90 days. He
7 had to sign the contract to continue driving. He took a class and passed the exam to obtain a
8 Class A driver's license. It requires special skills to drive a truck. He asked for vacation but
9 Defendant CMI refused, he did not take vacation days. Defendant CMI did not require him
10 to purchase a uniform. He could choose where to go for truck repairs and services. He chose
11 what route to take to enter the port and deliver to customers, however, Defendant CMI told
12 him where to go and gave him assignments. If he did not sign the contract, or change oil, or
13 submit expense receipts within the time frame set by Defendant CMI, he was put out of
14 service. He currently owns the truck, the title and registration are under his name. He filed
15 Form 1099 and he claimed all his truck expenses when he filed for a tax return. On average,
16 Defendant CMI told Plaintiff Reyes three times per week not to stop on the way to Visalia,
17 CA. Some places, he could not even stop for a bathroom break. He carried an empty bottle
18 in his truck for emergency purposes. When he stopped to fill up the tank, he went in the
19 store to get some water, took a small break, and inspected the truck and tires before he
20 continued with the trip.

21 **I. Plaintiff Jesus Ramos**

22 Plaintiff Jesus Ramos ("Plaintiff Ramos") performed personal services for Defendant
23 CMI as a truck driver in the County of Los Angeles, California from January 1, 2008 to April
24 16, 2018. Plaintiff Ramos testified that he worked an average of 12 hours per day, five (5)
25 days per week, at a piece rate per load. Plaintiff Ramos was terminated on April 16, 2018.

26 Defendant CMI paid Plaintiff Ramos weekly and provided a settlement statement that
27 served as a detailed wage statement. According to proof, Plaintiff Ramos earned \$8,029.11

1 over the period of 20 workdays during the last four pay periods from December 2017 to April
2 2018, equivalent to \$401.46 daily.

3 Plaintiff Ramos generally arrived to work between 3:30PM and 4:00PM, and was not
4 dispatched until 5:00PM or 6:00PM. There was a wait list that he had to fill out when he got
5 to work, and the earlier he put down his name, the more chances he would get to receive
6 work for that day. Plaintiff Ramos had to be present at the yard to receive work when the
7 called his name, otherwise, they would skip him from the list and assign to someone else.
8 Sometimes, Plaintiff Ramos called the dispatcher before he got in the office, and after he
9 reported to work, he waited to be dispatched. He performed a pre-trip inspection on the
10 truck before he put his name on the wait list.

11 When Plaintiff Ramos was dispatched, he received a hand ticket with information on
12 the assignment. Then, he went to the port to pull a load and deliver to Defendant CMI's
13 clients. After delivery, he called the dispatcher to get instructions. The dispatcher sent
14 Plaintiff Ramos to another yard to pick up an empty and return to the port, and if he did not
15 have an empty, he returned back to the company yard and was paid for bobtail. He
16 generally received two assignments per day. Some assignments had appointment times.
17 When he received an assignment with appointment times, he had to calculate the time he was
18 driving and make sure he was on time for the next delivery. He received "last free day"
19 cargo and he had to pull the load before the end of the day.

20 Plaintiff Ramos could not negotiate the price of the load. He drove exclusively for
21 Defendant CMI's clients and he did not have his own client.

22 Plaintiff Ramos tried to refuse an assignment to San Bernardino, CA, and the
23 dispatcher told him that if he refuses work, it would be his last assignment.

24 Plaintiff Ramos started using the electronic log book two (2) years ago. He had to fill
25 out a daily manifest, and turn in the manifests with the hand tickets to the dispatcher to get
26 paid every week.

27 Plaintiff Ramos leased an LNG truck through Defendant CMI. Israel, the manager,

1 told him to enter into the lease program, and he went to Cal Carriage, another company, and
2 then to a dealership with a dozen other Defendant CMI drivers to sign the papers. Plaintiff
3 Ramos did not have an opportunity to pick the type of truck he wanted. He wanted a diesel
4 truck with a sleeper and ended up getting an LNG truck without sleeper. To his
5 understanding, the LNG truck has less power and is more delicate than the diesel truck, and
6 is riskier to carry heavy cargos. He made truck payments in the amount of \$471.00 from May
7 2012 to May 2017. He was not allowed to negotiate the truck payment amount, and it was
8 deducted from his wages. Israel and Robert Loya, supervisors of Defendant CMI, told
9 Plaintiff Ramos that he was not allowed to drive for other companies while employed by
10 Defendant CMI.

11 Plaintiff Ramos received a notice on Defendant CMI company rules (Exhibit 33).
12 According to the rules, drivers were not allowed to park in front of the dispatch area, he
13 could be suspended for not following the rules. The notice (Exhibit 33) came stapled to his
14 paycheck.

15 Plaintiff Ramos received a notice on the anticipated oil change (Exhibit 34) for his
16 truck. According to the notice, he had to complete the oil change by April 30, 2015.
17 Defendant CMI kept track of drivers' truck mileages and sent the notification to change oil
18 when they were due. Plaintiff Ramos reported to Defendant CMI when he completed the oil
19 change.

20 Defendant CMI performed an inspection on Plaintiff Ramos' truck every 90 days.
21 Hernan Colindres performed the inspection, and gave Plaintiff Ramos a report on the result
22 of the inspection and the repairs needed on the truck. If Plaintiff Ramos did not repair the
23 truck within the time frame set by the safety department, Defendant CMI would put him out
24 of service.

25 According to proof, Defendant deducted the following for fuel, physical damage,
26 materials, supplies and services, and advance: (1) a total of \$8,070.36 in 2013; (2) a total of
27 \$38,629.35 in 2014; (3) a total of \$33,202.64 in 2015; (4) a total of \$24,105.23 in 2016, \$25,681.41

1 in 2017 and \$1,246.01 in 2018 (Exhibit 35).

2 Plaintiff Ramos claims reimbursement of expenses incurred. A detailed review of the
3 receipts submitted into evidence show that his maintenance expenses during the claim period
4 were \$3,965.05 in 2013, \$4,933.77 in 2014, \$8,133.43 in 2015, \$15,258.59 in 2016, \$12,927.48 in
5 2017 and \$1,285.02 in 2018 (Exhibit 36).

6 Plaintiff Ramos testified that he had to pay for a yearly road tax, and pay liability
7 insurance out-of-pocket.

8 Plaintiff Ramos testified that he was not provided with an uninterrupted meal period
9 of 30 minutes. The meal break was not mandatory. Plaintiff Ramos brought his lunch, and
10 ate inside the truck while waiting in line to get to the port.

11 Plaintiff Ramos testified that he could not take 10-minute rest breaks. He was either
12 inside the truck while waiting in line to get to the port, or driving. He had to be mindful of
13 the time limit and he felt pressure to continue driving to make it on time.

14 Plaintiff Ramos used Defendant CMI's USDOT and MC number. He used his own CA
15 number and paid for it.

16 Plaintiff Ramos was terminated by Oscar Venegas in April 2018. He was called into
17 the office and told he was fired. Plaintiff Ramos told Oscar he has been working for
18 Defendant CMI for the past eight (8) years, and never had any issues, and asked why he was
19 fired. Oscar told him he did not know the reason.

20 Plaintiff Ramos testified to the following under cross-examination. Plaintiff Ramos
21 understands that the truck payment deduction from his wages went to City National Bank.
22 Plaintiff Ramos understands that "fuel surcharge" is a percentage Defendant CMI gave him
23 for the load he transported to Ontario, CA. He generally received two (2) to three (3) loads
24 per day. After the second load, he could decide whether to call back the dispatcher to get
25 another assignment. He had to calculate the time to deliver the loads, if he was late to the
26 port, the port would not allow him to pull a load. Besides this time pressure, he was free to
27 decide his schedule and what time to report to work. He currently owns the truck. He

1 received the title after he paid off the balance. When he leased the truck, he understood to be
2 an investment to purchase the truck later on. He ate while waiting to enter the port. It was
3 his choice when to take the meal breaks. The problem was that it took too long to pull a load
4 from the port, and he wanted to finish the work and save time. Plaintiff Ramos always had
5 to call dispatch in the morning, if he didn't call, it meant he would not work that day.
6 Defendant CMI instructed him to call dispatch before he reported to work. Some drivers
7 who arrived to work after him would get assignments before him. The order on the wait list
8 at the yard was not being followed. Being present at yard was important to receive work.
9 When he signed the lease for this truck, he was told by Defendant CMI that he had to be
10 employed at least two (2) years before he could purchase the truck. If he left before two (2)
11 years, he could not take the truck with him.

12 **J. Plaintiff Ronald Rosales**

13 Plaintiff Ronald Rosales ("Plaintiff Rosales") performed personal services for
14 Defendant CMI as a truck driver in the County of Los Angeles, California from August 1,
15 1996 to present. Plaintiff Rosales testified that he worked an average of 12 hours per day, six
16 (6) days per week, at a piece rate per load.

17 Plaintiff Rosales generally reported to work between 7:15AM and 7:30AM. Plaintiff
18 Rosales wrote his name down on the waiting list, and waited at the yard to get dispatched.
19 He was generally dispatched between 8:00AM and 8:30AM. On occasions, he called the
20 dispatcher the night before to put his name down, and reported to work the next day. Israel
21 Gonzalez, the dispatch supervisor, told him to call the night before.

22 Plaintiff Rosales received hand tickets when he was dispatched. When he finished his
23 first delivery, he called back the dispatcher and received another assignment. Plaintiff
24 Rosales wrote the information on the hand ticket when he received the second assignment.

25 Plaintiff Rosales received assignments with appointment times and "last free day
26 cargo." Plaintiff Rosales could refuse an assignment, however, Plaintiff was punished for
27 trying to reject an assignment. When he refused an assignment, the dispatcher gave him a

1 mediocre job the next day.

2 Plaintiff Rosales could not negotiate the price of the load. Defendant set the price for
3 loads and he could not ask for more per load.

