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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

KEITH HUCKABY, individually and on behalf of all other persons similarly situated, 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 **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT** *[Proposed Order lodged concurrently herewith]* Date: September 9, 2024 Time: 1:30 p.m. Judge: The Honorable Otis D. Wright II Courtroom: 5D Pre-Trial Conference: October 28, 2024 Trial Date: November 19, 2024

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I. INTRODUCTION

This is a certified class action addressing Defendant CRST Expedited Inc.'s ("CRST") policy of paying its commercial truck drivers that resided in California ("Class Members") by a piece rate for driving, but denying them wages for non-driving work that it required them to perform during the Class Period of this case. The required non-driving work that is the subject of this Motion for Partial Summary Judgment consists of: (1) conducting pre- and post-trip vehicle inspections; (2) completing required paperwork/data entry; (3) stopping and scaling the vehicles at weigh stations; (4) participating in Department of Transportation ("DOT") inspections; and (5) fueling the truck. (Hereafter referred to as the "Admittedly Compensable Non-Driving Tasks").

CRST concedes that it required the Class Members to perform these Admittedly Compensable Non-Driving Tasks, that Class Members were on duty when performing them, and that the law entitles Class Members to compensation for them. At the same time, CRST also admits that it agreed with Class Members to pay them a per-mile piece rate for the distance they drove the truck. However, CRST did not pay them any separate or additional wage for the Admittedly Compensable Non-Driving Tasks.

CRST's pay scheme violates California law, which forbids borrowing from a per-mile piece rate to satisfy the obligation to separately pay wages for the non-driving work. In fact, CRST's pay scheme is just the sort of pay policy that the "no borrowing" rule was designed to prevent, as it dilutes the contractually promised per-mile rate, resulting in payment that is secretly reduced below the rate to which the parties agreed.

CRST does not dispute the material facts concerning the way in which it calculated Class Member pay or the materials it promulgated to the Class Members to explain the pay scheme. Rather, CRST contends in response to Plaintiff's complaint that the per-mile rate scheme had impliedly compensated for all non-driving tasks necessary to complete the load assignments. Yet, CRST admits that it did not obtain any express agreement from Class Members that their per-mile rate included such non-driving tasks, or that it even informed Class Members of this possibility during the Class Period. Only *after* this case

was filed, after the Court granted class certification, and after the end-date of the Class Period, did CRST attempt to amend its policy by distributing a driver handbook stating that non-driving tasks would be folded into the per-mile rate. It is undisputed, however, that during the Class Period, CRST's pay agreements uniformly informed the Class Members that they would be paid for *miles* driven, without any explicit incorporation of non-driving tasks into the per-mile rate. In turn, CRST's uniform written policies confirmed to Class Members that they would be paid "based on the miles [they] run" and would earn more when they "run more miles" and work in a team because the "wheels [are] always moving."

Binding authority holds that non-driving tasks (i.e., non-piece-rate work) must be paid separately from the per-mile rate unless they are explicitly incorporated into it. As this Court observed at class certification, the parties' pay agreement is evidenced by the words of the instrument, not by a party's subjective impressions. Here, it is beyond dispute that CRST's pay agreements and written policies during the Class Period did not incorporate non-driving tasks or activities into the per mile rate. It is also undisputed that during the Class Period, CRST had no agreement with the Class Members to explicitly incorporate any non-driving work into the per-mile rate. To claim otherwise, as CRST now does, is to attempt to impermissibly dilute the value of the Class Members' pay scale, in violation of both the terms of CRST's agreements with the Class and the fundamental underpinnings of California's wage protection laws.

In this Motion for Partial Summary Judgment, Plaintiff seeks a ruling that CRST failed to pay the Class Members for performing the Admittedly Compensable Non-Driving Tasks outlined above. As shown below, there is no dispute of fact material to this determination. For all the reasons discussed herein, Plaintiff's Motion should be granted.

II. SUMMARY OF UNCONTROVERTED FACTS

A. Class Members Transported Trailers for CRST Out of Their Designated Home Base in California.

CRST is in the expedited freight business, which involves transporting freight

quickly over long distances. (Plaintiff's Uncontroverted Fact ("UF") 1, 2.) CRST touts that it leads the industry with an average length of haul of approximately 1,400 to 1,500 miles. (UF 3.)

From August 9, 2017 to April 10, 2023 ("Class Period"), CRST employed approximately 4,512 Class Members. (UF 4.) During this time, CRST's California operations were conducted out of its terminal located in Jurupa Valley, which is known as CRST's "Riverside Terminal." (UF 8-9.) The Class Members are California residents and CRST designated their "home" base to be in California. (UF 8-18.) CRST conducted the hiring process, onboarding, and training for Class Members at the Riverside Terminal in California. (UF 9.) After orientation, Class Members utilized the Riverside Terminal to retrieve and park their assigned truck during time off from work, known as "Home Time," and to conduct necessary maintenance on the truck. (UF 11-13.)

