

1 Aidan C. McGlaze (SBN 277270)
amcglaze@sshhlaw.com
2 **SCHONBRUN SEPLOW**
HARRIS & HOFFMAN LLP
3 11543 W. Olympic Boulevard
Los Angeles, CA 90064
4 Telephone: (310) 396-0731
Facsimile: (310) 399-7040
5

6 Matt Dunn, Esq. (pro hac vice application to be filed)
mdunn@getmansweeney.com
7 Alex Dumas Esq. (pro hac vice application to be filed)
adumas@getmansweeney.com
8 **GETMAN, SWEENEY & DUNN, PLLC**
260 Fair Street
9 Kingston, NY 12401
Telephone: (845) 255-9370
10 Facsimile: (845) 255-8649

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 **SALVADOR CASTRO, on**
14 **behalf of himself and those**
15 **similarly situated,**

16 **Plaintiffs,**

17 **v.**

18 **C.R. ENGLAND, INC.,**

19 **Defendant.**

Case No. 5:18-CV-00655
Assigned to:

COLLECTIVE ACTION

**COMPLAINT FOR DAMAGES AND
RESTITUTION**

- 1) **Violations of the Fair Labor Standards Act (29 U.S.C. §§ 201, *et seq.*)**
- 2) **Failure to Pay Overtime Wages (Cal. Lab. Code, §§ 510, 1194; IWC Orders)**
- 3) **Failure to Pay Wages of Terminated or Resigned Employees (Cal. Lab. Code, §§ 201-203)**
- 4) **Failure to Provide Meal Periods (Cal. Lab. Code, §§ 226.7, 512; IWC Orders; Cal. Code Regs., Title 8, § 11040)**
- 5) **Failure to Provide Rest Periods (Lab. Code, § 226.7; IWC Orders; Cal. Code Regs., Title 8, § 11040)**
- 6) **Violations of the Unfair Competition Law (Cal. Bus. & Prof. Code, §§ 17200-17208)**

DEMAND FOR JURY TRIAL

1 Plaintiff Salvador Castro (“Castro”), on behalf of himself and the FLSA
2 Class (as defined below and collectively referred to as “Plaintiffs”), alleges upon
3 personal knowledge as to himself and his acts, and as to all other matters upon
4 information and belief, as follows:

5 **I. NATURE OF THE ACTION**

6 1. Defendant C.R. England, Inc. (“C.R. England”) is a privately-held company
7 incorporated in Utah. C.R. England is a nationwide leader in truckload service in
8 North America. C.R. England employs people with job titles such as customer
9 service representatives and customer service managers whose primary job duty is
10 to work with specific customers to process bills of lading into to its AS 400
11 computer system and keep those customers updated as to the progress of their
12 freight and who were paid on a salary basis without compensation at the rate of
13 time and one-half for all hours worked over 40 in a workweek. (collectively
14 referred as “CSRs”).

15 2. Castro brings this case under the collective action provision of the Fair
16 Labor Standards Act (“FLSA”), as set forth in 29 U.S.C. § 216(b), on behalf of
17 himself and a nationwide class of CSRs employed by C.R. England within three
18 years of the filing of this Complaint who were not paid overtime premium pay at
19 the rate of time and one-half the regular rate for all hours worked over 40 in a
20 workweek. He seeks unpaid wages, liquidated damages, interest, costs and
21 attorneys’ fees, as well as declaratory relief under the FLSA for himself and any
22 CSRs who join the action. 29 U.S.C. § 201, *et seq.*

23 3. Castro also brings this case under California state law to recover overtime
24 premium pay at the rate of time and one-half the regular rate for all hours worked
25 over 40 in a workweek or more than eight hours in a day or more than twelve hours
26 in a day during the time period that commences four years prior to the filing of this
27 action through the date of judgment. Castro also seeks prejudgment interest,
28 restitution, attorneys’ fees and costs, injunctive relief, and other statutory penalties

1 in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§
2 17200 *et seq.*, and the California Labor Code and related regulations, Cal Labor
3 Code §§ 201-203, 218.6, 510, and 1194, Cal. Wage Order No. 4-2001.