4 Plaintiff Rosales performed a pre-trip inspection after he was dispatched. Then, he
5 went to the port to pick up a load, and delivered the load to Defendant client's yard. After
6 delivery, he picked up an empty at the client's yard or another yard that the dispatcher
7 assigned to him, and brought it back to the port terminal. After delivery, he called the
8 dispatcher to see if there was more work. He generally delivered to Visalia, CA or Fresno,
9 CA.

10 Plaintiff Rosales filled out the manifests and turned them in to dispatched every one
11 (1) to two (2) days. Recently, Defendant implemented a phone system to enter the log book,
12 so he stopped turning in the log books.

13 Plaintiff Rosales filled up the tank two (2) times per week, and it took him
14 approximately 30 minutes to fill up the tank.

15 Plaintiff Rosales drove a 2010 freightliner. Defendant CMI informed Plaintiff Rosales
16 of the government program to return his old truck and lease a new truck. Plaintiff Rosales
17 did not choose the truck. Defendant CMI sent him to a lot with other drivers, then to the
18 dealer to get the truck. Plaintiff Rosales signed the truck lease with a bank, and Defendant
19 CMI made deductions for truck payment from his paychecks. Defendant CMI decided how
20 much to deduct for truck payments. Plaintiff Rosales now owns the truck. He completed the
21 truck payment for five (5) years, and at the end of the fifth year, he paid off the balance.
22 Plaintiff Rosales has his own insurance.

23 Plaintiff Rosales could not work for another company while employed by Defendant
24 CMI. Plaintiff Rosales witnessed Israel Gonzalez taking the truck from a driver for driving
25 for another company. Plaintiff Rosales went to help a friend one day, and he pulled a load
26 from the port. Robert Loya saw him pulling a load that was not Defendant CMI's load and
27 fired Plaintiff Rosales in November 2017.

1 According to proof, Defendant deducted the following for fuel, materials, supplies and
2 services, and parking: (1) a total of \$2,198.00 in 2013; (2) a total of \$ 9,241.47 in 2014; (3) a total
3 of \$6,599.70 in 2015; (4) a total of \$13,963.98 in 2016, and (5) a total of \$1,715.90 in 2017
4 (Exhibit 39).

5 Plaintiff Rosales claims reimbursement of expenses incurred. A detailed review of the
6 receipts submitted into evidence show that his maintenance expenses during the claim period
7 were \$5,762.20 in 2013, \$14,170.00 in 2014, \$2,152.00 in 2015, \$10,830.65 in 2016, and \$19,301.18
8 in 2017 (Exhibit 40).

9 Plaintiff Rosales testified he understands that "fuel surcharge" is an incentive he
10 receives for fuel. Plaintiff Rosales did not take advances from Defendant CMI for personal
11 use. Plaintiff Rosales used the company fuel card to pump gas at designated gas stations.

12 Plaintiff Rosales testified that he did not take an uninterrupted 30-minute lunch break.
13 Plaintiff Rosales took little breaks to eat when he arrived at Defendant CMI's client yard.
14 Plaintiff Rosales did not make stops on the way to deliver the loads. Defendant CMI
15 reminded Plaintiff Rosales that it was dangerous to stop on the way.

16 Plaintiff Rosales took one break when he was waiting in the truck to enter the port,
17 when he arrived at the port, or when he was waiting to enter the client's yard. He Took an
18 average of one (1) rest break per day, and he did not take two (2) rest breaks. He felt time
19 pressure to continue driving, to get to the client's yard or get to the port on time.

20 Plaintiff Rosales drove the truck with Defendant CMI's USDOT number and MC
21 numbers.

22 Plaintiff Rosales testified to the following under cross-examination. Plaintiff Rosales
23 paid a balance of \$10,000.00 in March 2015 to obtain the truck's title. Plaintiff Rosales was
24 waiting to received work at the yard, and he did not have a free time. Plaintiff Rosales was
25 able to make phone calls, and could occasionally buy breakfast at the yard. He made short
26 stops on his way to Fresno, CA to use the restroom. He could not leave the truck unattended
27 for long. He holds a Class A license, he went to school and passed an exam. He took rest

1 breaks inside the truck. Plaintiff Rosales signed the independent contractor agreement
2 (Exhibit M) every three (3) months. Defendant CMI required Plaintiff Rosales to sign the
3 agreement to continue receiving work. Plaintiff Rosales had his own CA number but he gave
4 up three (3) years ago. Plaintiff Rosales did not do business with another company besides
5 Defendant CMI under that CA number. Plaintiff Rosales had the option to make payments
6 directly to the bank or get deductions from his paycheck.

7 **K. Common Testimony**

8 In addition to the facts above, Plaintiffs testified to the following:

- 9 • Defendant CMI determined the rates paid to Plaintiffs. Plaintiffs could not
10 negotiate the rates. Plaintiffs could not ask for more pay for loads. The hand
11 tickets did not show the rate per load. Plaintiffs learned their load rates when they
12 received the settlement statements.
- 13 • Plaintiffs did not work for other companies during their claim periods.
- 14 • Plaintiffs testified that Defendant CMI told them they could not use the trucks for
15 other companies.
- 16 • Customers: Defendant CMI obtained the customers. Plaintiffs did not have their
17 own clients, and could not obtain their own clients.
- 18 • Plaintiffs could not drive for other companies. All drivers knew they would be
19 disciplined if they drove for other companies.
- 20 • Defendant CMI's dispatchers assigned work to Plaintiffs. Plaintiffs reported to
21 work, received assignments from dispatchers, and checked in with dispatch every
22 time they finished the deliveries.

23 ■ Drivers drove the trucks to the port, passed through the speaker, someone at the
24 speaker asked them the name of company, the container number and the load, they
25 identified themselves as drivers of Defendant CMI. Plaintiffs could not enter the
26 port without identifying the company name. After Plaintiffs entered the port, they
27 tried to find the chassis, obtained the container, went through the port's mechanics

1 inspection, and exited through the out-gate to go to Defendant CMI client's yard.

- 2 • Class A license: Plaintiffs went to school and took an exam to obtain Class A
- 3 driver's license. Plaintiffs believe that driving a truck requires more skill and is
- 4 more dangerous than driving a regular car. Plaintiffs consider themselves to be
- 5 professional drivers.
- 6 • Parking: Plaintiffs parked their trucks at Defendant CMI's yard.
- 7 • Placard: The trucks had placards on them with Defendant CMI's logo, MC
- 8 number, and USDOT numbers. Defendant CMI also paid for Plaintiffs' CA
- 9 numbers, with the exception of Plaintiff Gil and Plaintiff Ortiz.
- 10 • Defendant CMI did not have a meal and rest break policy. No one told Plaintiffs
- 11 they could or could not take 30-minute meal breaks or 10-minute rest breaks.

12 **L. Plaintiffs' Records**

13 Plaintiffs' Representative, Jean Choi, submitted the following documents as exhibits:

- 14 • Plaintiffs' Statute of Limitations Brief – Exhibit 41
- 15 • Plaintiffs' Closing Brief – Exhibit 42

16 Plaintiffs' Representative, Jean Choi, stipulated that his clients would not be pursuing
17 claims against Defendants Robert A. Curry, an individual and Oscar Venegas, an individual.

18 **M. Defendants' Records**

19 Defendants' representative confirmed that Defendant CM2931, LLC, a California
20 Limited Liability Company dba CMI, was formerly known as Defendant CMI, and they are
21 essentially the same companies.

22 John H. Haney and Samuel Stone, attorneys representing Defendants, submitted the
23 following documents as exhibits:

- 24 • Luis Santiago Kina, Independent Contractor Agreement – Exhibit A
- 25 • Luis Santiago Kina, driver log book – Exhibit B
- 26 • Hector Gustavo Gil, Independent Contractor Agreement – Exhibit C
- 27 • Hector Gustavo Gil, driver log book – Exhibit D

- Salvador Felipe Carmona Ortiz, Independent Contractor Agreement – Exhibit E
- Answers to Plaintiffs’ Complaints – Exhibits F-1 through F-10
- Julio Menjibar, Independent Contractor Agreement – Exhibit G
- Julio Menjibar, driver log book – Exhibit H
- Angel Garcia, driver log book – Exhibit I
- Manuel F. Beleton Sagastume, Independent Contractor Agreement – Exhibit J
- Edwin Garcia, Independent Contractor Agreement – Exhibit K
- Ramon Perez Reyes, Independent Contractor Agreement – Exhibit L-1
- Jesus Ramos, Independent Contractor Agreement – Exhibit L-2
- Ronald Rosales, Independent Contractor Agreement – Exhibit M
- Defendants’ Consolidated Closing Brief – Exhibit N

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.

1 **B. Statute of Limitations**

2 The statute of limitations for filing a claim based on a statutory right is three years
3 from the date the right to reimbursement occurred. (Code Civ. Proc., § 338.) The purpose of a
4 statute of limitations is to prevent the litigation of stale claims by providing defendants with
5 notice in time to prepare a fair defense on the merits, and to require plaintiffs to diligently
6 pursue their claims. See *Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d 1131, 1136 (9th
7 Cir.2001) (en banc). However, to “ensure that a limitations period is not used to bar a claim
8 unfairly,” courts developed the doctrine of equitable tolling. See *Hatfield v. Halifax PLC*, 564
9 F.3d 1177, 1185 (9th Cir. 2009).

10 Under California law, equitable tolling has been broadly applied to avoid the injustice
11 of dismissing what would otherwise be time-barred claims, where three factors are met: “(1)
12 timely notice to the defendant in the filing of the first claim; (2) lack of prejudice to the
13 defendant in gathering evidence to defend against the second claim; and (3) good faith and
14 reasonable conduct by the plaintiff in filing the second claim.” *Hatfield*, 564 F.3d at
15 1185 (citing *Collier v. City of Pasadena*, 142 Cal. App. 3d 917, 924, 191 Cal. Rptr. 681, 685 (1983)).