CRST also provided Class Members with California Labor Code section 2810.5 written notice for new hires; an addendum for California residents in its driver employee handbook specifying that Class Members would be subject to California wage laws; and required Class Members to attend discrimination and harassment training under California law. (UF 14-15.) The Class Members also were subject to California's income tax law. (UF 16.)

B. CRST's Team Driving Model is Designed to Achieve its Expedited Freight Goals While Complying with the DOT's Time Constraints.

CRST's operations and its drivers are subject to the DOT Regulations, including regulation of the maximum number of hours a truck driver may drive. (UF 18, 26.) The DOT mandates that a truck driver may only be on-duty for a maximum of fourteen hours per day. (UF 20.); 49 C.F.R. § 395.3(a)(1)-(3). Within this fourteen-hour period, a truck driver may only drive for a total of eleven hours and the remaining three hours may be spent on non-driving responsibilities. (UF 21.); 49 C.F.R. §§ 395.3(a)(1)-(3), 395.2. After the fourteen-hour period, the DOT mandates that the driver refrain from driving for ten

consecutive hours, wherein the driver resets their "Hours of Service."[1] (UF 22.); 49 C.F.R. § 395.3(a)(1).

To achieve its expedited freight goals, CRST has most of its drivers operate as a team (i.e., two drivers are assigned to each truck). (UF 23 - 26.) CRST's team-driving approach typically resulted in one person driving while the co-driver remained confined to the sleeper berth or the passenger seat of the moving truck and "resets" their "Hours of Service." (UF 24, 25.)

C. CRST's Driver Recruitment, Training and Onboarding Policies Promised to Pay Class Members for the Miles Driven.

CRST, the "nation's largest team carrier," uses dedicated recruiters ("Driver Recruiters") to attract and hire drivers to work as a team. (UF 27, 28.) CRST advised Driver Recruiters that their ability to meet CRST's hiring goals is integral to profitability. (UF 30.) CRST's standard recruiting manuals uniformly directed Driver Recruiters to entice prospective drivers by informing them that team "drivers are able to earn a higher income than if they were driving solo" because two drivers result in "more *miles*." (UF 29, 31 (*italics* added).) Pursuant to these policies, CRST's Driver Recruiters also emphasized that CRST "pay[s] you for your miles whether your truck is loaded or empty." (UF 33.)

CRST also instructed its Driver Recruiters to inform prospective employees leery of team driving that they could make more money because the truck is "always moving," and if the truck slows down while team-driving, "you have the ability to make up the missed time/miles on the back end." (UF 32, 34.)

Further, CRST attempted to attract drivers by telling them that "team driving allows for higher income (more miles!)" and that drivers working for other companies that pay a flat rate might not make as much as a CRST driver. (UF 35, 36, 38.)

[1] "Hours of Service" is a regulatory scheme under the authority of the DOT to ensure that drivers get adequate rest and promote safety.

During the onboarding process, CRST provided Class Members with written policies emphasizing that drivers are paid for the miles driven. (UF 43-48.) For example, in one of the onboarding manuals, CRST included the following "Frequently Asked Question":

> **How many miles can I run?**
> Our average length of haul is approximately 1,400 to 1,500 miles – the longest in the industry! This means more time working and less time waiting. Our commitment to the long-haul market provides you with consistent mileage all year long. Our teams can currently average over 5,000 miles/week.

(UF 44.)

CRST's onboarding documents also stated that "as an over-the-road driver you will be getting paid based on the miles you run," and "the more you are available, the more miles you can run." (UF 45, 46.) Further, CRST repeatedly informed Class Members that "while you are driving for CRST, you will split the miles, but not the pay." (UF 47, 52, 53.) In other words, "you will be paid for half of the total miles the truck runs each week… As an example, if you and your co-driver run 6,000 miles in a week, you will be paid for 50% of the miles or 3,000 miles." (UF 47.) CRST also provided the Class Members with a "Student Driver Handbook" illustrating they would be paid for the total "movement miles" for the truck. (UF 50.) ("…the total movement miles for the truck for this pay period was 1069 miles. The total paid miles for the driver were 534.5. Based off this example it's for a truck that had two drivers on the truck.").

Nowhere did CRST's recruiting, onboarding or training documents state that Class Members would be paid by the load or that any non-driving tasks were incorporated into the per-mile rate. (UF 31 – 48, 50.)

D. CRST's Common Pay Plan Promised to Compensate Class Members for Miles, Not for Non-Driving Tasks Associated with Delivering Loads.

The only compensation plan that the Class Members signed during the Class Period was "CRST Expedited Solutions Wage Verification Expedited Pay Scale" ("Mileage

Pay"),[2] wherein CRST promised to pay each driver a certain amount per mile, as follows:

> My wage rate will be _ cents per mile. I will split miles with my [Co-driver].

(UF 51, 52.)

The Class Members were also provided with a "CRST Expedited Pay" sheet that stated: "Please note that while you are driving for CRST Expedited, you will split the miles, but not the pay." (UF 53.) Nowhere did CRST's pay scale agreements state that Class Members would be paid by the load or mention any of the non-driving tasks associated with delivering loads. (UF 49, 52, 53, 82, 83.)

