SHADIE L. BERENJI (SBN 235021)
berenji@employeejustice.law
DAVID C. HOPPER (SBN 306281)
hopper@employeejustice.law
BERENJI LAW FIRM, APC
8383 Wilshire Boulevard, Suite 708
Beverly Hills, California 90211
Telephone: (310) 855-3270
Facsimile: (310) 855-3751

Attorneys for Plaintiff
KEITH HUCKABY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

KEITH HUCKABY, individually and on behalf of all other persons similarly situated, and on behalf of the general public,

Plaintiff,

v.

CRST EXPEDITED, INC., an Iowa corporation; CRST INTERNATIONAL, INC., an Iowa corporation; and DOES 1 through 30, inclusive,

Defendants.

Case No. 2:21-cv-07766-ODW-PD
Assigned to Hon. Otis D. Wright, II

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

Date: April 18, 2022
Time: 1:30 p.m.
Courtroom: 5D

[*Filed concurrently herewith Notice of Motion and Motion for Class Certification, Declarations of Keith Huckaby and Shadie L. Berenji, Compendium of Exhibits, [Proposed] Order*]

Complaint Filed: August 9, 2021
Trial: March 28, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

Federal Statutes

State Statutes

State Regulations

IWC Wage Order 9-2001

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Keith Huckaby and over 4,350 prospective class members were subjected to violations of California employment laws when they worked for defendants CRST Expedited, Inc. and CRST International, Inc. (collectively, "CRST" or "Defendants") as California-based commercial truck drivers from August 2017 to the present. Pursuant to Federal Rule of Civil Procedure 23 ("Rule 23"), Plaintiff seeks class certification of the wage and hour claims alleged in his operative complaint based on CRST's unlawful company-wide policies and practices that resulted in the failure to: (1) pay for work performed on tasks and activities that were not included in CRST's compensation system that paid by piece rate ("Piece-Rate Pay Plan"); (2) reimburse necessarily incurred business expenses, such as mobile phones and vehicle citations and fines; (3) provide accurate itemized wage statements; and, (4) timely pay all wages earned. Class treatment is warranted here because the relevant facts may readily be ascertained from Defendants' pay and time records for all the truck drivers, and the legal issues turn on the interpretation of statutory law applicable to all the proposed class members.

The question that the Court is asked to consider at this time is whether Plaintiff's theory of the case is amenable to common proof at trial. This case is well-suited for class action adjudication because Plaintiff's theories of recovery involve common policies and practices that generate common questions of law and facts that predominate over any individualized issues, as they center around the legality of Defendants' uniform and systematic compensation practices that resulted in the failure to timely and properly pay Plaintiff and the proposed class all the wages they were owed. Plaintiff intends to prove the claims by presentation of representative plaintiff testimony, corporate testimony, corporate records, and by representative evidence extrapolated to the class. Plaintiff herein

demonstrates that substantial evidence exists to certify the proposed classes, as the class certification prerequisites set forth in Rule 23 are aptly met. Accordingly, Plaintiff's motion for class certification of the proposed classes, as detailed in the notice accompanying this motion, should be granted.

II. STATEMENT OF FACTS AND CLAIMS

CRST is a transportation company that utilizes dry van trucks to pick up and deliver freight throughout the United States.[1][2] CRST is the "nation's largest team carrier" and employs approximately four to five hundred truck drivers that reside in California ("CA Truck Drivers").[3] From August 9, 2017 to the present, CRST employed more than 4,350 CA Truck Drivers."[4] CRST operates a terminal in California located in Jurupa Valley, which is known as CRST's "Riverside Terminal."[5] CRST conducts the hiring process, onboarding, and training for CA Truck Drivers at the Riverside Terminal.[6] Once the CA Truck Drivers become employees, they utilize the Riverside Terminal to conduct maintenance on the trucks and to park the trucks during their time off from work, also known as "Home Time."[7] CRST provides CA truck drivers with notices, policies, and trainings pursuant to California law.[8] For example, CRST provides CA Truck Drivers with California's Labor Code section 2810.5 written notice for new hires; a thirteen-page addendum for California residents in its Driver Employee Handbook; and, mandatory discrimination and harassment training under California law. *Id.*

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[1] Unless otherwise noted, all deposition testimony and exhibits referenced herein are attached to the Declaration of Shadie L. Berenji filed concurrently herewith. Deposition testimony cited herein will be referenced as "[Deponent's Last Name]:[page]:[lines]" and the prefix for CRST's bates-stamped numbers on the documents they produced in discovery will be referenced as "F[number]."

[2] Declaration of Shadie L. Berenji ("Berenji Decl."), Ex. C at F465; Brueck, 25:21-26:1.

[3] Berenji Decl., Ex. D at F248; Brueck, 27:3-17.

[4] Berenji Decl., Ex. B, Response to No. 1.

[5] Berenji Decl., Ex. E at F41; Brueck, 26:13-18, 31:17-32:6.

[6] Berenji Decl., Ex. E at F41, Ex. F at F71; Declaration of Keith Huckaby ("Huckaby Decl."), ¶¶ 6-7; Brueck, 32:7-14.

[7] Berenji Decl., Ex. C at F489, F631, Ex. D at F257; Huckaby Decl., ¶9.

CRST's truck drivers are responsible for delivering freight to CRST's customers. [ECF No. 1-1 at ¶7; ECF No. 9 at ¶7.] More specifically, CRST's truck drivers' "normal work duties" included picking up freight, conducting daily pre-trip and post-trip vehicle inspections mandated by federal law, transporting the freight (i.e., driving), completing daily paperwork or data entries (e.g., Department of Transportation ("DOT") driver logs, Bills of Lading), using the onboard computer system to communicate required information to CRST, fueling the truck, hooking/unhooking and loading/unloading trailers, waiting on customers and dispatch, and pulling through the DOT weight stations and participating in DOT's tests and inspections.[9] [ECF No. 9 at ¶7.]