16 In the instant case, Plaintiffs contend that the statute of limitations should be equitable
17 tolled on September 20, 2016, the date that similarly-situated workers filed the *Martinez* class
18 action lawsuit against California Multimodal, LLC, alleging the same causes of action and
19 nearly identical facts. Plaintiffs argued that: (1) Defendants were timely notified of the claims
20 Plaintiffs bring because similarly-situated truck drivers at Defendant CMI filed the *Martinez*
21 class-action lawsuit against Defendant CMI on September 20, 2016 (See Declaration of Jean
22 Choi, Exhibit 41); (2) Defendant CMI is not prejudiced in gathering the evidence to defend
23 Plaintiffs’ claims because they allege the same causes of action, namely, illegal deductions,
24 unreimbursed business expenses, minimum wages, meal break premiums, rest break
25 premiums, and waiting time penalties; and (3) Plaintiffs acted reasonably and in good faith
26 by excluding themselves from the class action lawsuit (Exhibits 21, 23, 27, 32 and 38) and by
27 not substantially delaying the filing of claims against Defendant CMI in this forum

1 (Declaration of Jean Choi, Exhibit 41).

2 Defendants did not directly address Plaintiffs' equitable tolling argument and thus
3 have not explained how the filing in this forum did not "insure timely notice to [Defendant
4 CMI]" regarding Plaintiffs' claims, such that they were prevented from "assembl[ing] a
5 defense when the facts are still fresh." *Elkins v. Derby*, 12 Cal.3d at p. 410, 412 (1974).
6 Likewise, Defendants have not shown it would be prejudiced if Plaintiffs' claims were
7 equitably tolled with respect to wages, meal periods, rest periods, unlawful deductions, and
8 failure to reimburse for business expenses, among other violations, between September 20,
9 2016, the date the class action was filed, and August 3, 2017, the earliest date Plaintiffs filed
10 for action in this forum. Evidence shows that the conduct of the Plaintiffs' has been
11 reasonable and in good faith. The Superior Court approved the *Martinez* class action on April
12 17, 2017 and Plaintiffs filed their claims between August 3, 2017 and October 20, 2017
13 (Declaration of Jean Choi, Exhibit 41). Accordingly, equitable tolling is appropriate in this
14 case. Plaintiffs' claims for wages, unlawful deductions under Labor Code section 221, meal
15 period premiums under Industrial Welfare Commission, Order No. 9, section 11, rest period
16 premiums under Industrial Welfare Commission Order No. 9, section 12, unreimbursed
17 business expenses under Labor Code Section 2802 and liquidated damages under Labor Code
18 section 1194.2 are subject to a three-year statute of limitations back from the date the *Martinez*
19 class action lawsuit was filed, which was September 20, 2016, commencing from September
20 20, 2013.

21 **C. Independent Contractor or Employee**

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

1 employee-employer relationship.

2 The *Borello* court identified the following additional factors that must be considered:
3 (1) whether the person performing services is engaged in an occupation or business distinct
4 from that of the principal; (2) whether or not the work is part of the regular business of the
5 principal; (3) whether the principal or the worker supplies the instrumentalities, tools, and
6 the place for the person doing the work; (4) the alleged employee's investment in the
7 equipment or materials required by his or her task or his or her employment of helpers; (5)
8 whether the service rendered requires a special skill; (6) the kind of occupation, with
9 reference to whether, in the locality, the work is usually done under the direction of the
10 principal or by a specialist without supervision; (7) the alleged employee's opportunity for
11 profit or loss depending on his or her managerial skill; (8) the length of time for which the
12 services are to be performed; (9) the degree of permanence of the working relationship; (10)
13 the method of payment, whether by time or by the job; and (11) whether or not the parties
14 believe they are creating an employer-employee relationship. (*Borello, supra*, 48 Cal.3d at p.
15 351.)¹

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

23 ¹ The California Supreme Court has issued its decision in *Dynamex Operations W. v. Superior Court*
24 (2018) 4 Cal.5th 903, 912, reh'g denied (June 20, 2018). *Dynamex* sets forth a simplified alternative to
25 *Borello*, the "ABC" test, for determining whether a worker is an employee under the "suffer or permit"
26 prong of the IWC wage orders. However, in *Cal. Trucking Ass'n v. Su*, the court it made clear that
27 *Dynamex* did not purport to replace the *Borello* standard in every instance. See *Cal. Trucking Ass'n v.*
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 1. Control

2 By statute, the question of control remains highly pertinent to the distinction between
3 employees and independent contractors. (See Lab. Code, § 3353.) The statutory test of
4 control may be satisfied even where “complete control” or “control over details” is lacking
5 when an employer retains pervasive control over the operation as a whole, the worker’s
6 duties are an integral part of the operation, and the nature of the work makes detailed control
7 unnecessary. (*Yellow Cab Cooperative, Inc. v. Workers’ Compensation Insurance Appeals Board*
8 (1991) 226 Cal.App.3d 1288.)

9 The evidence shows Defendant CMI retained pervasive control over the drayage
10 operation as a whole. Defendant obtained the customers and the customers paid Defendant
11 CMI directly. Plaintiffs did not have the authority to negotiate prices with customers or with
12 Defendant CMI. Defendant CMI determined the rates paid to Plaintiffs, and did not inform
13 the price per load until Plaintiffs received their weekly settlement statements. Plaintiffs
14 drove exclusively for Defendant CMI, and were not authorized to work for any other
15 company. Plaintiffs did not have their own businesses independent of Defendant CMI
16 business. Defendant CMI implemented a dispatch system, whereby Plaintiffs were required
17 to check in, write down their names in the waiting list, wait for hours to get dispatched, and
18 complete the assignments within a specified time frame set by Defendant CMI. Moreover,
19 Plaintiffs could not refuse any assignments, most of them testified that they feared retaliation
20 if they refused an assignment. Plaintiffs testified that they had to call back dispatch after
21 completing an assignment, to get instructions on the next assignment. The only decision
22 Plaintiffs could make was to determine which route to take to deliver the loads. Defendant
23 CMI imposed mandatory truck inspections, and set deadline for oil changes to make sure the
24 drivers maintained their truck to Defendant CMI’s standards. Thus, Defendant CMI retained
25 all necessary control over its operations. (See *JKH Enterprises, Inc. v. Dept. of Industrial*
26 *Relations* (2006) 142 Cal.App.4th 1046, 1064 [“By obtaining the clients in need of the service
27 and providing the workers to conduct it, JKH retained all *necessary* control over the operation

1 as a whole.”].)

2 Plaintiffs’ duties of truck driving and transporting cargo are an integral part of
3 Defendant CMI’s motor carrier business of transporting commodities. Without truck drivers,
4 Defendant CMI’s trucking business would not exist. Based on the foregoing, Defendant CMI
5 exercised all necessary control over Plaintiffs’ work, and the statutory test of control was
6 satisfied.

7 2. Additional Factors

8 a. *Distinct Occupation or Work Part of Principal’s Regular Business*

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

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

17 Plaintiffs leased their trucks through Defendant CMI. Defendant CMI assigned the
18 trucks to Plaintiffs, regardless of Plaintiffs’ preferences on the trucks, and arranged the truck
19 leases through the dealer and the banks on behalf of Plaintiffs. Defendant CMI provided
20 insurance and deducted the costs from Plaintiffs’ weekly compensation. The trucks had
21 Defendant CMI’s placard on them, along with Defendant CMI’s MC and USDOT numbers.
22 Plaintiffs were required to check in at Defendant CMI’s yard in the morning to get
23 dispatched. Plaintiffs had to park the trucks at Defendant CMI’s yard. In light of the fact that
24 Defendant CMI supplied the trucks by arranging the truck leases and provided the place of
25 work, this factor weighs in Plaintiffs’ favor. (See *Ruiz v. Affinity Logistics Corp.* (9th Cir. 2014)
26 754 F.3d 1093, 1104 [where “Affinity supplied the drivers with the major tools of the job by
27 encouraging or requiring that the drivers obtain the tools from them through paid leasing

1 arrangements", this factor favored employee status.])

2 c. *Investment in Equipment or Materials*

3 Most Plaintiffs made an investment in the equipment used to transport commodities
4 for Defendant CMI's customers. Plaintiffs, with the exception of Plaintiff Carmona Ortiz,
5 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 every time they finished an assignment, and received
21 assignments with appointment times. Plaintiffs also received "hot cargo" and "last free day"
22 load assignments, which dispatchers told Plaintiffs they had to pull or deliver the loads on
23 the same day. Dispatchers could decide which assignments to give to a driver, regardless of
24 the check in time, and could punish a driver for trying to refuse an assignment, by giving a
25 less appealing work or no work at all. Defendant CMI required Plaintiffs to submit manifests
26 and daily logs on a daily basis.

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. Defendant
3 CMI controlled the work assignments, and Plaintiffs performed whatever work was assigned
4 to them each day. Plaintiffs could not refuse an assignment or negotiate the price of a load.
5 The rates set by Defendant CMI were published in the weekly settlement when Plaintiffs
6 were paid. Plaintiffs could not drive for another company while employed by Defendant
7 CMI. Plaintiffs did not have their own customers. Thus, Plaintiffs' opportunity to earn more
8 compensation was entirely dependent on what jobs Defendant CMI assigned and how much
9 Defendant CMI decided to pay for the jobs. Plaintiffs' own entrepreneurial skills and
10 judgment did not determine how much money they could make.

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

12 The longer the working relationship, or if it is for an indefinite period of time, the more
13 likely the existence of an employment relationship. Plaintiffs worked full-time for Defendant
14 CMI and regularly worked from ten (10) to twelve (12) hours per day, five (5) to six (6) days
15 per week. Plaintiffs were not allowed to work for another company while employed by
16 Defendant CMI. Plaintiffs worked anywhere from three (3) to 17 years for Defendant CMI.
17 The regularity of their work and length of time for which Plaintiffs performed services for
18 Defendant CMI are indicative of a permanent relationship that is commonly associated with
19 employment.