E. The Class Members' Job Responsibilities Included a Set of Regular Non-Driving Tasks and Obligations.

The Class Members were required to safely drive CRST's semi-tractors with up to a 53' trailer. (UF 56.) CRST operated a "forced dispatch" system, whereby "[f]ailure by any company CRST driver to accept a legal dispatch will result in disciplinary action." (UF 77.) Class members had to drive up to a 10-hour shift and up to 70 hours per week. (UF 58.)

In addition to the array of tasks that are directly related to driving a big rig safely and efficiently (*see, e.g.*, UF 57-58, 62), CRST's truck drivers' "normal work duties" included the following non-driving tasks: picking up/delivering freight, planning the travel route and work schedule, conducting daily pre-trip and post-trip inspections, completing paperwork and entering data (e.g., DOT driver logs, Bills of Lading), using the onboard computer system to communicate required information to CRST, fueling the truck, hooking/unhooking trailers, waiting on customers and dispatch, stopping and scaling at weigh stations and participating in the DOT's tests and inspections. (UF 63 - 72.)

[2] CRST's California Labor Code section 2810.5 notice references "CRST Expedited Pay Scale Document" under Wage Information.

F. It is Undisputed that During the Class Period, CRST Did Not Compensate Class Members for Specific Non-Driving Tasks that It Concedes Are Compensable (the "Admittedly Compensable Non-Driving Tasks").

CRST's Mileage Pay Plan did not provide pay separate from the per-mile rate for a majority of the non-driving tasks the Class Members were required to perform, including: (1) conducting pre- and post-trip vehicle inspections; (2) completing required paperwork/data entry; (3) stopping and scaling at weigh stations; (4) participating in DOT inspections; and (5) fueling. CRST admits that the foregoing tasks were required and compensable duties and Plaintiff therefore refers to them herein as the "Admittedly Compensable Non-Driving Tasks." (UF 78-80.)

CRST also admits that it did not allocate any portion of the per-mile rate to any of the foregoing non-driving tasks, and that there was no difference in per-mile pay depending on how many such tasks were performed or how long they took. (UF 81 - 84.)

CRST further admits that during the Class Period, it did not promulgate any policies or obtain any agreements from Class Members that explicitly incorporated these Admittedly Compensable Non-Driving Tasks into the per-mile rate. (UF 84, 85, 86.)

Rather, CRST's written policies and pay agreements were wholly silent on compensation for the Admittedly Compensable Non-Driving Tasks. (UF 83.) Rather, CRST's recruitment and training policies provided that pay was for miles driven. (*See* UF 31, 32, 36, 37, 41, 45 - 48.)

Indeed, CRST's Rule 30(b)(6) witness testified that the "main component of CRST's driver compensation [was] miles driven." (UF 54). The witness further explained, and CRST's pay statements confirm, that the other components of driver compensation were not for any of the Admittedly Compensable Non-Driving Tasks at issue in this motion; rather, they were for certain other activities designated under separate taxable income pay codes. (UF 54, 85).[3] Notably, CRST's pay statements did not include

[3] The separate taxable income pay codes correspond to a set of driver obligations distinct from the Admittedly Compensable Non-Driving Tasks, such as waiting with the vehicle

any taxable income pay codes for any of the Admittedly Compensable Non-Driving Tasks, and it is undisputed that none of these tasks were paid for separately from the per-mile rate. (UF 86-88.).

CRST's Rule 30(b)(6) witness is unaware of Class Members ever being told during the Class Period that Mileage Pay was intended to cover all tasks necessary to complete a load assignment. (UF 84.) Nowhere did CRST's policies say the miles corresponded to something other than distance traveled by the truck, or that pay was for the "load," as opposed to by the mile. (UF 81-86.)

The Class Members who have testified in this case confirmed in deposition that mileage pay covered driving, but not non-driving tasks. (UF 55.)

While CRST now contends that Mileage Pay impliedly compensated for delivering loads, it had no such policy during the Class Period. (UF 88.) Only in May 2023, after this case was filed and after the close of the Class Period, did CRST promulgate a new driver manual attempting to amend its prior policies and stating that mileage pay would compensate for all non-driving tasks necessary to complete delivery of the load. (UF 87.)

III. SUMMARY JUDGMENT STANDARD

In this Motion, Plaintiff seeks partial summary judgment and/or adjudication of discrete issues. *See* Ntc. of Mtn., filed concurrently herewith. "A motion for summary adjudication is governed by the same standard as a motion for summary judgment." *Dreamroom Prods., Inc. v. Suavemente, Inc*., 2014 WL 12579813, at *2 (C.D. Cal. 2014). The summary judgment standards are well known and need not be reiterated in detail here.

Where, as here, a claim hinges on contract interpretation, it is "ripe for summary judgment." *See Cacique, Inc. v. Reynaldo's Mexican Food Co., LLC*, 2014 U.S. Dist.