CRST's truck drivers are paid through CRST's Piece-Rate Pay Plan which promises to pay them a certain amount for each mile they drive ("Mileage Pay").[10] CRST's Labor Code section 2810.5 written notice, wage agreements (i.e., "CRST's Expedited Pay Scale," "CRST's Entry Classification/Wage Verification"), and written policies state that the CA Truck Drivers are paid for the miles they drive.[11] Significantly, CRST's Piece-Rate Pay Plan does not provide separate pay, at or above minimum wage, for a majority of the non-driving tasks the CA Truck Drivers are required to perform, including but not limited to: (1) pre-trip and post-trip vehicle inspections; (2) completing required paperwork/data entry; (3) stopping at weigh stations and/or participating in DOT inspections; (4) fueling; (5) required rest breaks; and, (6) waiting for dispatch

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[8] Berenji Decl., Ex. G at F61, Ex. H at F356-369, Ex. I at F650-653.

[9] Brueck, 34:15-20, 45:8-9, 45:10-12, 50:12-21, 47:18-21, 49:22-50:8, 50:22-51:4; 97:19-98:2, Ex. 3 at F473, F515, F504-510, F980, and Exs. 25, 30, 31.

[10] Berenji Decl., Ex. J at F380, Ex. K at F55, Ex. D at F250, F255-258; Brueck, Ex. 12, 153:9-154:2, 156:11-24, and Ex. 14.

[11] Berenji Decl., Ex. G, Ex. J at F380, Ex. K at F55, Ex. D at F250, F255-258 ["My wage rate will be _ cents per mile;" "And we pay you for your miles whether your truck is loaded or empty;" "We offer the industry's longest average length of haul – 1,400 to 1,500 miles! This means fewer stops and greater pay for you;" "Our commitment to the long-haul market provides you with consistent mileage all year long;" "Keep in mind, the more you are available the more miles you can run;" "You and your co-driver are paid based on the "split mile" method … Therefore, you will be paid for half of the total miles the truck runs each week."]

and/or waiting during weather delays or breakdowns ("Nonproductive Time").[12] CRST's documents are wholly silent on compensation for the foregoing Nonproductive Time.[13] Notably, CRST has records of each CA Truck Driver's work time, including all the driving and non-driving tasks, with the contemporaneous location of the truck.[14]

Plaintiff worked for CRST as a CA Truck Driver from April 2019 to August 17, 2020.[15] During Plaintiff's employment, Plaintiff contends he was denied: wages; reimbursement for business expenses; accurate itemized wage statements; and, timely payment of wages at the separation of employment. Accordingly, Plaintiff commenced this action by filing a class action complaint on August 9, 2021. [ECF No. 1-1.] The crux of Plaintiff's complaint is that as a result of Defendants' systematic and uniform compensation policies and payroll practices, Defendants violated the California Labor Code[16] as follows:

1. <u>Failure to Pay Wages</u>

Under California law, if an employee is being compensated on a piece-rate basis and is required to perform work that is not covered under the piece-rate compensation plan, the employee must be **separately** compensated, at minimum wage or a contractual rate, for the nonproductive time.[17] Throughout the class period, CRST has subjected all of its CA Truck Drivers to its Piece-Rate Pay Plan, which does not separately compensate the drivers for Nonproductive Time. CRST's Piece-Rate Pay Plan primarily consists of Mileage Pay, plus occasional

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[12] Brueck, 36:14-16, 96:24-97:18, 49:22-50:8, 50:12-21, 55:3-5, 97:19-98:6, 45:16-20, 52:20-53:2, 22:17-23:7, 50:22-11, 51:15-18, 115:2-25; Berenji Decl., Ex. B, Response to No. 2.

[13] Berenji Decl., Ex. G, Ex. J at F380, Ex. K at F55, Ex. D at F250, F255-258; Brueck 37:10-16, 38:3-12, 154:13-155:9, 156:7-10, Exs. 13, 14.

[14] Brueck, 86:10-22, 113:22-115:1, 130:23-131:11, 132:15-20, 167:14-168:4, 208:21-209:8, 213:17-215:11, Ex. 3 at F552, Ex. 24, Ex. 34; Berenji Decl., Exs. L, M.

[15] Huckaby Decl., ¶¶ 5, 21.

[16] All references to the "Labor Code" hereinafter are to the California Labor Code.

[17] Cal. Lab. Code § 226.2; *Ridgeway v. Wal-Mart Stores, Inc.*, 946 F.3d 1066 (2020); *Gonzalez v. Downtown LA Motors, LP*, 215 Cal.App.4th 36, 49 (2013); *Bluford v. Safeway Stores, Inc.*, 216 Cal.App.4th 864 (2013); *Armenta v. Osmose, Inc.* 135 Cal.App.4th 314 (2005); *Oman v. Delta Air Lines, Inc.,* 9 Cal. 5th 762 (2020).

supplemental pay for certain activities and periods of time. However, CRST does not compensate the CA Truck Drivers for any daily Nonproductive Time. Critical to both the class certification and liability questions, CRST's Piece-Rate Pay Plan does not allocate any separate pay to the CA Truck Drivers for time spent performing required nonproductive work on a daily basis**.** Accordingly, Plaintiff asserts that CRST's uniform Piece-Rate Pay Plan violates California law.

Plaintiff's piece-rate wage claims also challenge CRST's common practice of not paying its CA Truck Drivers for all *actual* miles driven, and at the rate promised in the driver's pay plan (i.e., "CRST's Expedited Pay Scale"). As stated above, CRST's Piece-Rate Pay Plan promises to pay CA Truck Drivers for all the miles they drive. None of CRST's policies or pay records that are provided to the CA Truck Drivers state that they are paid for mileage based on "estimates" of miles driven.[18] Notwithstanding the foregoing, and even though CRST has knowledge of the actual miles driven based on the truck odometer, CRST's electronic tracking system, and the drivers' DOT logs, CRST disregards the actual miles driven for pay purposes and instead pays the drivers for mileage based on "estimates" of miles driven.[19] Plaintiff maintains that this uniform pay practice, evidenced in CRST's documents and deposition, is unlawful.

2. Failure to Reimburse Business Expenses

California law requires employers to indemnify its employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. Cal. Lab. Code §§ 2800, 2802. Plaintiff and the CA Truck Drivers furnished their personal mobile phones, along with monthly voice and data plans, to communicate with other CRST's employees and customers.[20] Plaintiff and the class also used their mobile phones to submit required

[18] *Id.;* Brueck, 217:15-18.
[19] Brueck, 116:12-117:10, 217:15-18, 77:15-23, 217:15-18; Berenji Decl., Ex. B, Response to No. 2.
[20] Brueck 102:3-15, 109:25-112:7, 211:11-21, Ex. 3 at F489, F515, F541; Huckaby Decl., ¶16; Berenji Decl., Ex. N at F403-404, F411.

paperwork to CRST.[21] Despite the reasonably necessary and constant use of their mobile phones for work, CRST never reimbursed Plaintiff and the class for this expense.[22] CRST also required Plaintiff and the CA Truck Drivers to pay for safety citations that related to the trucks that were owned by CRST and driven by the truck drivers to perform their job duties (i.e., missing permits and license).[23] CRST unlawfully required Plaintiff and the class to pay for this business loss.