4 4. Castro also brings claims for C.R. England's willful failure to pay all
5 overtime compensation and other premium wages upon termination. Castro seeks
6 30 days of wages, attorneys' fees and costs, prejudgment interest, and injunctive
7 relief under California Labor Code §§ 203 and 218.6, and the California Unfair
8 Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*

9 5. Castro also brings claims under California state law for C.R. England's
10 failure to provide meal and rest breaks as required by California Labor Law
11 violations. Castro seeks damages for one hour of additional pay at the regular rate
12 of compensation for each workday that the proper meal and rest periods were not
13 provided as secured by the California Labor Law, prejudgment interest, injunctive
14 relief, and other statutory penalties for violations of California Labor Code and
15 related regulations, Cal Labor Code §§ 218.6 and 226.7 and Cal. Wage Order No.
16 4-2001, and the California Business and Professions Code § 17200, *et seq.*

17 **II. JURISDICTION AND VENUE**

18 6. The FLSA authorizes private rights of action to recover damages for
19 violation of the FLSA's wage and hour provisions. 29 U.S.C. § 216(b). This Court
20 has original federal question jurisdiction under 28 § U.S.C. § 1331 and by 28
21 U.S.C. § 1337 because this action arises under Acts of Congress regulating
22 commerce. Jurisdiction over Plaintiff's claims for declaratory relief is conferred by
23 28 U.S.C. §§ 2201 and 2202.

24 7. This Court has supplemental jurisdiction over the California state law claims
25 under 28 U.S.C. § 1367 because they are so related to this action that they form
26 part of the same case or controversy under Article III of the United States
27 Constitution.

28 ///

1 8. Venue is proper in this District under 28 U.S.C. § 1391 because C.R.
2 England resides in Colton, California, which lies within this District, and a
3 substantial part of the events or omissions giving rise to the claim occurred in this
4 judicial district.

5 9. C.R. England employs CSRs in this District in Colton, California.

6 10. Upon information and belief, C.R. England is subject to personal jurisdiction
7 in California.

8 **III. THE PARTIES**

9 **A. Named Plaintiff**

10 11. Named Plaintiff Castro is a natural person residing in Menifee, California.

11 12. Castro worked for C.R. England as a CSR in Colton, California.

12 13. Castro was initially hired by C.R. England as a Driver Manager in
13 approximately January 2015. Castro was reassigned to work as a CSR for C.R.
14 England from approximately March 2015 until approximately January 2017.

15 **B. Named Defendant**

16 14. Upon information and belief, C.R. England is a privately owned company
17 having terminals and dedicated offices that employed CSRs, including in
18 California and Utah.

19 15. C.R. England is a privately held company having an office and place of
20 business in Colton, California and Lathrop, California. C.R. England lists its
21 headquarters and principal office address as 4701 W 2100 S, Salt Lake City, UT
22 84120.

23 16. C.R. England is engaged in the interstate shipment of freight and provides its
24 customers transportation solutions.

25 17. C.R. England is a transportation services company and delivers shipments to
26 customers throughout the United States.

27 18. Upon information and belief, C.R. England grossed more than \$500,000 in
28 each of the last six calendar years.

1 19. C.R. England is an enterprise engaged in interstate commerce for purposes
2 of the Fair Labor Standards Act.

3 20. All actions and omissions described in this complaint were made by C.R.
4 England directly or through its supervisory employees and agents.

5 **C. Represented Parties under 29 U.S.C. § 216 (b)**

6 21. The term “FLSA Class” as used in this Complaint refers to Castro and a
7 nationwide class of all CSRs employed by C.R. England who were scheduled to
8 work more than 40 hours in a workweek and were not paid at the rate of time and
9 one-half for all hours worked over forty in a week within three years of the filing
10 of this Complaint pursuant to the FLSA’s collective action provisions. 29 U.S.C. §
11 216(b).

12 22. Castro brings claims under the FLSA individually and for the FLSA Class to
13 redress C.R. England’s failure to pay wages at the rate of time and one-half for all
14 hours worked over forty in a week.

15 **IV. FACTUAL BACKGROUND**

16 23. C.R. England has terminals throughout the country.

17 24. C.R. England has employed CSRs in California and Utah.

18 25. Castro worked for C.R. England in Colton, California as a CSR from
19 approximately March 2015 until approximately January 2017.

20 26. CSRs, including Castro, had the primary job duty of processing bills of
21 lading for specific customers into C.R. England’s AS 400 system and keeping
22 those customers updated as to the progress of their freight.