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at customer sites ("detention") and during weather delays, breakdowns, and layovers. Plaintiffs acknowledge these activities, which CRST links to separate pay codes, were compensated at a flat rate, but allege that the flat rate was below minimum wage. Defendant's alleged liability for these separate pay code activities is not part of the instant motion, but reserved for trial.

LEXIS 15773, at *10 (C.D. Cal. Feb. 7, 2014) (Wright, J.).

IV. ARGUMENT

A. California Law Prohibits Borrowing from a Per-Mile Piece Rate to Compensate for Non-Driving Work.

1. The Right to Compensation for "Each Hour Worked."

The California Legislature enacted labor standards to ensure that employees be compensated for "each hour worked." *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 323 (2005) (emphasis added). This requirement, which is more protective than baseline federal standards, "reflect[s] a strong public policy in favor of full payment of wages for all hours worked." *Id.* at 324.

In the foundational *Armenta* case, the Court of Appeal held that it was unlawful for a utility-pole maintenance company to borrow from compensation it promised to pay employees for the maintenance of poles to satisfy its obligation to pay for maintaining, servicing and cleaning the company truck, loading equipment, repairing tools, and driving to and from the job site. *Id.* at 317-319, 324. The company classified the foregoing tasks as "nonproductive" because they were not "directly related" to pole maintenance. *Id.* at 317-318. *Armenta* reasoned that borrowing from compensation promised for particular work and applying it to work for which no compensation is promised contravenes Labor Code sections 221 and 223, which prohibit an employer from using wages promised by contract "as a credit" against its minimum wage obligation, thereby diluting the contractually promised wages and "secretly" paying a lower wage. *Id.* at 320-323.

2. The "No Borrowing" Rule Applies to Piece-Rate Pay Schemes.

Gonzalez v. Downtown LA Motors and *Bluford v. Safeway Stores* applied *Armenta's* no-borrowing rule to employees compensated by a piece rate. *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36, 40-41, 48-53 (2013); *Bluford v. Safeway Inc.*, 216 Cal. App. 4th 864, 872-73 (2013). These cases hold that when employees are compensated on a piece-rate basis, Labor Code sections 221 and 223 require that they be separately

compensated for time spent performing work for which piece-rate compensation is not earned. *Id.*

In *Gonzalez*, the Court of Appeal held that automobile technicians, who were paid on a piece-rate basis for repair work, were also entitled to wages for the time they were required to perform non-repair tasks such as obtaining parts and picking up vehicles to repair. *See* 215 Cal.App.4th at 40-41, 48-53. In applying *Armenta*'s "no borrowing" rule, the Court of Appeal ruled that the defendant violated Labor Code section 223 by borrowing from the piece rate that the employer promised to pay for repair work, as a credit against its obligation to pay wages for non-repair work. *Id*. at 50.

Similarly, in *Bluford*, the Court of Appeal held that an employer must separately compensate piece-rate workers at the minimum or a contracted hourly wage for rest breaks required under California law. 216 Cal.App.4th at 873. The defendant paid its delivery drivers a piece-rate for miles driven and tasks performed. *Id*. at 867. Although the drivers were authorized to take rest breaks, they did not receive any compensation for the time. *Id*. at 869. Because the Labor Code provides that rest breaks are "hours worked," the drivers were entitled to compensation separate from the piece rate for that time. *Id*. at 872.

Thereafter, the California Legislature enacted Labor Code section 226.2, "which was directly premised on the *Gonzalez* and *Bluford* Court of Appeal decisions relating to how piece-rate wages must be paid." *Nisei Farmers League v. Labor & Workforce Dev. Agency*, 30 Cal. App. 5th 997, 1014-15 (2019). Labor Code section 226.2 codifies the holdings of *Gonzalez* and *Bluford*, requiring that "nonproductive" tasks be paid separately from the piece rate. *Id*. at 1006.

Following *Gonzalez* and *Bluford*, numerous federal and state courts, including the Supreme Court of California and the Ninth Circuit, have affirmed *Armenta's* "no borrowing" rule in the piece rate context. *See, e.g., Ridgeway v. Walmart Inc.*, 946 F.3d 1066, 1084 (9th Cir. 2020); *Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017); *Oman v. Delta Air Lines, Inc.*, 9 Cal.5th 762, 781 (2020).

B. The Class is Entitled to Compensation for The Admittedly Compensable Non-Driving Tasks that CRST Failed to Compensate Separately from the Per-Mile Rate.

1. There is No Material Dispute that CRST Failed to Pay for Non-Driving Tasks Separately from the Per-Mile Rate, in Violation of the "No Borrowing" Rule and Labor Code Sections 221 and 223.