3. Failure to Provide Accurate Itemized Wage Statements

California law requires employers to provide employees with itemized wage statements that accurately reflect nine categories of information. Cal. Lab. Code § 226, subd. (a). Defendants have maintained a class-wide policy and practice of knowingly and intentionally failing to provide Plaintiff and the class with properly itemized wage statements. CRST's wage statements are standardized and uniform as to all the CA Truck Drivers, and the subject wage statements are in clear violation of California law, as Defendants fail to: (1) disclose the total hours worked; (2) identify the accurate gross and net wages earned; (3) identify the accurate piece rate and the actual miles driven for which a piece-rate is due; and, (4) report the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.[24]

4. Labor Code § 203 and California Unfair Competition Law

As a result of the above-mentioned unlawful conduct, Defendants violated Labor Code section 203 and California's Unfair Competition Law. Defendants also failed to pay final wages pursuant to the time periods in Labor Code sections 201 and 202.

III. THE STANDARD FOR CLASS CERTIFICATION

Rule 23 provides the standard for certification of a class action. To certify a class, a plaintiff must satisfy each element of Rule 23(a) (i.e., numerosity,

[21] *Id.;* Brueck, 83:22-84:22, 88:19-89:2, Ex. 3 at F492, F494.
[22] Brueck, 86:23-88:18, Ex. 3 at F493, 219:5-8.
[23] Brueck, 90:17-91:7, Ex. 3 at F501, 127:6-18, Ex. 5 at F940, 134:5-25, Ex. 6 at F347-348.
[24] Brueck, 168:5-169:9, 180:13-181:15, 187:18-188:1, 193:25-194:15, Exs. 25-26; Huckaby Decl., ¶20.

commonality, typicality, and adequacy of representation) and one of the subsections of 23(b).[25] This matter is well suited for class certification pursuant to Rule 23, as the evidence set forth herein demonstrates that Plaintiff's claims are typical of all members of the proposed classes, Plaintiff will fairly and adequately represent the interests of the class members, common questions of law and fact predominate, and class certification is the superior way to handle the claims of over 4,350 employees in this litigation.

Rule 23(a) provides that class certification is appropriate if: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class."[26] Certification is warranted under Rule 23(b)(3) when "the questions of law or fact common to class members predominate over any questions affecting only individual members," and "a class action is superior to other available methods for fairly and efficiently" settling the controversy.[27] In a motion for class certification, "[t]he court is bound to take the substantive allegations of the complaint as true."[28] The court's resolution of a class certification motion should not become "a preliminary inquiry into the merits" of the case or who will ultimately prevail.[29] Although a court's class-certification analysis may "entail some overlap with the merits of the plaintiff's underlying claim," the Supreme Court cautions that "Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage" and "[m]erits questions may be considered to the extent – but only to the extent – that they are relevant to

[25] *See Mazza v. American Honda Motor Co., Inc.*, 666 F.3d 581, 588 (9th Cir. 2012); *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013).
[26] *Mazza*, 666 F.3d at 588.
[27] Fed. R. Civ. P. 23(b)(3).
[28] See *Blackie v. Barrack*, 524 F. 2d 891, 901 (9th Cir. 1975).
[29] *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 177-78 (1974).

determining whether the Rule 23 prerequisites for class certification are satisfied."[30] Rather, at this early stage of the litigation, the court must resolve factual disputes as "necessary to determine whether there was a common pattern and practice that could affect the class *as a whole*."[31]

IV. THE PROPOSED CLASSES SATISFY RULE 23 PREREQUISITES

As a result of Defendants' unlawful uniform and systematic compensation practices, Plaintiff seeks to certify the class and subclasses as detailed in the notice accompanying this motion. As explained in detail below, Plaintiff demonstrates that all of the prerequisites of Rule 23(a) and at least one of the requirements of Rule 23(b) have been met.

1. The Requirements of Rule 23(a) are Satisfied

A. The Proposed Class is Numerous

Under Rule 23(a)(1), a class action may be maintained where "the class is so numerous that joinder of all members is impracticable." The Ninth Circuit has not provided a numerical cut-off and has found that classes consisting of thirty-nine (39) people are large enough to satisfy the numerosity requirement.[32]

According to Defendants, it employed more than 4,351 class members.[33] This number clearly satisfies Rule 23's numerosity requirement.

B. There Are Common Questions of Law and Fact

Under Rule 23(a)(2), Plaintiff must demonstrate that there are questions of law or fact common to the class. Here, the requirements of Rule 23(a)(2) are easily met.[34] "The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Id.* To satisfy the commonality

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[30] *Amgen Inc. v. Conn. Ret. Plans and Trust Funds*, 133 S.Ct. 1184, 1194-95 (2013).
[31] *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 983 (9th Cir. 2011) (emphasis in original).
[32] *See e.g., Jordan v. Los Angeles County*, 669 F.2d 1311 (9th Cir. 1982) (vac'd on other grounds).
[33] Berenji Decl., Ex. B, Response to No. 1.

requirement, a common question "must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke."[35]

Here, all of the legal claims that Plaintiff seeks to certify raise common questions of law based on California wage and hour laws because each class member: is a California resident; only brings claims that arise out of California; does not primarily perform work in any single state; and, has his/her base of work operations in California. California law applies to claims for compensation for work performed by California residents, and the same claim can serve as a predicate for claims under California's unfair competition law.[36] In determining whether Labor Code sections 226 and 203 applies to interstate transportation workers who do not work principally in any one state, California's laws will apply if the worker performs some work in California and has a "base of operations in California," "meaning that California serves as the physical location where the worker presented himself or herself to begin work.'"[37]

The Court should find that California law applies to Plaintiff's unpaid wages claims because all the CA Truck Drivers reside in California and all of the claims arise out of California law. The Court should also find that the following facts are sufficient to establish that California law applies to Plaintiff's wage statement and failure to timely pay wages claims (Labor Code §§ 226, 203), as all the CA Truck Drivers perform some work in California and their base of

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[34] *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998) (emphasizing the "minimal" requirements and "permissive" interpretation of Rule 23(a)(2)).