20 h. *Payment by Time or by Job*

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

26 i. *Parties' Belief*

27 Plaintiffs entered into independent contractor agreements and signed such agreements

every three (3) months. Even if the parties expressly agree in writing that an independent contractor relationship exists, the label that parties place on their employment relationship "is not dispositive and will be ignored if their actual conduct establishes a different relationship." (*Estrada, supra*, 154 Cal.App.4th at p. 10.) Plaintiffs generally believed they were being treated as employees rather than independent contractors. Plaintiffs were required to check in with the dispatcher in the morning, and had to wait until they were dispatched. Plaintiffs Gil and A. Garcia testified that even after Defendant CMI started sending assignments through the phone application system, dispatchers still required them to come in to the yard in the morning to put down their names and wait to be dispatched. Plaintiffs testified that they had to wait for hours at the yard to be dispatched, and could not leave the premises. If they left, the dispatchers would take them off the list and assign to the next person on the list. Defendant CMI dispatchers handed the drivers hand tickets with driver names and assignment information. Plaintiffs could not refuse an assignment. Plaintiffs could choose which route to take, but were not free to choose the end destination or the clients. Plaintiffs had to identify themselves as drivers for Defendant CMI to be able to enter the port terminal. Plaintiffs could not negotiate the rate of pay per load. Plaintiffs could not obtain their own customers, or drive for another company while employed by Defendant CMI. Plaintiffs had to maintain the trucks to CMI's standards and had to comply with the 90-day truck inspection, parking instructions and oil change deadlines set by Defendant CMI (Exhibits 7, 22, 33 and 34). Plaintiffs were paid on a weekly basis, and had to turn in their manifest and daily logs in order to get paid. Plaintiffs could not choose the type of truck they wanted to lease. Defendant CMI determined the type of trucks and the lease payment amounts. Defendant CMI deducted the truck lease payments from Plaintiffs' paychecks.

Further, independent contractor agreements can be and often amount to subterfuge to avoid paying payroll and income taxes as well as workers' compensation insurance liability. Whether a person who provides services is paid as an independent contractor without payroll deductions and with income reported through an IRS 1099 form, instead of a W-2

1 form, is irrelevant. "These are merely the legal consequences of an independent contractor
2 status not a means of proving it. An employer cannot change the status of an employee to
3 one of independent contractor by illegally requiring him to assume burdens which the law
4 imposes directly on the employer." (*Toyota Motor Sales v. Superior Court* (1990) 220
5 Cal.App.3d 864, 877.)

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

11 *j. Conclusion*

12 Taking into consideration all of the above factors, Defendant CMI has not met its
13 burden of proof on its affirmative defense that Plaintiffs were independent contractors.
14 Defendant CMI retained pervasive control over the operation as a whole, and Plaintiffs'
15 services were an integral part of Defendant CMI's business. Substantial evidence supports
16 the finding that Plaintiffs were functioning as employees rather than as true independent
17 contractors.

18 **D. Joint Employer**

19 It is undisputed that Plaintiffs performed work as drivers for Defendant CMI.
20 Plaintiffs' representative, Jean Choi, stipulated on the record that his clients would no longer
21 be pursuing claims against Defendants Robert A. Curry, an individual, and Oscar Venegas,
22 an individual. Accordingly, claims against Defendants Robert A. Curry and Oscar Venegas
23 are hereby dismissed.

24 Defendant CM2931, LLC a California Limited Liability Company dba CMI (hereinafter
25 "Defendant CM2931") was formerly known as Defendant CMI and is essentially the same
26 company as Defendant CMI. Therefore, Defendant CM2931 is liable for Plaintiffs' claims by
27 virtue of being a joint employer.

1 **E. Wages for Nonproduction Hours**

2 Labor Code section 226.2 requires employees who are compensated on a piece-rate
3 basis to be separately compensated for "other nonproductive time," which is defined as
4 "time under the employer's control, exclusive of rest and recovery periods, that is not
5 directly related to the activity being compensated on a piece-rate basis." (Lab. Code, § 226.2.)
6 Piece-rate wages for production work cannot be used to satisfy the employer's obligation to
7 pay for work not directly related to the production of pieces, and each hour of
8 nonproduction work must be separately compensated by an additional payment equal to or
9 exceeding the minimum wage. (*Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th
10 36.)

11 Defendants CMI and CM2931 paid Plaintiffs for work performed on a piece-rate basis.
12 Plaintiffs credibly testified that they were not paid for time spent waiting to get dispatched,
13 processing the daily logs and manifests, inspecting the trucks, and repairing the trucks.
14 Therefore, Plaintiffs must be separately compensated for these nonproduction hours.

15 According to proof, Plaintiff Kina worked a total of 865 days during the claim period
16 (Exhibit 2). Thus, Plaintiff Kina worked a total of 1,730 nonproduction hours (2 hours of
17 waiting time per day) during the claim period, for which he was not compensated.
18 **Accordingly, Plaintiff Kina is awarded \$15,840.00 in earned, but unpaid hourly wages for**
19 **nonproduction hours worked.**

20 According to proof, Plaintiff Gil worked a total of 1,125 days during the claim period
21 (Exhibit 5). Thus, Plaintiff Gil worked a total of 2,250 nonproduction hours (2 hours of
22 waiting time per day) during the claim period, for which he was not compensated.
23 **Accordingly, Plaintiff Gil is awarded \$21,350.00 in earned, but unpaid hourly wages for**
24 **nonproduction hours worked.**

25 According to proof, Plaintiff Ortiz worked a total of 250 days during the claim period
26 (Exhibit 10). Thus, Plaintiff Ortiz worked a total of 750 nonproduction hours (3 hours of
27 waiting time per day) during the claim period, for which he was not compensated.

1 Accordingly, Plaintiff Ortiz is awarded \$6,195.00 in earned, but unpaid hourly wages for
2 nonproduction hours worked.

3 According to proof, Plaintiff Menjibar worked a total of 120 days during the claim
4 period (Exhibit 14). Thus, Plaintiff Menjibar worked a total of 480 nonproduction hours (4
5 hours of waiting time per day) during the claim period, for which he was not compensated.
6 Accordingly, Plaintiff Menjibar is awarded \$5,040.00 in earned, but unpaid hourly wages
7 for nonproduction hours worked.

8 According to proof, Plaintiff A. Garcia worked a total of 235 days during the claim
9 period (Exhibit 16). Thus, Plaintiff A. Garcia worked a total of 470 nonproduction hours (2
10 hours of waiting time per day) during the claim period, for which he was not compensated.
11 Accordingly, Plaintiff A. Garcia is awarded \$5,025.00 in earned, but unpaid hourly wages
12 for nonproduction hours worked.

13 According to proof, Plaintiff Sagastume worked a total of 245 days during the claim
14 period (Exhibit 19). Thus, Plaintiff Sagastume worked a total of 980 nonproduction hours (4
15 hours of waiting time per day) hours during the claim period, for which he was not
16 compensated. Accordingly, Plaintiff Sagastume is awarded \$8,820.00 in earned, but
17 unpaid hourly wages for nonproduction hours worked.

18 According to proof, Plaintiff E. Garcia worked a total of 120 days during the claim
19 period (Exhibit 25). Thus, Plaintiff E. Garcia worked a total of 360 nonproduction hours (3
20 hours of waiting time per day) during the claim period, for which he was not compensated.
21 Accordingly, Plaintiff E. Garcia is awarded \$3,135.00 in earned, but unpaid hourly wages
22 for nonproduction hours worked.

23 According to proof, Plaintiff Reyes worked a total of 405 days during the claim period
24 (Exhibit 29). Thus, Plaintiff Reyes worked a total of 1,215 nonproduction hours (3 hours of
25 waiting time per day) during the claim period, for which he was not compensated.
26 Accordingly, Plaintiff Reyes is awarded \$10,605.00 in earned, but unpaid hourly wages for
27 nonproduction hours worked.

1 According to proof, Plaintiff Ramos worked a total of 1,095 days during the claim
2 period (Exhibit 35). Thus, Plaintiff Ramos worked a total of 1,642.5 nonproduction hours (1.5
3 hours of waiting time per day) during the claim period, for which he was not compensated.
4 **Accordingly, Plaintiff Ramos is awarded \$15,450.00 in earned, but unpaid hourly wages**
5 **for nonproduction hours worked.**

6 According to proof, Plaintiff Rosales worked a total of 978 days during the claim
7 period (Exhibit 39). Thus, Plaintiff Rosales worked a total of 978 nonproduction hours (1
8 hour of waiting time per day) during the claim period, for which he was not compensated.
9 **Accordingly, Plaintiff Rosales is awarded \$9,955.50 in earned, but unpaid hourly wages for**
10 **nonproduction hours worked.**

11 **F. Unlawful Deductions**

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

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

23 (Lab. Code, § 224.)