Binding authority holds that mileage-based pay systems fail to compensate for non-driving tasks where they are not explicitly included in the piece rate or paid separately from it. In *Ridgeway*, the Ninth Circuit addressed an analogous pay system whereby a trucking company compensated truck drivers with: a per-mile rate; "activity" pay for discrete work tasks; and hourly pay for limited events such as detention at a customer. 946 F.3d at 1084. The defendant did not pay for inspections and rest periods under its separate pay codes or hourly pay categories, but argued that these tasks were "subsumed" into the piece-rate because they were performed "in conjunction" with other discrete activities that were expressly covered by "activity" pay. *Id*. Yet, *none* of the "activity codes" or hourly pay categories included inspections or rest periods. *Id*. at 1085. Rather, the policies were "silent" on compensation for performing inspections and completing required rest periods. *Id*. Thus, the defendant's pay system "impermissibly averaged a trucker's pay within a single hour, when it should have provided separate compensation" for the inspections and rest periods. *Id*. at 1084-85.

Here, as in *Ridgeway*, CRST maintained a uniform pay system consisting of: (1) a per-mile rate that compensated for the movement miles of the truck; (2) separate "pay codes" for discrete activities, *other* than the Admittedly Compensable Non-Driving Tasks at issue in this Motion; and (3) limited hourly pay for certain events, such as breakdowns and layovers lasting more than 48 hours. *See* UF No. 85. Just as the pay codes in *Ridgeway* did not expressly include compensation for time spent on inspections and rest periods, CRST's per-mile rates and pay codes here did not expressly include compensation for the Admittedly Compensable Non-Driving Tasks. *See* UF No. 86. Rather, just like in *Ridgeway*, it is undisputed that, during the Class Period, CRST's pay documents and

policies were "silent" on these non-driving tasks. Indeed, CRST did not begin referring to them as part of the per-mile rate until its driver manual in May 2023—after the Class Period (and likely in response to this litigation). CRST simply did not include any of the Admittedly Compensable Non-Driving Tasks, much less explicitly include them, during the Class Period. *See* UF No. 86 - 88. Under *Ridgeway's* binding authority, CRST's pay system violates the "no-borrowing" rule as a matter of law.

Ridgeway was decided against the backdrop of well-developed caselaw from this Circuit finding analogous pay schemes unlawful at summary judgment. *See, e.g., Ortega v. J.B. Hunt Transp., Inc.*, 2018 U.S. Dist. LEXIS 227175, at *6, 9-10 (C.D. Cal. July 23, 2018) (mileage and delivery pay "fail[] to separately compensate drivers for other hours they spend performing required tasks" including "pre- and post-trip inspections; paperwork" and "fueling the trucks"); *Wright v. Renzenberger, Inc.*, 2018 U.S. Dist. LEXIS 234702, at *19 (C.D. Cal. Mar. 8, 2018); *Sandoval v. M1 Auto Collisions Ctrs., Inc.*, 2016 U.S. Dist. LEXIS 156810, at *69 (N.D. Cal. Sep. 23, 2016); *Ridgeway v. Wal-Mart Stores, Inc.*, 107 F. Supp. 3d 1044, 1052-53 (N.D. Cal. 2015); *Quezada v. Con-Way Freight, Inc.*, 2012 U.S. Dist. LEXIS 98639, at *7 (N.D. Cal. July 11, 2012); *Cardenas v. McLane Foodservices, Inc.*, 796 F. Supp. 2d 1246, 1253 (C.D. Cal. 2011); *Carrillo v. Schneider Logistics, Inc.*, 823 F. Supp. 2d 1040, 1044 (C.D. Cal. 2011).

For the same reasons, CRST's pay plan violates the Labor Code protections in sections 221 and 223, on which the foregoing authorities are based. There is no dispute that CRST promised Class Members pay for miles driven, without promising any pay (whether separate from or incorporated into mileage pay) for the Admittedly Compensable Non-Driving Tasks at issue in this Motion. *See* UF No. 51 - 53, 78. By using the per-mile rate as a credit against its obligation to pay wages for non-driving tasks that are not included in the per-mile rate, CRST diluted the contractually agreed piece rate and "secretly" paid a rate lower than its contractual commitment. *See* Cal. Lab. C. § 223.

2. CRST's Pay System Also Violated Labor Code Section 226.2 Because CRST Failed to Compensate Separately for Non-Driving Tasks that Did Not Directly Generate Piece Rate Units.

Labor Code section 226.2, subdivision (a) provides, in relevant part: "Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation… 'other nonproductive time' means time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis."[4]

In turn, "the *Gonzalez* and *Bluford* decisions provide helpful context for understanding the meaning of section 226.2." *Nisei*, 30 Cal. App. 5th at 1015. "*Gonzalez* furnishes a fact-based concrete illustration of what was meant by the term 'other nonproductive time,' thereby providing further clarity and certainty to the statute." *Id*. at 1015-16.