[35] *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

[36] *See Bernstein v. Virgin America, Inc.,* 3 F.4th 1127, 1137 (2020)*; Sullivan v. Oracle Corp.*, 51 Cal.4th 1191, 1194 (2011); *see also* Cal. Lab. Code § 1171.5, subd. (a) ["[a]ll protections, rights, and remedies available under state law ... are available to all individuals ... who are or who have been employed, in this state"].

[37] *See Ward v. United Airlines, Inc.*, 9 Cal.5th 732, 755 (2020); *Oman*, 9 Cal.5th at 775–776; *Bernstein,* 3 F.4th at 1143-1144; *Gunther v. Alaska Airlines, Inc.,* 72 Cal.App.5th 334 (2021).

operations is in California: the CA Truck Drivers are hired, onboarded, and trained at CRST's Riverside Terminal; once they become employees, they pick up the truck from the Riverside Terminal or a local CRST-approved parking lot; during their time off from work, they park the trucks at CRST's Riverside Terminal or a local CRST-approved parking lot; they utilize the Riverside Terminal to conduct preventive maintenance and repairs on the trucks; CRST requires them to attend California's mandatory discrimination and harassment training; and, CRST provides them with notices, policies, and trainings pursuant to California law (e.g., Labor Code section 2810.5 notice; California Addendum to its "Driver Employee Handbook").[38] Accordingly, the Court should find that the California-based truck drivers' legal claims will involve questions of law that will be based on California law, and there are many common questions of law and fact that will generate common answers that are applicable to all the CA Truck Drivers and resolve issues that are central to each legal claim. The common questions of law and fact will include questions regarding: whether CRST's Piece-Rate Pay Plan fails to separately compensate drivers for Nonproductive Time; whether, by failing to compensate drivers for actual miles driven in excess of mileage estimates, and at the rate promised in their wage rate sheet, CRST violates California law; whether the drivers' use of their tools (e.g., mobile phone) to perform their job duties is a reasonable cost under Labor Code section 2802; whether CRST is permitted to require the drivers to pay for citations and fines related to CRST's trucks; whether the wage statements violate Labor Code sections 226 and 226.2; and, whether CRST's failed to timely pay wages under Labor Code section 203.

Defendants may argue that minor variations in the potential class members' claims (e.g., damages) defeat commonality. However, where a lawsuit

[38] Berenji Decl., Ex. C at F489, F631, Ex. D at F257, Ex. E at F41; Huckaby Decl., ¶¶ 6-7; Brueck, 32:7-14.

"challenges a system-wide practice...that affects all of the putative class members...individual factual differences among the individual litigants or groups of litigants will not preclude a finding of commonality."[39] As a common example, the differences among class members in the quantification and allocation of damages are insufficient to defeat class certification.[40]

C. Plaintiff's Claims are Typical

Rule 23(a)(3) requires that the representative plaintiff have claims "typical of the claims...of the class." "The test of typicality is whether other member have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct."[41] Representative claims are typical "if they are reasonably co-extensive with those of absent class members; they need not be identical."[42] In other words, "named plaintiffs need not be identically situated with all other class members. It is enough if their situations share a common issue of law or fact and are sufficiently parallel to insure a vigorous and full presentation of all claims for relief."[43] The typicality test turns on "whether other member have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class member have been injured by the same course of conduct."[44]

Here, Plaintiff and all other class members have the same fundamental injury – unpaid wages and business expense reimbursements – resulting from the

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[39] *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001).
[40] See *Vaquero v. Ashley Furniture Indus., Inc,* 824 F. 3d 1150, 1155 (9th Cir. 2016); *Leyva v. Medline Indus., Inc.,* 716 F.3d. 510, 514 (9th Cir. 2013); *Jimenez v. Allstate Ins., Co.,* 765 F.3d 1161, 1167 (9th Cir. 2014); *Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d 1087, 1094 (9th Cir. 2010).
[41] *Wolin v. Jaguar Land Rover N. Am., LLC,* 617 F. 3d 1168, 1175 (9th Cir. 2010).
[42] *Hanlon*, 150 F.3d at 1020.
[43] *Cal. Rural Legal Assistance, Inc. v. Legal Servs. Corp*. 917 F.2d 1171, 1175 (9th Cir. 1990) (internal quotations omitted).
[44] *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014).

same course of conduct and policies of Defendants. Like the other class members, Plaintiff resided in California when he worked for CRST as a truck driver. Huckaby Decl., ¶5. All of the compensation practices that applied to Plaintiff and the CA Truck Drivers were identical and applied uniformly. Plaintiff was never treated differently with respect to any of the subject policies and practices at issue. Plaintiff's claims are certainly co-extensive with those of the proposed classes, as they are based on substantially identical facts and theories of liability. In asserting his claims, Plaintiff will necessarily establish the claims of other class members and is thus typical of the class.

D. The Adequacy Requirements Are Met

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Adequate representation turns on whether the named plaintiff and his/her counsel "have any conflicts of interest with other class members," and whether the named plaintiff and his/her counsel will "prosecute the action vigorously on behalf of the class."[45]

Plaintiff will fairly and adequately protect the interests of the class. Plaintiff does not have a conflict of interest with the class, as his claims are identical to the claims of the putative class members and he possesses the same interests and has suffered the same injuries as the proposed class. Further, Plaintiff has already and will continue to dedicate his time to prosecuting this action.[46] Additionally, as set forth in the Declaration of Shadie L. Berenji submitted herewith and incorporated herein by reference, Plaintiff has retained counsel well-qualified and sufficiently experienced to ensure vigorous prosecution of this litigation. This declaration demonstrates that counsel has extensive experience in the handling of wage and hour class actions and has

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[45] *Hanlon*, 150 F.3d at 1020; *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003).
[46] Huckaby Decl., ¶¶ 3-4, 22-25.

served as class counsel with positive results for certified classes.[47]