23 27. C.R. England scheduled CSRs, including Castro, to work more than 40
24 hours in a workweek.

25 28. CSRs, including Castro, regularly worked more than 40 hours in a
26 workweek.

27 29. CSRs working in California, including Castro, regularly worked more than
28 eight hours in a day.

1 30. CSRs working in California, including Castro, regularly worked more than
2 twelve hours in a day.

3 31. Castro was scheduled to work Sunday through Thursday from 4:00 P.M.
4 until 4:00 A.M.

5 32. Other CSRs had the same or similar schedules.

6 33. As a result of the hours C.R. England scheduled Castro to work, he worked
7 at least 55 hours a week.

8 34. CSRs, including Castro, regularly worked more than their scheduled hours,
9 arriving before their scheduled shift, staying after their scheduled shift, working
10 through lunch breaks, or attending staff meetings outside of shift hours.

11 35. C.R. England paid CSRs, including Castro, on a salary basis.

12 36. C.R. England did not pay CSRs, including Castro, overtime compensation at
13 the rate of time and one-half the regular rate for hours worked more than 40 in a
14 workweek as required by the FLSA.

15 37. C.R. England failed to pay CSRs who worked in California, including
16 Castro, overtime at the rate of time and one-half the regular rate for hours worked
17 more than 40 in a workweek as required by California law.

18 38. C.R. England also failed to pay CSRs who worked in California, including
19 Castro, overtime at the rate of time and one-half the regular rate for hours worked
20 more than eight in a day as required by California law.

21 39. C.R. England knew or should have known that CSRs, including Castro, were
22 working more than 40 hours a week.

23 40. C.R. England knew or should have known that CSRs who worked in
24 California, including Castro, were working more than eight hours a day.

25 41. CSRs who worked in California, including Castro, worked for more than
26 five consecutive hours without taking a 30 minute meal break as required by
27 California law.

28 ///

1 42. CSRs who worked in California, including Castro, worked for more than
2 four consecutive hours without taking a rest break as required by California law.

3 43. C.R. England did not pay CSRs who worked in California, including Castro,
4 earned wages within 72 hours of their separation from C.R. England.

5 44. C.R. England did not pay CSRs who worked in California, including Castro,
6 earned wages within 30 days of their separation from C.R. England.

7 45. C.R. England's conduct as described herein was willful and has caused
8 significant damages to CSRs, including Castro.

9 **FIRST CAUSE OF ACTION**

10 **(Failure to Pay Overtime Wages in violation of the Fair Labor Standards Act)**
11 **(Brought by Castro on behalf of himself and the nationwide FLSA Class)**

12 46. On information and belief, at all relevant times, C.R. England was an
13 "employer" engaged in interstate "commerce" and/or in the production of "goods"
14 for "commerce," within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant
15 times, C.R. England employed CSRs, including Castro and the FLSA Class. Upon
16 information and belief, C.R. England grossed more than \$500,000 in each of the
17 last three calendar years.

18 47. Attached hereto, as Exhibit 1, is the consent to sue form signed by Castro in
19 this action pursuant to section 16(b) of the FLSA, 29 U.S.C. §§ 216(b) and 256.
20 Other FLSA Class members will likely sign consent to sue forms and join as opt-in
21 plaintiffs on this claim in the future.

22 48. The FLSA requires each covered employer, such as C.R. England, to
23 compensate all non-exempt employees the minimum-wage for all hours worked
24 and overtime at a rate of not less than one and one-half times the regular rate of
25 pay for work performed in excess of forty hours in a workweek.

26 49. CSRs were entitled to be paid compensation at the rate of one and one-half
27 times the regular rate of pay for work performed in excess of forty hours in a
28 workweek.

1 50. At all relevant times, C.R. England, pursuant to its policies and practices,
2 failed and refused to pay appropriate overtime to Castro and the FLSA Class for all
3 hours worked in excess of forty hours in a workweek.

4 51. By failing to compensate Castro and the FLSA Class at a rate not less than
5 one and one-half times the regular rate of pay for work performed in excess of
6 forty hours in a workweek, C.R. England has violated the FLSA, 29 U.S.C. §§ 201
7 *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a).