In *Gonzalez*, the technicians were paid a flat rate for each "flag hour" assigned by the car manufacturer to repair tasks they performed on the vehicles. 215 Cal. App. 4th at 41. The employer did not pay separately for "nonproductive" time when the auto technicians were not actively repairing vehicles, but had to perform "various nonrepair tasks, including obtaining parts, cleaning their work stations, attending meetings, traveling to other locations to pick up and return cars, reviewing service bulletins, and participating in online training." *Id.* at 42. The foregoing non-repair tasks did not generate "flag hours"

[4] Labor Code section 226.2 merely codified *Gonzalez* and *Bluford* rather than "chang[ing] California law[.]" *Ortega*, 2018 U.S. Dist. LEXIS 227175, at *12 n.4. Section 226.2 expressly states that it "shall not be construed to limit or alter minimum wage or overtime compensation requirements, or the obligation to compensate employees for all hours worked under any other statute or local ordinance." Cal Lab Code § 226.2. Thus, CRST "has the same obligations to its drivers under section 226.2 as it had before section 226.2 was enacted." *Ortega*, 2018 U.S. Dist. LEXIS 227175, at *12 n.4. *Armenta* and its progeny *Gonzalez* and *Bluford*—which predate Section 226.2—were based on Labor Code sections 221 and 223. *See supra*, Section IV.A.2. Accordingly, Plaintiff need not rely on section 226.2 to demonstrate CRST's violation of California's wage laws. In any event, there is no material dispute that CRST's pay system *also* violated section 226.2.

and thus had to be compensated separately from the piece rate, even though they were necessary as a practical matter to perform the piece-rate repair work. *See id*. at 53; *see also, e.g., Ortega*, 2018 U.S. Dist. LEXIS 227175, at *9-11 (because drivers did not "directly earn" wages for non-driving tasks, they had to be paid separately from the piece rate). The lesson from *Gonzalez*, as codified by Labor Code section 226.2, is that tasks are not "directly related" to the piece-rate work if the employees do not earn piece-rate units by completing them. It is black letter law that such tasks must be compensated separately to comply with Labor Code section 226.2.

It is undisputed that none of the Admittedly Compensable Non-Driving Tasks generated piece rate units. UF No. 78 – 84.[5] Thus, as a matter of law, these tasks were "nonproductive" and not "directly related" to the piece-rate driving work under Section 226.2.

As in *Gonzalez*, where technicians did not earn the "flag hours" that formed the basis for the piece rate when performing non-repair work, *see* 215 Cal. App. 4th at 41-42, 49-51, the Class Members here by definition did not and could not accrue the movement miles that formed the basis of their piece rate earnings when the truck was not being driven. UF No. 78-84. On the contrary, CRST's pay system "preclude[d] drivers from earning piece-rate compensation for [non-driving tasks] by its very calculation." *See Ortega*, 2018 U.S. Dist. LEXIS 227175, at *11-12 ("tasks like fueling vehicles" prevented drivers from earning piece rate units under system based on miles and deliveries); *Villalpando v. Exel Direct Inc*., 161 F. Supp. 3d 873, 888-89 (N.D. Cal. 2016) (meetings

[5] As discussed in Section II.F, *supra*, these Admittedly Compensable Non-Driving Tasks include pre- and post-trip vehicle inspections; required paperwork/data entry; stopping and scaling at weigh stations; participating in DOT inspections; and fueling the truck. While CRST admits that it requires the drivers to perform these non-driving tasks, that they are compensable, and that a driver should be "on duty" when performing them, UF No 79, 80, CRST also concedes it does not pay for them separately from the per-mile rate and that none of CRST's other pay components compensated for them either. UF No. 81 - 84.

with management regarding delivery work not "directly related" to piece rate work of making deliveries because drivers could not earn piece rate units during meetings).

Similarly, just as the repair technicians in *Gonzalez* were entitled to compensation for time spent obtaining vehicles and parts for the repair work that generated piece-rate units, the Class Members here are entitled to compensation for conducting inspections and fueling for the driving work that generated piece-rate units. *See* 215 Cal. App. 4th at 41-42, 49-51. While the Admittedly Compensable Non-Driving Tasks here were required by CRST, they were "nonproductive" and not "directly related" to the piece-rate work under Labor Code section 226.2, because it is undisputed that they did not generate piece-rate units.

Any suggestion by CRST now that it had implicitly paid for the Admittedly Compensable Non-Driving Tasks through the per-mile rate would not only run afoul of the "expressly incorporate" rule discussed in Section IV.B.1, above, and Labor Code section 226.2, but would also demonstrate a violation of Labor Code sections 221 and 223. Take, for example, two drivers who run the same number of miles as a team in the same vehicle. Under CRST's pay scheme, each would be compensated based on the same number of miles, even if one driver performed more of the required non-driving tasks and/or spent more time on them than the other driver. UF No. 82. In turn, the team driver who completed and/or spent more time on the non-driving tasks, but nonetheless was paid for the same number of miles as the team driver who performed less, was either doing the non-driving tasks for free, or was effectively being paid for less miles than the other driver, even though CRST emphatically told both drivers in its uniform policy documents that they would be paid for the same miles. UF No. 47, 48, 50, 52, 82. This, of course, is a violation of Labor Code sections 221 and 223. *See Gonzalez*, 215 Cal. App. 4th at 50.