2. Rule 23(b)(3) Predominance Requirement is Satisfied

A class may be certified under Rule 23(b)(3) when "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."[48] The predominance inquiry concerns whether a plaintiff's "actual legal theory" is "one in which common issues of law or fact … predominate over individual questions."[49] The predominance inquiry requires the Court to determine "whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues."[50] If "one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matter will have to be tried separately, such as damages or some affirmative defense peculiar to some individual class members." *Id.* Courts and treatises acknowledge that "[c]ommon issues will predominate if 'individual factual determinations can be accomplished using computer records, clerical assistance, and objective criteria.'"[51] "'When the claim is that an employer's policy and practices violated labor law, the key question for class certification is whether there is a consistent employer practice that could be a basis for consistent liability.'"[52] Thus, where the employer has a uniform policy

[47] Berenji Decl., ¶¶ 17-33.
[48] *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997).
[49] *United Steel v. Conoco Phillips Co.*, 593 F.3d 802, 808 (9th Cir. 2010).
[50] *Tyson Foods, Inc. v. Bouaphakeo* 136 S. Ct. 1036, 1045 (2016) (internal citations and quotations omitted).
[51] 2 Newberg on Class Actions § 4:50 (5th ed.); *Smilow v. Sw. Bell Mobile Sys., Inc.,* 323 F.3d 32, 40 (1st Cir. 2003).
[52] *Kamar v. Radio Shack Corp.*, 254 F.R.D. 387, 398-99 (C.D. Cal. 2008).

that is uniformly applied, the appropriateness of class certification is 'easily established.'"[53]

As illustrated below, in the case at hand, Plaintiff can meet the predominance requirement of Rule 23(b)(3):

A. Piece-Rate Class Wage Claims

i. Unpaid Tasks/Activities

The linchpin of Plaintiff's wage claims is the contention that CRST violated California law by failing to compensate the truck drivers for the performance of tasks that were not covered by CRST's Piece-Rate Plan, which primarily only paid for miles driven by the truck drivers. CRST acknowledges that under its Piece-Rate Plan it **does not separately** compensate for the Nonproductive Time for which compensation is sought in this case. CRST further admits that all of the Nonproductive Time is part of the drivers' "normal work duties." Therefore, at the core of this claim is a single common question: whether CRST's uniform policy and practice of building pay for Nonproductive Time into its promise to pay a certain amount for each mile driven violates California law.

California's Industrial Welfare Commission ("IWC") Wage Order requires employers in the transportation industry to pay at least minimum wage for all hours worked.[54] "Hours worked" is a defined as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." *Id*. When an employee is paid pursuant to a piece-rate compensation system for the performance of a specific task(s), California law prohibits an employer from

[53] *Wren v. RGIS Inventory Specialists*, 256 F.R.D. 180, 204 (N.D. Cal. 2009); see *Brinker Rest. Corp.,* 53 Cal. 4th at 1033 ["Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly found suitable for class treatment."].

[54] *See* IWC Wage Order No. 9-2001, §§ 2(H), 4.

"borrowing" the piece-rate compensation to pay for the performance of an additional task(s) that is not covered by the piece-rate compensation system (i.e., nonproductive work), *regardless of whether the total average hourly compensation paid to an employee is above minimum wage.*[55] Instead of borrowing from the piece-rate compensation to satisfy its legal obligation to compensate an employee for all "hours worked" with at least minimum wages, California law requires the employer to *separately compensate* the employee for the Nonproductive Time at either the minimum wage or a contractual rate. *Id.*

The genesis of the no-borrowing rule is in *Armenta v. Osmose, Inc.,* 135 Cal.App.4th 314, 317-319, 324 (2005), wherein the California Court of Appeal held that it was unlawful for a utility-pole maintenance company to borrow the compensation it promised to pay employees for the maintenance of poles – classified as "productive" tasks – to satisfy its minimum wage obligations for work that was classified as "nonproductive" and unpaid, such as travel and processing paperwork. Notably, the *Armenta* court held this was unlawful even if the average of the paid productive hours and the unpaid nonproductive hours exceeded minimum wage because "[t]he averaging method utilized by federal courts for assessing a violation of federal minimum wage law does not apply." *Id.* at 323. The court reasoned that allowing an employer that promises to compensate particular work at a particular rate to borrow some of that compensation and apply it to work for which no compensation was promised will dilute the contractually promised wages and contravene Labor Code sections 221-223, which prohibit an employer from using wages it promised by contract "as a

[55] Cal. Lab. Code § 226.2(a)(1); *Ridgeway,* 946 F.3d 1066; *Gonzalez*, 215 Cal. App 4th at 49; *Bluford*, 216 Cal.App.4th 864; *Quezada v. Con-Way Freight, Inc.,* 2012 WL 2847609 *6 (N.D. Cal. July 11, 2012); *Reinhardt v. Gemini Motor Transport*, 869 F.Supp.2d 1158, 1168 (E.D. Cal. 2012); *Cardenas v. McLane Foodservices, Inc.,* 796 F.Supp.2d 1246, 1252 (C.D. Cal. 2011); *Carillo v. Schneider Logistics*, 823 F.Supp.2d 1040, 1044 (C.D. Cal. 2011); *Ontiveros v. Zamora*, 2009 WL 425962 *3 (E.D. Cal. Feb. 20, 2009); *Armenta,* 135 Cal.App.4th 314; *Oman,* 9 Cal. 5th 762.

credit" against its minimum wage obligation and secretly paying a lower wage while purporting to pay the contractual wage. *Id.* The court concluded that the employer was required to pay minimum wage for all the nonproductive work. *Id.* at 324.