24 Defendants CMI and CM2931 made weekly deductions from Plaintiffs' settlements for
25 various truck related costs and business expenses incurred for Defendant CMI and CM2931's
26 benefit. These deductions do not fall within the narrow parameters of lawful deductions as
27 outlined in Labor Code section 224. Further, Labor Code section 2802 prohibits employers
from passing on the expenses related to their business to employees. Thus, Defendants CMI
and CM2931 must reimburse Plaintiffs for these business expenses that were deducted from

1 Plaintiffs' wages.

2 According to proof, Defendants CMI and CM2931 deducted \$126,283.82 from Plaintiff
3 Kina's compensation during the relevant claim period from 2013 through 2017 for fuel,
4 physical damage, materials, supplies and services, advance and parking (Exhibit 2).
5 Specifically, deductions amounted to \$10,140.58 in 2013, \$32,873.24 in 2014, \$23,010.77 in
6 2015, \$13,087.63 in 2016 and \$4,438.31 in 2017. **Accordingly, the evidence supports an award**
7 **of \$83,550.53 for unlawfully deducted wages.**

8 According to proof, Defendants CMI and CM2931 deducted \$167,337.87 from Plaintiff
9 Gil's compensation during the relevant claim period from 2013 through 2018 for fuel,
10 physical damage, materials, supplies and services, advance, parking and trip deductions
11 (Exhibit 5). Specifically, deductions amounted to \$17,746.15 in 2013, \$39,524.53 in 2014,
12 \$31,546.62 in 2015, \$18,295.33 in 2016, \$17,229.86 in 2017, and \$4,829.39 in 2018. **Accordingly,**
13 **the evidence supports an award of \$129,171.88 for unlawfully deducted wages.**

14 According to proof, Defendants CMI and CM2931 deducted \$190,671.46 from Plaintiff
15 Ortiz' compensation during the relevant claim period from 2013 through 2014 for truck, fuel,
16 physical damage, materials, supplies and services, advance, parking and trip deductions
17 (Exhibit 10) Specifically, deductions amounted to \$33,296.22 in 2013, and \$157,375.24 in 2014.
18 **Accordingly, the evidence supports an award of \$190,671.46 for unlawfully deducted**
19 **wages.**

20 According to proof, Defendants CMI and CM2931 deducted \$270.00 from Plaintiff
21 Menjibar's compensation during the relevant claim period (Exhibit 14). Specifically,
22 deductions amounted to \$270.00 in 2017. **Accordingly, the evidence supports an award of**
23 **\$270.00 for unlawfully deducted wages.**

24 According to proof, Defendants CMI and CM2931 deducted \$733.00 from Plaintiff A.
25 Garcia's compensation during the relevant claim period from 2017 through 2018 for
26 materials, supplies, and services, and parking (Exhibit 16). Specifically, deductions
27

1 amounted to \$504.00 in 2017, and \$229.00 in 2018. **Accordingly, the evidence supports an**
2 **award of \$733.00 for unlawfully deducted wages.**

3 According to proof, Defendants CMI and CM2931 deducted \$96,679.67 from Plaintiff
4 Sagastume's compensation during the relevant claim period from 2014 through 2015 for
5 truck, fuel, physical damage, advance, parking, trip deductions and maintenance operating
6 equipment (Exhibit 19). Specifically, deductions amounted to \$16,709.98 in 2014, and
7 \$79,969.69 in 2015. **Accordingly, the evidence supports an award of \$96,479.67 for**
8 **unlawfully deducted wages.**

9 According to proof, Defendants CMI and CM2931 deducted \$71,057.15 from Plaintiff
10 E. Garcia's compensation during the relevant claim period from 2013 through 2015 for fuel,
11 physical damage, materials, supplies and services, advance, parking, and trip deduction
12 (Exhibit 25). Specifically, deductions amounted to \$4,919.47 in 2013, \$54,410.31 in 2014 and
13 \$11,727.37 in 2015. **Accordingly, the evidence supports an award of \$71,057.15 for**
14 **unlawfully deducted wages.**

15 According to proof, Defendants CMI and CM2931 deducted \$7,861.21 from Plaintiff
16 Reyes' compensation during the relevant claim period from 2013 through 2016 for physical
17 damage, materials, supplies and services, advance and parking (Exhibit 29). Specifically,
18 deductions amounted to \$820.11 in 2013, \$5,834.93 in 2014, \$647.72 in 2015 and \$558.45 in
19 2016. **Accordingly, the evidence supports an award of \$7,861.21 for unlawfully deducted**
20 **wages.**

21 According to proof, Defendants CMI and CM2931 deducted \$130,935.00 from Plaintiff
22 Ramos' compensation during the relevant claim period from 2013 through 2018 for fuel,
23 physical damage, materials, supplies and services, and advance (Exhibit 36). Specifically,
24 deductions amounted to \$8,070.36 in 2013, \$38,629.35 in 2014, \$33,202.64 in 2015, \$24,105.23 in
25 2016, \$25,681.41 in 2017, and \$1,246.01 in 2018. **Accordingly, the evidence supports an award**
26 **of \$130,935.00 for unlawfully deducted wages.**

1 According to proof, Defendants CMI and CM2931 deducted \$33,719.05 from Plaintiff
2 Rosales' compensation during the relevant claim period from 2013 through 2017 for fuel,
3 materials, supplies and services, and parking (Exhibit 39). Specifically, deductions amounted
4 to \$2,198.00 in 2013, \$9,241.47 in 2014, \$6,599.70 in 2015, \$13,963.98 in 2016 and \$1,715.90 in
5 2017. **Accordingly, the evidence supports an award of \$33,719.05 for unlawfully deducted**
6 **wages.**

7 **G. Liquidated Damages**

8 Defendants CMI and CM2931 are subject to the requirements of Industrial Welfare
9 Commission Wage Order 9-2001 (the "Order"), which regulates the wages, hours, and
10 working conditions for the Transportation Industry.

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

12 Every employer shall pay to each employee wages not less than the
13 following: (1) Any employer who employs 26 or more employees shall pay
14 to each employee wages not less than the following: (a) Ten dollars and fifty
15 cents (\$10.50) per hour for all hours worked, effective January 1, 2017; and
16 (b) Eleven dollars (\$11.00) per hour for all hours worked, effective January
17 1, 2018; (2) Any employer who employs 25 or fewer employees shall pay to
18 each employee wages not less than the following: (a) Ten dollars (\$10.00)
per hour for all hours worked, effective January 1, 2016 through December
31, 2017; and (b) Ten dollars and fifty cents (\$10.50) per hour for all hours
worked, effective January 1, 2018.²

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

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

26 ² It should be noted, the minimum wage in California was eight dollars (\$8.00) per hour in 2013, increased to nine dollars
27 (\$9.00) per hour, effective of July 1, 2014, and ten dollars (\$10.00) per hour, effective January 1, 2016.

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

8 According to proof, Plaintiff Kina worked an average of 12 hours, 5 days per week. A
9 review of the evidence submitted (Exhibit 2) shows that weekly wages were sometimes less
10 than the equivalent of minimum wage for a workweek of 60 hours. In summary, Plaintiff
11 Kina was underpaid \$21,913.86 during the relevant claimed period. **Therefore, he is awarded**
12 **liquidated damages in the amount of \$21,913.86.**

13 According to proof, Plaintiff Gil worked an average of 14 hours, 5 days per week. A
14 review of the evidence submitted (Exhibit 5) shows that weekly wages were sometimes less
15 than the equivalent of minimum wage for a workweek of 70 hours. In summary, Plaintiff Gil
16 was underpaid \$27,219.13 during the relevant claimed period. **Therefore, he is awarded**
17 **liquidated damages in the amount of \$27,219.13.**

18 According to proof, Plaintiff Ortiz worked an average of 14 hours, 5 days per week. A
19 review of the evidence submitted (Exhibit 10) shows that weekly wages were sometimes less
20 than the equivalent of minimum wage for a workweek of 70 hours. In summary, Plaintiff
21 Ortiz was underpaid \$27,555.18 during the relevant claimed period. **Therefore, he is**
22 **awarded liquidated damages in the amount of \$27,555.18.**

23 According to proof, Plaintiff Menjibar worked an average of 10 hours, 5 days per
24 week. A review of the evidence submitted (Exhibit 14) shows that weekly wages were
25 sometimes less than the equivalent of minimum wage for a workweek of 50 hours. In
26 summary, Plaintiff Menjibar was underpaid \$5,224.54 during the relevant claimed period.
27 **Therefore, he is awarded liquidated damages in the amount of \$5,224.54.**

1 According to proof, Plaintiff A. Garcia worked an average of 12 hours, 5 days per
2 week. A review of the evidence submitted (Exhibit 16) shows that weekly wages were
3 sometimes less than the equivalent of minimum wage for a workweek of 60 hours. In
4 summary, Plaintiff A. Garcia was underpaid \$5,371.44 during the relevant claimed period.
5 **Therefore, he is awarded liquidated damages in the amount of \$5,371.44.**

6 According to proof, Plaintiff Sagastume worked an average of 16 hours, 5 days per
7 week. A review of the evidence submitted (Exhibit 19) shows that weekly wages were
8 sometimes less than the equivalent of minimum wage for a workweek of 80 hours. In
9 summary, Plaintiff Sagastume was underpaid \$28,704.06 during the relevant claimed period.
10 **Therefore, he is awarded liquidated damages in the amount of \$28,704.06.**

11 According to proof, Plaintiff E. Garcia worked an average of 12 hours, 5 days per
12 week. A review of the evidence submitted (Exhibit 25) shows that weekly wages were
13 sometimes less than the equivalent of minimum wage for a workweek of 60 hours. In
14 summary, Plaintiff E. Garcia was underpaid \$15,201.17 during the relevant claimed period.
15 **Therefore, he is awarded liquidated damages in the amount of \$15,201.17.**

16 According to proof, Plaintiff Reyes worked an average of 12 hours, 5 days per week. A
17 review of the evidence submitted (Exhibit 29) shows that weekly wages were sometimes less
18 than the equivalent of minimum wage for a workweek of 60 hours. In summary, Plaintiff
19 Reyes was underpaid \$11,681.61 during the relevant claimed period. **Therefore, he is**
20 **awarded liquidated damages in the amount of \$11,681.61.**

21 According to proof, Plaintiff Ramos worked an average of 12 hours, 5 days per week.
22 A review of the evidence submitted (Exhibit 35) shows that weekly wages were sometimes
23 less than the equivalent of minimum wage for a workweek of 60 hours. In summary, Plaintiff
24 Ramos was underpaid \$22,631.24 during the relevant claimed period. **Therefore, he is**
25 **awarded liquidated damages in the amount of \$22,631.24.**

26 According to proof, Plaintiff Rosales worked an average of 12 hours, 6 days per week.
27 A review of the evidence submitted (Exhibit 39) shows that weekly wages were sometimes

1 less than the equivalent of minimum wage for a workweek of 72 hours. In summary, Plaintiff
2 Rosales was underpaid \$11,082.76 during the relevant claimed period. **Therefore, he is**
3 **awarded liquidated damages in the amount of \$11,082.76.**

4 **H. Reimbursable Business Expenses**

5 Labor Code section 2802(a) provides:

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

10 Plaintiffs incurred out-of-pocket business expenses for fuel and maintenance in direct
11 consequence of the discharge of their duties while employed by Defendants CMI and
12 CM2931. As such, Plaintiffs are entitled to reimbursement from Defendants CMI and
13 CM2931 for these out-of-pocket expenses.