Again, CRST admits that it did not allocate any portion of the per-mile rate to any given non-driving task. *See* UF No. 81. Because completing more or less Admittedly Compensable Non-Driving Tasks does not drive the number of piece-rate units up or

down, such tasks cannot be baked into the per-mile rate. *See Sandoval*, 2016 U.S. Dist. LEXIS 156810, at *69 ("…workers are not separately paid for rest breaks because they receive the same compensation whether they take a rest break or not.").

3. CRST Lacks Significant Probative Evidence of An Agreement to Incorporate Non-Driving Tasks into the Per-Mile Rate.

After this lawsuit was filed, CRST engaged in revisionist history by describing the piece rate to the Court as "load pay" designed to "compensate[] its drivers for delivering loads" as opposed to for accruing miles. *See* Ds' Opp. to Class Cert. (ECF No. 47) at 5:15. Yet, the plain language of CRST's policies demonstrate beyond material dispute that CRST agreed with its employees to a per-mile rate that compensates for miles, not for delivering loads and performing the other non-driving tasks necessary to do so.

As the Court reasoned at class certification: "In determining the scope of any contract, including CRST's Piece-Rate Pay Plan, 'the relevant intent is . . . the objective intent as evidenced by the words of the instrument, not a party's subjective intent." Class Cert. Order, ECF No. 60 at 10:18-11:1 (citing *Shaw v. Regents of Univ. of Cal*., 58 Cal. App. 4th 44, 54–55 (1997)); *see also Oman*, 9 Cal. 5th at 783 (violation of "no borrowing" rule "turns on the nature of [the employer's] contractual commitments.").

Under the "plain meaning rule[,] words of a contract are given their usual and ordinary meaning." *Johnson v. Walmart Inc*., 57 F.4th 677, 682 (9th Cir. 2023). The trier of fact "cannot rewrite or alter by construction the unambiguous terms the parties agreed upon." *Ramirez v. Charter Communications, Inc.*, 2024 WL 3405593, at *9 (Cal., July 15, 2024, No. S273802). Here, CRST's pay agreements uniformly stated that Class Members would be paid a rate per "mile." UF No. 52. The definition of "mile" is a measurement of distance, not a measurement of time or some value other than distance.[6]

CRST's uniform written policies further confirmed that the per-mile rate compensated for time that the truck was being driven, not time when the truck was

[6] Mile, Merriam-Webster's Collegiate Dictionary (11th ed. 2020).

stationary and Class Members were performing non-driving tasks. For instance, CRST's recruitment, training and employment polices stated that drivers are paid "based on the miles [they] run"; earn more when they "run more miles" and work in a team because the "wheels [are] always moving"; and "will be paid for half of the total miles the truck runs each week." UF No. 31 – 37, 45 - 50. CRST's policies also informed Class Members that they would be compensated "for your miles whether your truck is loaded or empty"; and that "base pay" is on "ALL MILES (loaded, empty or bobtail)," which forecloses CRST's revisionist construction that the per-mile rate was really compensating for delivering loads. UF No. 33, 48, 49, 50 (emphasis in original). Suffice it to say, pay cannot be for delivering a load if the truck has an empty trailer or bobtail (no trailer at all). The ordinary meaning of CRST's policies is that Mileage Pay compensated for the miles that the truck was driven, not for other work. Indeed, CRST's Rule 30(b)(6) witness testified that Mileage Pay is for "miles driven." *See supra*, Section II.F.

Nor do any of CRST's written policies or pay agreements during the Class Period state that the per-mile rate incorporated non-driving tasks. In fact, CRST is not aware of any Class Member being told this. UF No. 78 - 84. CRST's failure to *explicitly* incorporate non-driving tasks into its per-mile pay agreement with the Class Members is dispositive. In *Ridgeway*, the Ninth Circuit reasoned that "sometimes several tasks like rest breaks and inspections could fall under a general provision in the pay plan," but "to comply with California law, [the defendant] would have to pay drivers for certain activity codes that include those tasks." 946 F.3d at 1085. Critically, the defendant in *Ridgeway* failed to explicitly incorporate the uncompensated tasks into the piece rate, as "the pay manual [was] **silent** on rest breaks and inspections." *Id*. (emphasis added). So too here.

As another example, in *Ortega*, the defendant argued that it "builds pay for [non-driving] tasks into the mileage and activity pay rates that drivers receive. But it is no defense to argue that the [] formula is designed to 'build-in' compensation for these tasks because California law requires employers to separately compensate employees for nonproductive tasks that are not **explicitly included** within the piece-rate pay formula."

2018 U.S. Dist. LEXIS 227175, at *6 (emphasis added); *see also Armstrong v. Ruan Transport*, 2021 WL 9095895, at *2 (Cal.Super. Feb. 17, 2021) (inspections could be incorporated into piece rate denominated as "flat rate for each trip, based on the distance," only if parties "agreed to include inspection time in the piece-rate pay."). CRST's defense fails for the same reason.