Gonzalez v. Downtown LA Motors and *Bluford v. Safeway Stores* were the first two California Courts of Appeal that applied the *Armenta* no-borrowing rule to employees compensated by piece rate.[56] These cases held that when employees are compensated on a piece-rate basis, they must be separately compensated for time spent performing work for which piece-rate compensation cannot be earned. *Id*. In *Gonzalez*, the court held that automobile technicians, who were paid on a piece-rate basis for automobile repair tasks, must also be paid at least the minimum hourly wage for the time they were required to perform non-repair tasks and wait at the auto dealership for new repair work.[57] By applying the *Armenta* no-borrowing rule, the court in *Gonzalez* concluded that the employer violated Labor Code section 223 by borrowing from piece-rate compensation the employer promised to pay for repair work in order to supply a minimum hourly wage for non-repair work that was not covered by the employer's promise to pay piece rate.[58] The court used the following example to illustrate how borrowing to fulfill an employer's minimum wage obligations for all hours worked dilutes the contractually promised wages to the employee: "a technician who works four piece-rate hours in a day at a rate of $20 per hour and who leaves the job site when that work is finished has earned $80 for four hours of work. A second technician who works the same piece-rate hours at the same rate but who remains at the job site for an additional four hours waiting for customers also earns $80 for the day; however, averaging his piece-rate wages over the eight-hour work day results in an average pay rate of $10 per hour, a 50 percent discount from his

[56] *Gonzalez*, 215 Cal.App.4th at 40-41; *Bluford,* 216 Cal.App.4th at 872, 873.
[57] *Gonzalez*, 215 Cal.App.4th at 40-41.

promised $20 per hour piece-rate. The second technician forfeits to the employer the pay promised "by statute" under Labor section 223 because if his piece-rate pay is allocated only to piece-rate hours, he is not paid at all for his nonproductive hours." *Id.* at 50.

In *Bluford*, the court utilized the *Armenta* no-borrowing rule to support its holding that an employer must separately compensate piece-rate workers at the minimum or a contracted hourly wage for rest breaks that must be authorized and permitted by their employers under California law.[59] In *Bluford*, the defendant paid its delivery drivers on a piece-rate basis for miles driven and tasks performed.[60] Although the drivers were authorized to take rest breaks, they did not receive any compensation for that time.[61] The *Bluford* court held that because the Labor Code provides that rest breaks must be considered "hours worked," the drivers must be separately compensated for that time.[62]

After *Gonzalez* and *Bluford,* numerous federal and state courts, have applied the *Armenta* no-borrowing rule and held that a piece-rate formula that does not compensate directly for all time worked on tasks that are not covered by the piece-rate violates California law, even if the task was performed during an hour when the employee was already compensated above minimum wage.[63]

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[58] *Id.* at 50.
[59] *Bluford*, 216 Cal.App.4th at 873.
[60] *Id.* at 867
[61] *Id*. at 869.
[62] *Id*. at 872.
[63] The California Supreme Court in *Oman v. Delta Air Line, Inc.,* 9 Cal.5th 762, 781 (2020) recently approved the *Armenta* no-borrowing rule and decisions in *Gonzalez* and *Bluford* with the following: "Although we have not previously had occasion to address the issue, we agree with this consensus: State law prohibits borrowing compensation contractually owed for one set of hours or tasks to rectify compensation below the minimum wage for a second set of hours or tasks, regardless of whether the average of paid and unpaid (or underpaid) time exceeds the minimum wage. Even if that practice nominally might be thought to satisfy the requirement to pay at least minimum wage for each hour worked, it does so only at the expense of reneging on the employer's contractual commitments, in violation of the contract protection provisions of the Labor Code." *See e.g., Ridgeway,* 946 F.3d 1066; *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017); *Balasanyan v. Nordstrom, Inc.* 294 F.R.D. 550, 567 (S.D. Cal. 2013).

Moreover, the California Legislature codified the legal principles enunciated by *Gonzalez* and *Bluford* with the enactment Labor Code section 226.2.[64] California Labor Code section 226.2, subdivision (a)(1) provides, in relevant part, for employees compensated on a piece-rate basis: "Employees shall be compensated for rest and recovery period and other nonproductive time separate from any piece-rate compensation."

Finally, most recently, the Ninth Circuit in *Ridgeway v. Wal-Mart* affirmed the *Armenta* no-borrowing rule and confirmed the holdings in *Gonzalez* and *Bluford* by holding that Wal-Mart violated California law by "subsuming time spent on rest breaks and inspections" into a pay structure that did not provide truck drivers with separate compensation for these activities.[65] In reaching its conclusion, the *Ridgeway* court stated that the following parts of Wal-Mart's pay manual was instructive: "Wal-Mart used an activity-based system that compensated drivers for (1) miles driven, (2) 'activity pay,' which included arriving at a location, departing, and hooking a new trailer to the truck, and (3) hourly pay for limited events like waiting at a store or supplier, delays due to inclement weather, or delays caused by a truck breakdown."[66] The court also noted that Wal-Mart's "pay manual [was] silent on rest breaks and inspections."[67] Wal-Mart attempted to defeat the truck drivers' wage claims by arguing: "these [rest breaks and inspection] were built into the pay plan because rest breaks and inspections occurred during an hour when the driver was already compensated above minimum wage and the tasks were 'directly related' to other tasks for which the drivers received compensation."[68] The court in *Ridgeway* rejected

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[64] *Nisei Farmers League v. Labor & Workforce Development Agency,* 30 Cal.App.5th 997, 1006 (2019); *Villalpando v. Exel Direct Inc.*, 161 F.Supp.3d 873, 889 (N.D. Cal. 2016).

[65] *Ridgeway v. Wal-Mart*, 946 F.3d at 1084-1085. *Ridgeway* is binding on this Court. *Hart v. Massanari,* 266 F.3d 1155, 1171 (9th Cir. 2001).

[66] *Id.* at 1084.

[67] *Id.* at 1085.

[68] *Id.* at 1084.

Wal-Mart's argument by applying the *Armenta* no-borrowing rule and holding that California law requires an employer to "pay an employee for all 'hours worked,' including 'the time during which an employee is subject to the control of an employer.'" *Id.* The Ninth Circuit in *Ridgeway* concluded that Wal-Mart violated California law by impermissibly averaging a trucker's pay within a single hour, when it should have provided separate compensation for rest periods and inspections.[69]

The California Supreme Court in *Oman v. Delta Air Lines* synthesized the above-mentioned authorities and explained, in determining whether an employer has violated the no-borrowing rule, the resolution necessarily turns on the answers to the following two questions: "Whether a particular compensation scheme complies with these obligations may be thought of as involving two separate inquiries. First, for each task or period covered by the contract, is the employee paid at or above the minimum wage? Second, are there other tasks or period not covered by the contract, but within the definition of hours worked, for which at least the minimum wage should have been paid?"[70]