14 According to proof, Plaintiff Kina is owed reimbursement for out-of-pocket business
15 expenses incurred. A detailed review of the receipts submitted into evidence show fuel
16 expenses during the claim period totaled \$2,159.09 in year 2013, \$11,244.29 in year 2014,
17 \$8,604.00 in year 2015, \$5,853.18 in year 2016, and \$7,386.14 in year 2017, for a subtotal of
18 \$35,246.70, minus \$1,194.82 in Fuel Surcharge paid by Defendants CMI and CM2931 during
19 the claim period as offset towards fuel expenses, for a total of \$34,051.88 (Exhibit 3).
20 **Therefore, Plaintiff Kina is awarded a total of \$34,051.88 for out-of-pocket business**
21 **expenses incurred during the relevant period of employment by Defendants CMI and**
22 **CM2931.**

23 According to proof, Plaintiff Gil is owed reimbursement for out-of-pocket business
24 expenses incurred. A detailed review of the receipts submitted into evidence show fuel
25 expenses during the claim period totaled \$3,775.03 in year 2013, \$15,981.95 in year 2014, \$
26 16,508.85 in year 2015, \$9,340.74 in year 2016, \$5,933.27 in year 2017, and \$1,198.30 in year
27 2018 for a subtotal of \$52,738.14, minus \$14,154.38 in Fuel Surcharge paid by Defendants CMI

1 and CM2931 during the claim period as offset toward fuel expenses, for a total of \$38,583.76.
2 (Exhibit 6). Therefore, Plaintiff Gil is awarded a total of \$38,583.76 for out-of-pocket
3 business expenses incurred during the relevant period of employment by Defendants CMI
4 and CM2931.

5 According to proof, Plaintiff Ortiz is owed reimbursement for out-of-pocket business
6 expenses incurred. A detailed review of the receipts submitted into evidence show fuel
7 expenses during the claim period totaled \$1,656.00 in year 2013, \$9,949.56 in year 2014, for a
8 total of \$11,605.56 (Exhibit 11). Therefore, Plaintiff Ortiz is awarded a total of \$11,605.56 for
9 out-of-pocket business expenses incurred during the relevant period of employment by
10 Defendants CMI and CM2931.

11 According to proof, Plaintiff A. Garcia is owed reimbursement for out-of-pocket
12 business expenses incurred. A detailed review of the receipts submitted into evidence show
13 fuel expenses during the claim period totaled \$14,908.94 in year 2017, and \$10,369.52 in year
14 2018, for a subtotal of \$25,278.46, minus \$8,534.11 in Fuel Surcharge paid by Defendants CMI
15 and CM2931 during the claim period, for a total of \$16,744.35 (Exhibit 17). Therefore,
16 Plaintiff A. Garcia is awarded a total of \$16,744.35 for out-of-pocket business expenses
17 incurred during the relevant period of employment by Defendants CMI and CM2931.

18 According to proof, Plaintiff Sagastume is owed reimbursement for out-of-pocket
19 business expenses incurred. A detailed review of the receipts submitted into evidence show
20 fuel expenses during the claim period totaled \$5,114.98 in year 2013, \$17,278.67 in year 2014,
21 \$10,339.42 in year 2015, for a subtotal of \$32,733.07, minus \$4,260.18 in Fuel Surcharge paid
22 by Defendants CMI and CM2931 during the claim period, for a total of \$28,472.89 (Exhibit
23 20). Therefore, Plaintiff Sagastume is awarded a total of \$28,472.89 for out-of-pocket
24 business expenses incurred during the relevant period of employment by Defendants CMI
25 and CM2931.

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

1 fuel expenses during the claim period totaled \$6,682.15 in year 2013, \$3,165.15 in year 2014,
2 \$3,304.81 in year 2015, for a subtotal of \$8,664.92, minus \$4,487.19 in Fuel Surcharge paid by
3 Defendants CMI and CM2931 during the claim period, for a total of \$4,177.73 (Exhibit 26).
4 **Therefore, Plaintiff E. Garcia is awarded a total of \$4,177.73 for out-of-pocket business**
5 **expenses incurred during the relevant period of employment by Defendants CMI and**
6 **CM2931.**

7 According to proof, Plaintiff Reyes is owed reimbursement for out-of-pocket business
8 expenses incurred. A detailed review of the receipts submitted into evidence show fuel
9 expenses during the claim period totaled \$13,670.93 in year 2013, \$50,986.43 in year 2014,
10 \$46,534.82 in year 2015, and \$44,993.32 in 2016, for a subtotal of \$156,185.50, minus \$28,699.09
11 in Fuel Surcharge paid by Defendants CMI and CM2931 during the claim period, for a total
12 of \$127,486.41 (Exhibit 30). **Therefore, Plaintiff Reyes is awarded a total of \$127,486.41 for**
13 **out-of-pocket business expenses incurred during the relevant period of employment by**
14 **Defendants CMI and CM2931.**

15 According to proof, Plaintiff Ramos is owed reimbursement for out-of-pocket business
16 expenses incurred. A detailed review of the receipts submitted into evidence show fuel
17 expenses during the claim period totaled \$3,965.05 in year 2013, \$4,933.77 in year 2014,
18 \$8,133.43 in year 2015, \$15,258.59 in year 2016, \$12,927.48 in year 2017, and \$1,285.02 in year
19 2018, for a total of \$46,503.34 (Exhibit 36). **Therefore, Plaintiff Ramos is awarded a total of**
20 **\$46,503.34 for out-of-pocket business expenses incurred during the relevant period of**
21 **employment by Defendants CMI and CM2931.**

22 According to proof, Plaintiff Rosales is owed reimbursement for out-of-pocket
23 business expenses incurred. A detailed review of the receipts submitted into evidence show
24 fuel expenses during the claim period totaled \$5,762.20 in year 2013, \$14,170.00 in year 2014,
25 \$2,152.00 in year 2015, \$10,830.65 in year 2016, and \$19,301.18 in year 2017, for a subtotal of
26 \$52,216.03, minus \$18,920.16 in Fuel Surcharge paid by Defendants CMI and CM2931 during
27 the claim period, for a total of \$33,295.87 (Exhibit 40). **Therefore, Plaintiff Rosales is**

1 awarded a total of \$33,295.87 for out-of-pocket business expenses incurred during the
2 relevant period of employment by Defendants CMI and CM2931.

3 **I. Meal Period Premiums**

4 Section 11 of the Order provides:

5 (A) No employer shall employ any person for a work period of more than five (5)
6 hours without a meal period of not less than 30 minutes, except that when a
7 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.

8 (B) An employer may not employ an employee for a work period of more than
9 ten (10) hours per day without providing the employee with a second meal
10 period of not less than 30 minutes, except that if the total hours worked is no
11 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.

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

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

20 As the California Supreme Court held in *Brinker v. Superior Court* (2012) 53 Cal.4th
21 1004, an employer must provide a meal period to its employees, but need not ensure that
22 each employee takes his meal periods. "The employer satisfies this obligation if it relieves its
23 employees of all duty, relinquishes control over their activities and permits a reasonable
24 opportunity to take an uninterrupted 30-minute break, and does not impede or discourage
25 them from doing so." (*Id.* at p. 1040.) "The employer is not obligated to police meal breaks
26 and ensure no work thereafter is performed." (*Ibid.*) However, an employer may not
27 undermine a formal policy of providing meal breaks by pressuring employees to perform

1 their duties in ways that omit breaks. (*Ibid.*)

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

11 Here, all Plaintiffs testified that they were unable to take uninterrupted meal periods
12 of at least 30 minutes every five (5) hours worked. Although Defendants CMI and CM2931
13 did not instruct Plaintiffs not to take a meal break, Plaintiffs testified that they could not leave
14 their trucks unattended and felt pressure to continue working. Plaintiffs ate while driving,
15 while waiting in line at the ports, or while waiting for loads. Based on the foregoing,
16 Defendants CMI and CM2931 did not provide Plaintiffs with a reasonable opportunity to
17 take uninterrupted meal breaks relieved of all duty.

18 Accordingly, Plaintiffs are awarded meal period premium pay for their missed meal
19 periods during their respective claim periods. The meal period premium pay is calculated by
20 multiplying the total number of days worked by the respective hourly rate of each Plaintiff.
21 The hourly rate is calculated by dividing the total gross earnings during the claim period by
22 the total number of days worked to obtain the daily rate. The daily rate is then divided by
23 the average number of hours worked per day to arrive at the hourly rate.

24 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff Kina a
25 bonified meal period for 865 days at various hourly rates of pay (each hourly rate of pay was
26 calculated per weekly pay period). **As such, Plaintiff Kina is awarded a total of \$28,660.41**
27 **for meal period premium pay.**

1 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff Gil a
2 bonified meal period for 1,125 days at various hourly rates of pay (each hourly rate of pay
3 was calculated per weekly pay period). **As such, Plaintiff Gil is awarded a total of**
4 **\$32,470.19 for meal period premium pay.**

5 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff Ortiz a
6 bonified meal period for 250 days at various hourly rates of pay (each hourly rate of pay was
7 calculated per weekly pay period). **As such, Plaintiff Ortiz is awarded a total of \$14,236.74**
8 **for meal period premium pay.**

9 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff Menjibar
10 a bonified meal period for 120 days at various hourly rates of pay (each hourly rate of pay
11 was calculated per weekly pay period). **As such, Plaintiff Menjibar is awarded a total of**
12 **\$2,365.12 for meal period premium pay.**

13 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff A. Garcia
14 a bonified meal period for 235 days at various hourly rates of pay (each hourly rate of pay
15 was calculated per weekly pay period). **As such, Plaintiff A. Garcia is awarded a total of**
16 **\$6,818.44 for meal period premium pay.**

17 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff
18 Sagastume a bonified meal period for 245 days at various hourly rates of pay (each hourly
19 rate of pay was calculated per weekly pay period). **As such, Plaintiff Sagastume is awarded**
20 **a total of \$8,063.85 for meal period premium pay.**

21 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff E. Garcia
22 a bonified meal period for 120 days at various hourly rates of pay (each hourly rate of pay
23 was calculated per weekly pay period). **As such, Plaintiff E. Garcia is awarded a total of**
24 **\$7,347.65 for meal period premium pay.**

25 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff Reyes a
26 bonified meal period for 405 days at various hourly rates of pay (each hourly rate of pay was
27 calculated per weekly pay period). **As such, Plaintiff Reyes is awarded a total of \$15,447.70**

1 for meal period premium pay.