The few non-binding decisions that have found incorporation of non-driving work into a per-mile piece rate turned on written policies that, unlike CRST's during the Class Period here, did in fact explicitly incorporate such tasks into the per-mile rate. For instance, in *Ayala v. U.S. Xpress Enters.*, 2020 U.S. Dist. LEXIS 102991 (C.D. Cal. June 9, 2020), the parties had reached an agreement on "the precise scope" of the mileage pay system to incorporate non-driving tasks. *See id*. at *26, 28-29, 23 n.7, 31-32 (agreement demonstrated by driver handbook stating that the mileage pay compensated for "[a]ll hours worked by the driver performing those job functions in completing the trip and delivering the load (i.e., all on-duty time, both driving and non-driving), including but not limited to receiving the dispatch, trip planning for the load, pre-trip and post-trip inspections of the equipment, driving, fueling, on-duty breaks, dealing with customers, waiting to load and unload, and completing and returning paperwork for the load, unless otherwise noted."). The court found that the non-driving tasks had been incorporated into the per-mile rate, but only as of the promulgation of the written policy explicitly informing the employees of this agreement. *See id*. at *32, 28-29, 5-6.

Here, CRST has no evidence of any such explicit agreement during the Class Period. Only after the filing of this case, the granting of Plaintiff's motion for class certification, and the end-date of the Class Period, did CRST even pay lip service to its drivers that non-driving tasks could be part of the per-mile rate. UF No. 87, 88. Thus, the only evidence of explicit incorporation here is immaterial to the class claims. *See* Civ. Code, § 1636 ("A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting...") (emphasis added).

The canons of construction further foreclose CRST's strained interpretation. For

instance, the "omitted case canon" provides that "[n]othing is to be added to what the text states or reasonably implies." *See* Antonin Scalia and Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 93 (2012); *United States v. McEligot*, 2015 U.S. Dist. LEXIS 45519, at *11 (N.D. Cal. Apr. 6, 2015). CRST's attempt to re-interpret its policies during the Class Period as incorporating non-driving work into the per mile rate is just the kind of implicit amendment to the text that the omitted case canon counsels against.

Similarly, the canon of construction "expressio unius est exclusion alterius" counsels that "to express or include one thing implies the exclusion of the other, or of the alternative." Black's Law Dictionary (9th ed. 2009). Here, there is no dispute that CRST promised to pay for some discrete non-driving activities separately from the per-mile rate under distinct "pay codes," such as for assisting with loading and unloading. *See* UF 84. This shows that CRST "knew how" to delineate pay for non-driving activities separately from the per-mile rate, but chose not to do so for the Admittedly Compensable Non-Driving Tasks specifically at issue on this Motion. *See Rosenthal-Zuckerman v. Epstein, Becker & Green Long Term Disability Plan*, 39 F. Supp. 3d 1103, 1107 (C.D. Cal. 2014) (citing *Murphy v. DirecTV, Inc.*, 724 F.3d 1218, 1234 (9th Cir. 2013)). CRST's express separate payment for some non-driving activities demonstrates the lack of payment for others.

By the same token, if CRST intended that the per-mile rate compensate for all non-driving work, it would not have needed to pay for *some* non-driving activities under separate "pay codes." This is just like in *Ridgeway*, where the defendant compensated drivers with a per-mile rate plus additional pay under discrete "activity codes" for certain non-driving activities, but not for inspections or rest periods. 946 F.3d at 1084-85. The Ninth Circuit held that the employer's failure to include specific pay codes for inspections and rest periods meant they were uncompensated. *Id*. at 1085. The same is true here, for the Admittedly Compensable Non-Driving Tasks.

C. California Law Applies to the Class Claims.

It is undisputed that all Class Members are not just California residents, but also that they stored their trucks at CRST's terminal in Riverside, California, or another local location in California approved by CRST, where they necessarily began and ended each trip, and that CRST defined such California location terminal as their "home." *See supra*, Section II.A. Citing these facts, the Court previously found that the Class Members "present themselves for work in California" and have a "designated home base" in California. ECF No. 60 at 12:7-19. None of these facts has changed since class certification. Moreover, CRST informed the Class Members in its policy documents that they would be subject to (and protected by) California law, required them to attend California-based training, and subjected them to the California income tax law. UF 14-16.

At Class Certification, the Court held that "California law applies to the putative class members' minimum wage claims." *Id*. (citing *Ward v. United Airlines, Inc*., 9 Cal. 5th 732, 755, 760 (2020)). The Court's determination is well-founded in applicable law. *See, e.g.*, *Ward*, 9 Cal.5th at 760 (California's wage statement laws applied to flight attendants based out of a California airport who did not work principally in any state); *Oman*, 9 Cal.5th at 773 (same); *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1137-38, 1142-44 (9th Cir. 2021) (same, for overtime, meal and rest period, and waiting time laws).

V. CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Partial Summary Judgment should be granted in its entirety.

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff, certifies that this brief contains 6,968 words, which complies with the word limit of L.R. 11-6.1.

Respectfully submitted,

Date: August 5, 2024

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