Here, the two questions outlined in *Oman* to determine if CRST's piece rate compensation system violated the Labor Code are common to all members of the Piece-Rate Class, and the answers to these common questions will "drive resolution in one stroke," whether in favor of the class or CRST. Specifically, in this case, the central issue for the Piece-Rate Class is whether there are "tasks or periods not covered by the contract, but within the definition of hours worked, for which at least the minimum wage should have been paid?" CRST has expressly acknowledged that it does not allocate any separate pay for many tasks performed or time spent by the CA Truck Drivers while they are on duty and within its control. As set forth above, it is *undisputed* that the drivers are not separately

[69] *Id.* at 1084-1085.
[70] *Oman v. Delta Air Lines,* 9 Cal. 5th at 782-783.

compensated for Nonproductive Time, including but not limited to: (1) vehicle inspections; (2) completing paperwork/data entry; (3) stopping at DOT weigh stations; (4) fueling; and, (5) attending meetings. Notably, similar to Wal-Mart in *Ridgeway*, it is also undisputed that CRST's pay records are wholly silent on compensation for the Nonproductive Time. [71]

CRST merely disputes that they were required to separately compensate the drivers for Nonproductive Time. CRST contends that the Mileage Pay "compensates a driver for all normal duties associated with the load." [Berenji Decl., Ex. B, Response to No. 2.] CRST necessarily contends that compensation for Nonproductive Time is included in the piece rate paid, and that it can average that pay (i.e., borrow from the piece rate) under California law to cover the otherwise unpaid time. However, as set forth above, an endless stream of court decisions has rejected CRST's positions, including the Ninth Circuit.

In light of the foregoing, the predominant legal question presented by these facts is whether Plaintiff is correct that California law in fact obligates CRST to separately compensate the drivers for Nonproductive Time. Plaintiff contends that California law does not allow CRST to "borrow" the pay which it promises to pay the drivers for driving, to cover the mandatory tasks and times it did not promise to pay by piece-rate (e.g., inspections). Therefore, based on Plaintiff's legal theory, Plaintiff will not need to prove that any individual employee was ever paid less than minimum wage in a given hour. Numerous courts have found, when faced with strikingly similar circumstances, that common issues predominate under these circumstances and have thus granted class certification.[72] Accordingly, under governing case law, Plaintiff contends

[71] Berenji Decl., Ex. B, Response to No. 2, Ex. G, Ex. J at F380, Ex. K at F55, Ex. D at F250, F255-258; Brueck, 36:14-16, 37:10-16, 38:3-12, 49:22-50:8, 50:12-21, 55:3-5, 97:19-98:6, 45:16-20, 52:20-53:2, 22:17-23:7, 50:22-11, 51:15-18, 96:24-97:18, 115:2-25, 154:1-9, 156:7-10, Ex. 14.

[72] *Ridgeway v. Wal-Mart Stores, Inc.*, 2014 WL 4477662 (N.D. Cal. Sept. 10, 2014); *Bluford,* 216 Cal.App.4th 864; *Taylor v. FedEx Freight, Inc.,* 2015 WL 2358248 (E.D. Cal. May 15, 2015); *Mendez v. R&L Carriers, Inc.*, 2012 WL 5868973 (N.D. Cal Nov. 19, 2012); *Quezada v.*

that the evidence in this case is not only sufficient to justify class certification, but would also support summary adjudication for Plaintiff.

ii. Unpaid Compensation for Miles

As illustrated above, CRST's records promise to pay the Piece-Rate Class a specific rate for each mile they drive. However, CRST acknowledges that it does not pay for all miles actually driven.[73] Rather, CRST only pays for a "predetermined" number of miles, even though none of the records that are provided to the CA Truck Drivers state that they will be paid based on an estimate and the drivers are never provided with the predetermined number of miles for their trips.[74] Therefore, as a matter of common practice, CRST does not pay drivers for their actual miles driven in excess of CRST's estimate. *Id*. As a result, drivers end up being short-changed on their trip miles.[75] Additionally, CRST paid drivers at a lower rate than they promised in the pay plan.[76] This results in many unpaid wages due to the understated mileage estimates and the use of an incorrect wage rate for their pay.[77] The predominant legal question for this issue is whether CRST paid at the wage rate they promised to pay, and whether by paying for a predetermined number of miles, rather than actual miles driven, CRST is systematically and secretly depriving its drivers of wages they earned. Whether or not Plaintiff's legal theory is correct presents yet another predominant common question which can and should be resolved as to all the members of the Piece-Rate Class in this one action.

B. Wage Statement Claim

Labor Code section 226, subdivision (a), requires employers to provide

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Con-Way Freight, Inc., 2012 WL 4901423 (N.D. Cal. Oct. 15, 2012); *Dilts v. Penske Logistics*, LLC, 267 F.R.D. 625 (S.D. Cal. 2010); *Espinoza v. Domino's Pizza*, 2009 WL 882845 (C.D. Cal. Feb. 18, 2009).

[73] Brueck, 116:12-117:10, 217:15-18.

[74] Brueck, 77:15-23, 217:15-18, 217:19-25; Berenji Decl., Ex. B, Response to No. 2. CRST further admits that this corporate policy applies to all the drivers in the Piece-Rate class. *Id.*

[75] *See* e.g., Brueck, 183:20-184:18, Ex. 28 at F799, Ex. 26 at F729-736.

[76] Brueck, 190:2-191:8*,* Ex. 26 at F740; Berenji Decl., Ex. K.

[77] Huckaby Decl. at ¶17.

employees with itemized wage statements that accurately reflect, among other things: (1) gross and net wages earned; (2) total hours worked by the employee; and, (3) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Additionally, for piece-rate employees, Labor Code section 226.2(a)(2)(B), requires employers to include the total hours, rate, and gross wages for "nonproductive time."

Here, Defendants uniformly failed to provide Plaintiff and the class with properly itemized wage statements. CRST's pay stubs are deficient and violate California law because they: (1) omit information they are required to include; and, (2) inaccurately report required information. First, CRST's wage statements violate Labor Code sections 226 and 226.2 by uniformly omitting the "total hours worked," the total hours, rate, and gross wages for the "nonproductive time," and the applicable hourly rates in effect and corresponding number of hours worked at each rate.[78] Second, CRST's wage statements violate Labor Code section 226 by inaccurately reporting the true wages earned and the actual miles driven for which a piece-rate is due.[79] With respect to these alleged violations, liability can be determined from the face of the wage statements. Because CRST admits that their wage statements are standardized and uniform, the question of whether these omissions constitute a violation of California law is a common issue that can be adjudicated on a class-wide basis.[80]

C. Business Expense Reimbursement Claim

California Labor Code section 2802 requires employers to reimburse their employees for all expenses necessarily "incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the

[78] Brueck, 168:5-169:9, 180:13-15, 187:18-188:1, 193:25-194:15, Exs. 25-26; Huckaby Decl., ¶ 20.