2 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff Ramos a
3 bonified meal period for 1,095 days at various hourly rates of pay (each hourly rate of pay
4 was calculated per weekly pay period). As such, Plaintiff Ramos is awarded a total of
5 \$44,192.40 for meal period premium pay.

6 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff Rosales a
7 bonified meal period for 978 days at various hourly rates of pay (each hourly rate of pay was
8 calculated per weekly pay period). As such, Plaintiff Rosales is awarded a total of
9 \$30,700.16 for meal period premium pay.

10 J. Rest Period Premiums

11 Section 12 of the Order provides:

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

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

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

27 Plaintiffs testified that Defendants CMI and CM2931 did not have a rest period policy

1 and that they were unable to take 10-minute rest breaks because they had to attend to their
2 trucks at all times. Although Defendants CMI and CM2931 did not inform Plaintiffs they
3 could not take rest breaks, Defendants CMI and CM2931 failed to authorize rest periods
4 because Defendants CMI and CM2931 did not advise Plaintiffs of the right to take rest breaks
5 in accordance with Section 12 of the Order.

6 Accordingly, Plaintiffs are awarded rest period premium pay for their missed rest
7 periods during their respective claim periods. The rest period premium is calculated by
8 multiplying the total number of days worked by the respective hourly rate of each Plaintiff.
9 The hourly rate is calculated by dividing the total gross earnings during the claim period by
10 the total days worked to obtain the daily rate. The daily rate is then divided by the average
11 number of hours worked per day to arrive at the hourly rate.

12 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff Kina a
13 rest period for 865 days at various hourly rates of pay (each hourly rate of pay was calculated
14 per weekly pay period). **As such, Plaintiff Kina is awarded a total of \$28,660.41 for rest**
15 **period premium pay.**

16 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff Gil a rest
17 period for 1,125 days at various hourly rates of pay (each hourly rate of pay was calculated
18 per weekly pay period). **As such, Plaintiff Gil is awarded a total of \$32,470.19 for rest**
19 **period premium pay.**

20 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff Ortiz a
21 rest period for 250 days at various hourly rates of pay (each hourly rate of pay was calculated
22 per weekly pay period). **As such, Plaintiff Ortiz is awarded a total of \$14,236.74 for rest**
23 **period premium pay.**

24 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff Menjibar
25 a rest period for 120 days at various hourly rates of pay (each hourly rate of pay was
26 calculated per weekly pay period). **As such, Plaintiff Menjibar is awarded a total of**
27 **\$2,365.12 for rest period premium pay.**

1 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff A. Garcia
2 a rest period for 235 days at various hourly rates of pay (each hourly rate of pay was
3 calculated per weekly pay period). **As such, Plaintiff A. Garcia is awarded a total of**
4 **\$6,818.44 for rest period premium pay.**

5 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff
6 Sagastume a rest period for 245 days at various hourly rates of pay (each hourly rate of pay
7 was calculated per weekly pay period). **As such, Plaintiff Sagastume is awarded a total of**
8 **\$8,063.85 for rest period premium pay.**

9 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff E. Garcia
10 a rest period for 120 days at various hourly rates of pay (each hourly rate of pay was
11 calculated per weekly pay period). **As such, Plaintiff E. Garcia is awarded a total of**
12 **\$7,347.65 for rest period premium pay.**

13 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff Reyes a
14 rest period for 405 days at various hourly rates of pay (each hourly rate of pay was calculated
15 per weekly pay period). **As such, Plaintiff Reyes is awarded a total of \$15,447.70 for rest**
16 **period premium pay.**

17 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff Ramos a
18 rest period for 1,095 days at various hourly rates of pay (each hourly rate of pay was
19 calculated per weekly pay period). **As such, Plaintiff Ramos is awarded a total of \$44,192.40**
20 **for rest period premium pay.**

21 According to proof, Defendants CMI and CM2931 failed to provide Plaintiff Rosales a
22 rest period for 978 days at various hourly rates of pay (each hourly rate of pay was calculated
23 per weekly pay period). **As such, Plaintiff Rosales is awarded a total of \$30,700.16 for rest**
24 **period premium pay.**

25 **K. Wages for Rest Periods Taken During Hours Worked Earning Piece-Rate Wages**

26 In *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, the court held that the
27 piece-rate wages paid by the employer for piece-rate work cannot be used to satisfy the

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

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

9 **L. Interest**

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

13 Plaintiff Kina is entitled to recover \$36,359.04 in interest accrued to date on the amount
14 due.

15 Plaintiff Gil is entitled to recover \$10,325.91 in interest accrued to date on the amount
16 due.

17 Plaintiff Ortiz is entitled to recover \$107,662.13 in interest accrued to date on the
18 amount due.

19 Plaintiff Menjibar is entitled to recover \$1,677.03 in interest accrued to date on the
20 amount due.

21 Plaintiff A. Garcia is entitled to recover \$1,523.95 in interest accrued to date on the
22 amount due.

23 Plaintiff Sagastume is entitled to recover \$36,259.12 in interest accrued to date on the
24 amount due.

25 Plaintiff E. Garcia is entitled to recover \$32,361.24 in interest accrued to date on the
26 amount due.

27 Plaintiff Reyes is entitled to recover \$48,449.53 in interest accrued to date on the

1 amount due.

2 Plaintiff Ramos is entitled to recover \$21,148.42 in interest accrued to date on the
3 amount due.

4 Plaintiff Rosales is entitled to recover \$5,486.77 in interest accrued to date on the
5 amount due.

6 **M. Waiting Time Penalties**

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

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

17 As of the date of his hearing, Plaintiffs Gil, A. Garcia and Rosales remained employed
18 by Defendants CMI and CM2931. Accordingly, Plaintiffs Gil, A. Garcia and Rosales are not
19 entitled to waiting time penalties.

20 The remaining Plaintiffs quit or were discharged over 30 days ago. However, as of the
21 date of the hearings, none of them were paid their full and final wages by Defendants CMI
22 and CM2931. Pursuant to Labor Code section 203, Plaintiffs are due the maximum of 30 days
23 waiting time penalties at their respective daily rates.

24 According to proof, Plaintiff Kina is due the maximum of 30 days waiting time
25 penalties at his daily rate of \$408.92 in the amount of \$12,267.60.

26 According to proof, Plaintiff Ortiz is due the maximum of 30 days waiting time
27 penalties at his daily rate of \$578.81 in the amount of \$17,364.30.

1 According to proof, Plaintiff Menjibar is due the maximum of 30 days waiting time
2 penalties at his daily rate of \$256.85 in the amount of \$7,705.50.

3 According to proof, Plaintiff Sagastume is due the maximum of 30 days waiting time
4 penalties at his daily rate of \$449.32 in the amount of \$13,479.60.

5 According to proof, Plaintiff E. Garcia is due the maximum of 30 days waiting time
6 penalties at his daily rate of \$576.71 in the amount of \$17,301.30.

7 According to proof, Plaintiff Reyes is due the maximum of 30 days waiting time
8 penalties at his daily rate of \$457.69 in the amount of \$13,730.70.

9 According to proof, Plaintiff Ramos is due the maximum of 30 days waiting time
10 penalties at his daily rate of \$401.46 in the amount of \$12,043.80.

11 **N. Attorney's Fees**

12 Labor Code section 2802(c) authorizes the recovery attorney's fees incurred by an
13 employee in connection with a claim for reimbursable business expenses. Plaintiffs retained
14 the services of an attorney to assist them in pursuit of their claim against Defendants CMI
15 and CM2931, including a claim for reimbursement of business expenses pursuant to Labor
16 Code section 2802(a).

17 Plaintiffs were represented by Jean Choi ("Mr. Choi"). Mr. Choi's hourly rate is
18 \$425.00 per hour. However, an appropriate hourly rate for these administrative hearings is
19 \$250.00. Mr. Choi claims the following hours were spent on each Plaintiff: (1) 0.4 hours to
20 discuss business expense claim with client; (2) 5.0 hours to review and sort business expense
21 receipts; (3) 3.5 hours to review and supervise calculation of business expense claims; (4) 0.1
22 hours to review Labor Commissioner complaint form; (5) 1 hour spent on review of
23 prevailing law on Labor Code 2802, review of preemption, statute of limitations and other
24 defenses; (6) 2 hours on update/revise business expense claims; (7) 0.7 hours to prepare for
25 hearing with client; and (8) 0.9 hours on hearing for presentation of business expense claims
26 (Declaration of Jean Choi, Exhibit 41). All Plaintiffs, with the exception of Plaintiff Menjibar,
27

1 who did not bring the claim for unreimbursed business expenses, are awarded attorney's fees
2 for 13.6 hours per Plaintiff.