8 52. The foregoing conduct, as alleged, constitutes a willful violation of the
9 FLSA within the meaning of 29 U.S.C. § 255(a).

10 53. Castro, on behalf of himself and the FLSA Class, seeks damages in the
11 amount of their respective unpaid overtime compensation, liquidated damages as
12 provided by the FLSA, 29 U.S.C. § 216(b), interest, and such other legal and
13 equitable relief as the Court deems just and proper.

14 54. Castro, on behalf of himself and the FLSA Class, seeks recovery of their
15 attorneys' fees and costs of action to be paid by C.R. England, as provided by the
16 FLSA, 29 U.S.C. § 216(b).

17 **SECOND CAUSE OF ACTION**
18 **(Failure to Pay Overtime Wages in Violation of California Labor Code)**
19 **(Brought by Castro)**

20 55. Castro is entitled to overtime compensation for overtime work performed for
21 C.R. England in an amount according to proof.

22 56. Pursuant to California Labor Code, sections 510 and 1194, Castro seeks the
23 payment of all overtime compensation which they earned and accrued during the
24 time period that commences four years prior to the filing of this action through the
25 judgment date.

26 57. Additionally, Castro is entitled to attorneys' fees, and costs, pursuant to
27 California Labor Code, section 1194 and prejudgment interest, pursuant to
28 California Labor Code § 218.6.

1 58. Wherefore, Castro requests relief as hereinafter prayed for.

2 **THIRD CAUSE OF ACTION**
3 **(Failure to Provide Meal Periods in Violation of California Labor Code)**
4 **(Brought by Castro)**

5 59. Castro is entitled to an hour of pay for each day that C.R. England failed to
6 afford one or more meal periods, in an amount according to proof.

7 60. Pursuant to California Labor Code, section 226.7, Castro seeks the payment
8 of all meal period compensation which he is owed for the time period that
9 commences four years prior to the filing of this action through the judgment date,
10 according to proof.

11 61. Additionally, Castro is entitled to attorneys' fees and costs and prejudgment
12 interest.

13 62. Wherefore, Castro requests relief as hereinafter prayed for.

14 **FOURTH CAUSE OF ACTION**
15 **(Failure to Provide Rest Periods in Violation of California Labor Code)**
16 **(Brought by Castro)**

17 63. Castro is entitled to an hour of pay for each day that C.R. England failed to
18 afford one or more rest periods, in an amount according to proof.

19 64. Pursuant to California Labor Code, section 226.7, Castro seeks the payment
20 of all rest period compensation which he is owed for the time period that
21 commences four years prior to the filing of this action through the judgment,
22 according to proof.

23 65. Additionally, Castro is entitled to attorneys' fees and costs and prejudgment
24 interest.

25 66. Wherefore, Castro requests relief as hereinafter prayed for.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIFTH CAUSE OF ACTION
(Failure to Pay Wages of Terminated or Resigned Employees)
(Brought by Castro)

67. Upon ending his employment with C.R. England, Castro was entitled to be promptly paid lawful overtime compensation and other premiums, as required by California Labor Code, sections 201-203.

68. Pursuant to California Labor Code, section 203, Castro seeks the payment of penalties in the amount of up to 30 days of wages, according to proof.

69. Additionally, Castro is entitled to attorneys' fees and costs, pursuant to California Labor Code, section 203, and prejudgment interest, pursuant to California Labor Code § 218.6.

70. Wherefore, Castro requests relief as hereinafter prayed for.

SIXTH CAUSE OF ACTION
(Violations of California Unfair Competition Law)
(Brought by Castro)

71. The failure to pay lawful overtime compensation, and rest and meal period pay is an unlawful and unfair business practice within the meaning of Business and Professions Code § 17200, *et seq.*, including but not limited to a violation of the applicable State of California Industrial Welfare Commission Wage Orders, regulations and statutes. It is a practice which is otherwise unfair and unlawful, because C.R. England did not pay tax contributions on the accrued overtime compensation in the form of FICA, Social Security, Medicare and Unemployment Insurance.

72. This cause of action is brought under Business and Professions Code §§ 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action and pursuant to Business and Professions Code § 17208, Castro seeks restitution of overtime wages and rest and meal period pay owed and where applicable, the penalties which are provided under the California Labor Code § 203, where such wages and penalties were due, commencing four (4) years prior to

1 filing of this complaint, according to proof.