[79] See Huckaby Decl. at ¶ 17; Brueck, 190:2-191:8, 183:20-184:18, Ex. 26 at F729-736, F740, Ex. 28 at F799; Berenji Decl., Ex. K.

[80] *See McKenzie v. Federal Express Corp*., 275 F.R.D. 290, 299-303 (C.D. Cal. 2011) (certifying Labor Code section 226 claim involving standardized wage statements that failed to list all applicable hourly rates and contained multiple entries that did not yield the correct total hours worked).

directions of the employer." Expenses are "necessary" if they are "reasonable." Cal. Lab. Code § 2802(c). Reimbursable expenses may reasonably fall within the scope of employment when it is not "'so unusual or startling that it would be unfair to include the loss as a cost of the employer's doing business.'"[81] In *Cochran v. Schwan's Home Services, Inc.* 228 Cal.App.4th 1137 (2014), the court addressed whether an employer must reimburse an employee for the reasonable expense of the use of a personal cell phone. *Id.* at 1144. The court found that when employees use their personal cell phones for work-related calls, California Labor Code section 2802 requires the employer to reimburse the employee. *Id.* They noted that failure to reimburse would have allowed the employer to pass their operating expenses onto their employees, which would be in direct conflict with the legislature's reasoning for enacting the statute. *Id.*

Here, Plaintiff and the class furnished their personal mobile phones, along with monthly voice and data plans, to communicate with other CRST's employees and customers.[82] Plaintiff and the class also used their mobile phones to submit required paperwork to CRST.[83] CRST also required Plaintiff and the class to pay for safety citations that related to the trucks that were owned by CRST and driven by the truck drivers to perform their job duties (i.e., missing permits and license).[84] Despite the reasonably necessary and constant use of their personal mobile phones for work, CRST never reimbursed Plaintiff and the CA Truck Drivers for this expense.[85] Like the plaintiffs in *Cochran*, Plaintiff and the class were not being reimbursed for necessarily incurred cell phone expenses, and as a result CTC was unlawfully passing its operating expenses onto them in direct violation of California law. Accordingly, Defendants'

[81] *See O'Hara v. Teamsters Union Local # 856,* 151 F.3d 1152, 1158, fn. 1 (9th Cir.1998) citing to *Devereaux v. Latham & Watkins,* 32 Cal.App.4th 1571, 1582 (1995).
[82] Brueck 102:3-15, 109:25-111:25, 211:11-21, Ex. 3 at F489, F515, F541; Huckaby Decl., ¶16; Berenji Decl., Ex. N at F403-404, F411.
[83] *Id.;* Brueck, 83:22-84:22, 88:19-89:2, Ex. 3 at F492, 494.
[84] Brueck, 90:17-91:7, Ex. 3 at F501, 127:6-18, Ex. 5 at F940, 134:5-25, Ex. 6 at F347-348.
[85] Brueck, 86:23-88:18, Ex. 3 at F493, 219:5-8.

uniform and systematic practice of failing to reimburse Plaintiff and the class for these expenses constitutes a violation of California Labor Code section 2802 and the unlawfulness of this practice can be established on a classwide basis.

D. Labor Code Section 203 Claim

If an employer fails to pay an employee all wages due at the time of discharge or more than seventy-two (72) hours after resignation, the wages shall continue as a penalty from the due date, and up to 30 days. Cal. Lab. Code § 203.

CRST failed to timely pay Plaintiff his final wages at the end of his employment. Plaintiff's last day of employment was August 17, 2020 and CRST did not provide him the wages that were due until eleven days later, August 28, 2020. *See* Huckaby Decl., ¶21; Brueck, Ex. 26 at F793. Further, as set forth above, Plaintiff contends that CRST failed to timely pay wages due and payable to the Piece-Rate Class. It is clear that if CRST is found to have violated the requirements of the Labor Code in connection with the above wage claims, that conduct will have been the same as to all the members of the Piece-Rate Class. Thus, whether CRST failed to timely pay wages to the Piece-Rate Class, and the wages shall continue as a penalty from the separation of employment, is a predominant legal question which can be answered for all the former employees in the Piece-Rate Class, in a single adjudication.

E. UCL Claim

Plaintiff's claims pursuant to California Business and Professions Code Section 17200 are derivative of Plaintiff's other claims, and should be certified for the same reasons the other claims should be certified.

3. Rule 23(b)(3) Superiority Requirement is Satisfied

Rule 23(b)(3) provides the following four factors to consider in determining if a class action would be superior to individual adjudication: (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning

the controversy already commenced by or against members of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (4) the difficulties likely to be encountered in the management of a class action.

A single adjudication of the company-wide policies at issue in this dispute is the most efficient and fairest means of trying this case. As Plaintiff and Plaintiff's counsel are adequate representatives of the class, Plaintiff is unaware of any reason the class members would prefer to individually control separate actions. Concentrating the claims into a single case would be desirable because liability as to Plaintiff's claims can be proven using common class-wide methods of proof. In adjudicating all of Plaintiff's claims, a fact-finder need only examine business expense receipts, Defendants' corporate policies and procedures to determine liability, and Defendants' time and payroll records to determine the amount of damages owed to the class members. Berenji Decl.,¶16. Thus, the maintenance of this suit as a class action is a fair and efficient way to adjudicate all putative class members' claims. If a class is not certified, each individual plaintiff will be required to present, in separate duplicative proceedings, essentially the same information, arguments, and evidence. This multiplicity of trials would be an unnecessary waste on judicial resources, as well as the resources of the parties. Therefore, managing the class action would not be so difficult as to make individual trials superior to a class action.

V. CONCLUSION

Plaintiff respectfully requests that this Court grant his motion in entirety.

DATE: February 27, 2022

BERENJI LAW FIRM, APC

By: */s/ Shadie L. Berenji*
SHADIE L. BERENJI
DAVID C. HOPPER
Attorneys for Plaintiff, KEITH HUCKABY