3 Plaintiff Kina is allowed recovery of 13.6 hours at the rate of \$250.00 per hour, for a
4 total of \$3,400.00. **Accordingly, Plaintiff Kina is awarded attorney's fees in the amount of**
5 **\$3,400.00.**

6 Plaintiff Gil is allowed recovery of 13.6 hours at the rate of \$250.00 per hour, for a total
7 of \$3,400.00. **Accordingly, Plaintiff Gil is awarded attorney's fees in the amount of**
8 **\$3,400.00.**

9 Plaintiff Ortiz is allowed recovery of 13.6 hours at the rate of \$250.00 per hour, for a
10 total of \$3,400.00. **Accordingly, Plaintiff Ortiz is awarded attorney's fees in the amount of**
11 **\$3,400.00.**

12 Plaintiff A. Garcia is allowed recovery of 13.6 hours at the rate of \$250.00 per hour, for
13 a total of \$3,400.00. **Accordingly, Plaintiff A. Garcia is awarded attorney's fees in the**
14 **amount of \$3,400.00.**

15 Plaintiff Sagastume is allowed recovery of 13.6 hours at the rate of \$250.00 per hour,
16 for a total of \$3,400.00. **Accordingly, Plaintiff Sagastume is awarded attorney's fees in the**
17 **amount of \$3,400.00.**

18 Plaintiff E. Garcia is allowed recovery of 13.6 hours at the rate of \$250.00 per hour, for
19 a total of \$3,400.00. **Accordingly, Plaintiff E. Garcia is awarded attorney's fees in the**
20 **amount of \$3,400.00.**

21 Plaintiff Reyes is allowed recovery of 13.6 hours at the rate of \$250.00 per hour, for a
22 total of \$3,400.00. **Accordingly, Plaintiff Reyes is awarded attorney's fees in the amount of**
23 **\$3,400.00.**

24 Plaintiff Ramos is allowed recovery of 13.6 hours at the rate of \$250.00 per hour, for a
25 total of \$3,400.00. **Accordingly, Plaintiff Ramos is awarded attorney's fees in the amount of**
26 **\$3,400.00.**

27 Plaintiff Rosales is allowed recovery of 13.6 hours at the rate of \$250.00 per hour, for a

1 total of \$3,400.00. Accordingly, Plaintiff Rosales is awarded attorney's fees in the amount
2 of \$3,400.00.

3
4 CONCLUSION

5 In regards to Plaintiff Luis Santiago Kina
6 State Case Number 05-70415 KR

7 For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendants
8 California Multimodal, LLC and CM2931, LLC shall pay Plaintiff Luis Santiago Kina a total of
9 \$264,703.73, as follows:

- 10 1. \$15,840.00 for wages;
- 11 2. \$83,550.53 in unlawful deductions;
- 12 3. \$21,913.86 in liquidated damages pursuant to Labor Code section 1194.2;
- 13 4. \$34,051.88 for reimbursable business expenses;
- 14 5. \$28,660.41 in meal period premiums;
- 15 6. \$28,660.41 in rest period premiums;
- 16 7. \$36,359.04 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or
17 2802(b);
- 18 8. \$12,267.60 in waiting time penalties pursuant to Labor Code section 203; and
- 19 9. \$3,400.00 in attorney's fees.

20
21 In regards to Plaintiff Hector Gustavo Gil
22 State Case Number 05-70416 KR

23 For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendants
24 California Multimodal, LLC and CM2931, LLC shall pay Plaintiff Hector Gustavo Gil a total
25 of \$294,991.06, as follows:

- 26 1. \$21,350.00 for wages;
- 27 2. \$129,171.88 in unlawful deductions;
3. \$27,219.13 in liquidated damages pursuant to Labor Code section 1194.2;

4. \$38,583.76 for reimbursable business expenses;
5. \$32,470.19 in meal period premiums;
6. \$32,470.19 in rest period premiums;
7. \$10,325.91 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or 2802(b); and
8. \$3,400.00 in attorney's fees.

In regards to Plaintiff Savador Felipe Carmona Ortiz
State Case Number 05-70413KR

For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendants California Multimodal, LLC and CM2931, LLC shall pay Plaintiff Salvador Felipe Carmona Ortiz a total of \$392,694.61, as follows:

1. \$6,195.00 for wages;
2. \$190,671.46 as unlawful deductions;
3. \$27,322.68 in liquidated damages pursuant to Labor Code section 1194.2;
4. \$11,605.56 for reimbursable business expenses;
5. \$14,236.74 in meal period premiums;
6. \$14,236.74 in rest period premiums;
7. \$107,662.13 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or 2802(b);
8. \$17,364.30 in waiting time penalties pursuant to Labor Code section 203; and
9. \$3,400.00 in attorney's fees.

In regards to Plaintiff Julio Menjibar
State Case Number 05-71168 KR

For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendants California Multimodal, LLC and CM2931, LLC shall pay Plaintiff Julio Menjibar a total of \$28,047.31, as follows:

1. \$5,040.00 for wages;
2. \$270.00 as unlawful deductions;
3. \$5,224.54 in liquidated damages pursuant to Labor Code section 1194.2;
4. \$2,365.12 in meal period premiums;
5. \$2,365.12 in rest period premiums;
6. \$1,677.03 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or 2802(b);
7. \$7,705.50 in waiting time penalties pursuant to Labor Code section 203; and
8. \$3,400.00 in attorney's fees.

In regards to Plaintiff Angel Garcia
State Case Number 05-71167 KR

For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendants California Multimodal, LLC and CM2931, LLC shall pay Plaintiff Angel Garcia a total of \$46,434.62, as follows:

1. \$5,025.00 for wages;
2. \$733.00 as unlawful deductions;
3. \$5,371.44 in liquidated damages pursuant to Labor Code section 1194.2;
4. \$16,744.35 for reimbursable business expenses;
5. \$6,818.44 in meal period premiums;
6. \$6,818.44 in rest period premiums;
7. \$1,523.95 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or 2802(b); and
8. \$3,400.00 in attorney's fees.

In regards to Plaintiff Manuel F. Beleton Sagastume
State Case Number 05-70411 KR

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

1 California Multimodal, LLC and CM2931, LLC shall pay Plaintiff Manuel F. Beleton
2 Sagastume a total of \$231,743.04, as follows:

- 3 1. \$8,820.00 for wages;
- 4 2. \$96,479.67 as unlawful deductions;
- 5 3. \$28,704.06 in liquidated damages pursuant to Labor Code section 1194.2;
- 6 4. \$28,472.89 for reimbursable business expenses;
- 7 5. \$8,063.85 in meal period premiums;
- 8 6. \$8,063.85 in rest period premiums;
- 9 7. \$36,259.12 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or
10 2802(b);
- 11 8. \$13,479.60 in waiting time penalties pursuant to Labor Code section 203; and
- 12 9. \$3,400.00 in attorney's fees.

13
14 In regards to Plaintiff Edwin Garcia
15 State Case Number 05-70414 KR

16 For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendants
17 California Multimodal, LLC and CM2931, LLC shall pay Plaintiff Edwin Garcia a total of
18 \$161,328.89, as follows:

- 19 1. \$3,135.00 for wages;
- 20 2. \$71,057.15 as unlawful deductions;
- 21 3. \$15,201.17 in liquidated damages pursuant to Labor Code section 1194.2;
- 22 4. \$4,177.73 for reimbursable business expenses;
- 23 5. \$7,347.65 in meal period premiums;
- 24 6. \$7,347.65 in rest period premiums;
- 25 7. \$32,361.24 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or
26 2802(b);
- 27 8. \$17,301.30 in waiting time penalties pursuant to Labor Code section 203; and
9. \$3,400.00 in attorney's fees.

1
2 In regards to Plaintiff Ramon Perez Reyes

3 State Case Number 05-71170 KR

4 For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendants
5 California Multimodal, LLC and CM2931, LLC shall pay Plaintiff Ramon Perez Reyes a total
6 of \$254,109.86, as follows:

- 7 1. \$10,605.00 for wages;
8 2. \$7,861.21 as unlawful deductions;
9 3. \$11,681.61 in liquidated damages pursuant to Labor Code section 1194.2;
10 4. \$127,486.41 for reimbursable business expenses;
11 5. \$15,447.70 in meal period premiums;
12 6. \$15,447.70 in rest period premiums;
13 7. \$48,449.53 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or
14 2802(b);
15 8. \$13,730.70 in waiting time penalties pursuant to Labor Code section 203; and
16 9. \$3,400.00 in attorney's fees.

17
18 In regards to Plaintiff Jesus Ramos

19 State Case Number 05-71172KR

20 For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendants
21 California Multimodal, LLC and CM2931, LLC shall pay Plaintiff Jesus Ramos a total of
22 \$340,496.40, as follows:

- 23 1. \$15,450.00 for wages;
24 2. \$130,935.00 as unlawful deductions;
25 3. \$22,631.24 in liquidated damages pursuant to Labor Code section 1194.2;
26 4. \$46,503.34 for reimbursable business expenses;
27 5. \$44,192.40 in meal period premiums;
 6. \$44,192.40 in rest period premiums;

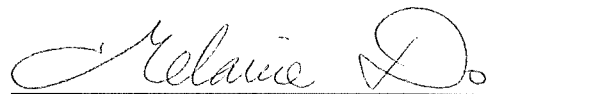
7. \$21,148.42 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or 2802(b);
8. \$12,043.80 in waiting time penalties pursuant to Labor Code section 203; and
9. \$3,400.00 in attorney's fees.

In regards to Plaintiff Ronald Rosales
State Case Number 05-70412 KR

For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendants California Multimodal, LLC and CM2931, LLC shall pay Plaintiff Ronald Rosales a total of \$158,340.27, as follows:

1. \$9,955.50 for wages;
2. \$33,719.05 as unlawful deductions;
3. \$11,082.76 in liquidated damages pursuant to Labor Code section 1194.2;
4. \$33,295.87 for reimbursable business expenses;
5. \$30,700.16 in meal period premiums;
6. \$30,700.16 in rest period premiums;
7. \$5,486.77 in interest pursuant to Labor Code sections 98(c), 1194.2 and/or 2802(b); and
8. \$3,400.00 in attorney's fees.

Dated: December 26, 2018



Melanie Do
Hearing Officer