2 73. This cause of action is brought as a cumulative remedy as provided in
3 Business and Professions Code § 17205 and is intended as an alternative remedy
4 for restitution for Castro for the time period, or any portion thereof, commencing
5 four years prior to the filing of this action and continuing through the judgment
6 date, and as the primary remedy for the time period of the fourth year prior to the
7 filing of this complaint, as such one year time period exceeds the statute of
8 limitations on statutory wage claims.

9 74. As a result of C.R. England's unlawful and unfair business practice of
10 failing to pay overtime and prompt payment of wages in violation of the California
11 Labor Code §§ 201 and 202, Castro has suffered damages and are entitled to
12 restitution in an amount according to proof and injunctive relief pursuant to
13 Business and Professions Code § 17203.

14 75. Further, Castro requests C.R. England's violations alleged herein be
15 enjoined, and other equitable relief as this Court deems proper including payment
16 for all hours worked and requiring and furnishing rest and meal periods and
17 requiring payment by C.R. England of tax contributions on the accrued overtime
18 compensation in the form of FICA, Social Security, Medicare, Unemployment
19 Insurance, or other appropriate payments.

20 76. Wherefore, Castro requests relief as hereinafter prayed for.

21 **VI. PRAYER FOR RELIEF**

22 Wherefore, Castro, and the FLSA Class he seeks to represent, pray for relief
23 and request that this Court enter an Order with respect to the FLSA claims:

- 24 a. Declaring that C.R. England violated the FLSA;
25 b. Certifying this action as a collective action;
26 c. Ordering notice sent to the FLSA Class giving them notice of the
27 opportunity to join this case pursuant to 29 U.S.C. § 216(b);
28 d. Declaring that C.R. England's violations of the FLSA were willful;

1 e. Granting judgment to Castro and the FLSA Class for their claims of
2 unpaid overtime wages as secured by the FLSA, as well as an equal amount in
3 liquidated damages and interest;

4 f. Awarding Castro and the FLSA Class their costs, including expert
5 witness fees, and reasonable attorneys' fees; and

6 g. Awarding the Named Plaintiff a service payment for his service to the
7 FLSA Class.

8 Wherefore, Castro, and the FLSA Class he seeks to represent, pray for relief
9 and request that this Court enter an Order with respect to the California state law
10 claims:

11 a. Declaring that C.R. England violated the overtime pay, meal and rest
12 break, and wage payment provisions of the California Labor Code;

13 b. Declaring that C.R. England's violations of the California Labor Code
14 were willful;

15 c. Declaring that C.R. England violated the California Unfair
16 Competition Law;

17 d. Granting judgment to Castro for his claims of unpaid overtime wages
18 as secured by the California Labor Law, as well as prejudgment interest;

19 e. Granting judgment to Castro for his claims of 30 days wages as
20 secured by the California Labor Law;

21 f. Granting judgment to Castro for his claim of one hour of additional
22 pay at the regular rate of compensation for each workday that the proper meal
23 periods were not provided, and one hour of additional pay at the regular rate of
24 compensation for each workday that the proper rest period was not provided as
25 secured by the California Labor Law;

26 g. Granting judgment to Castro for his claim of restitution and injunctive
27 relief as secured by the California Unfair Competition Law;

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- h. Any other appropriate statutory penalties, other injunctive and equitable relief as the Court may deem just and proper, and post-judgment interest;
- i. Awarding Castro his attorneys’ fees and costs of suit, including expert fees and costs; and
- j. Awarding the named plaintiff a service payment for his service to the class.

Dated: March 29, 2018

Respectfully submitted,

**SCHONBRUN SEPLOW HARRIS &
HOFFMAN LLP**

GETMAN, SWEENEY & DUNN, PLLC

By: /s/ Aidan C. McGlaze
Aidan C. McGlaze

Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff individually, and on behalf of all others similarly situated, demands a trial by jury.

Dated: March 29, 2018 Respectfully submitted,

**SCHONBRUN SEPLOW HARRIS &
HOFFMAN LLP**

GETMAN, SWEENEY & DUNN, PLLC

By: /s/ Aidan C. McGlaze
Aidan C. McGlaze

Attorneys for Plaintiff