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

14 ~~SALVADOR CASTRO~~, on behalf
of himself and those similarly
situated,

15 Plaintiffs,

16 v.

17 SWIFT TRANSPORTATION
18 COMPANY, SWIFT
TRANSPORTATION CO. OF
19 ARIZONA, LLC, SWIFT
TRANSPORTATION SERVICES,
20 LLC, and DOES 1-10, inclusive,

21 Defendants.

Case No. 2:16-CV-3232
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)

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 SWIFT TRANSPORTATION COMPANY is a publically owned
7 company incorporated in Arizona. SWIFT TRANSPORTATION CO. OF
8 ARIZONA, LLC and SWIFT TRANSPORTATION SERVICES, LLC are
9 subsidiaries of SWIFT TRANSPORTATION COMPANY and are Delaware
10 limited liability companies (collectively “Swift”). Swift is a multi-faceted
11 transportation services company and the largest truckload carrier in North
12 America. Swift employs customer service representatives (“CSRs”) to work with
13 specific customers to ensure high-quality service and frequent customer contact.

14 Although customer service representatives regularly work overtime, i.e., more than
15 40 hours in a week, Swift does not pay them premium overtime pay at the rate of
16 time and one-half their regular rate for all hours worked over 40 in a workweek.

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

25 3. ~~Castro~~ also brings this case under California state law to recover overtime
26 premium pay at the rate of time and one-half the regular rate for all hours worked
27 over 40 in a workweek or more than eight hours in a day during the time period
28 that commences four years prior to the filing of this action through the date of

1 judgment. ~~Castro~~ also seeks prejudgment interest, restitution, attorneys' fees and
2 costs, injunctive relief, and other statutory penalties in violation of the California
3 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and the
4 California Labor Code and related regulations, Cal Labor Code §§ 201-203, 218.6,
5 510, and 1194, Cal. Wage Order No. 4-2001.

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

11 5. ~~Castro~~ also brings this case to recover for meal and rest break violations,
12 including one hour of additional pay at the regular rate of compensation for each
13 workday that the proper meal and rest periods were not provided as secured by the
14 California Labor Law, prejudgment interest, injunctive relief, and other statutory
15 penalties for violations of California Labor Code and related regulations, Cal
16 Labor Code §§ 218.6 and 226.7 and Cal. Wage Order No. 4-2001, and the
17 California Business and Professions Code § 17200, *et seq.*

18 **II. JURISDICTION AND VENUE**

19 6. The FLSA authorizes private rights of action to recover damages for
20 violation of the FLSA's wage and hour provisions. 29 U.S.C. § 216(b). This Court
21 has original federal question jurisdiction under 28 § U.S.C. § 1331 and by 28
22 U.S.C. § 1337 because this action arises under Acts of Congress regulating
23 commerce. Jurisdiction over Plaintiffs' claims for declaratory relief is conferred by
24 28 U.S.C. §§ 2201 and 2202.

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

1 8. Venue is proper in this District under 28 U.S.C. § 1391 because Swift
2 resides in Fontana, Mira Loma, and Wilmington, California, which lies within this
3 District.

4 9. Swift employs CSRs in this District including in Irwindale, Fontana, Mira
5 Loma, and Wilmington, California.

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

8 11. A substantial part of the acts and/or omissions giving rise to the claims
9 occurred in this District.

10 **III. THE PARTIES**

11 **A. Named Plaintiff**

12 12. Named Plaintiff ~~Castro~~ is a natural person residing in La Puente, California.

13 13. ~~Castro~~ was employed by Swift as a CSR from approximately November
14 2013 until approximately November 2014.

15 14. ~~Castro~~ worked for Swift as a CSR in Irwindale, California.

16 **B. Named Defendants**

17 15. Upon information and belief, the individual Defendants are related business
18 corporations having terminals and dedicated offices that employed CSRs in
19 California, and in Arizona, Florida, Georgia, Idaho, Illinois, Indiana, Kansas,
20 Michigan, Minnesota, Nevada, New Mexico, New York, Ohio, Oklahoma, Oregon,
21 Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

22 16. Defendant SWIFT TRANSPORTATION COMPANY is an Arizona
23 business corporation having an office and place of business in Phoenix, Arizona.
24 Defendant SWIFT TRANSPORTATION COMPANY lists its headquarters and
25 principal office address as 2200 S. 75th Ave., Phoenix, Arizona 85043-7410.

26 17. Defendant SWIFT TRANSPORTATION COMPANY is engaged in
27 interstate shipment of freight and provides its customers transportation solutions.

28 18. Defendant SWIFT TRANSPORTATION CO. OF ARIZONA, LLC is a

1 subsidiary of SWIFT TRANSPORTATION COMPANY and is a Delaware limited
2 liability company. Upon information and belief, SWIFT TRANSPORTATION
3 CO. OF ARIZONA, LLC's headquarters and principal office address is 2200 S.
4 75th Ave., Phoenix, Arizona 85043-7410.

5 19. Defendant SWIFT TRANSPORTATION SERVICES, LLC is a subsidiary
6 of SWIFT TRANSPORTATION COMPANY and is a Delaware limited liability
7 company. Upon information and belief, SWIFT TRANSPORTATION
8 SERVICES, LLC's headquarters and principal office address is 2200 S. 75th Ave.,
9 Phoenix, Arizona 85043-7410.

10 20. Swift is a multi-faceted transportation services company and the largest
11 truckload carrier in North America.

12 21. Swift conducts business throughout the country, including in Arizona,
13 California, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Michigan,
14 Minnesota, Nevada, New Mexico, New York, Ohio, Oklahoma, Oregon,
15 Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

16 22. Upon information and belief, each individual Defendant grossed more than
17 \$500,000 in each of the last six calendar years, individually and collectively.

18 23. Each individual Defendant is an enterprise engaged in interstate commerce
19 for purposes of the Fair Labor Standards Act.

20 24. The individual Defendants have common control and a common business
21 purpose and are operated as a single enterprise, within the meaning of 29 U.S.C. §
22 203(r)(1).

23 25. All actions and omissions described in this complaint were made by Swift
24 directly or through its supervisory employees and agents.

25 **C. Doe Defendants**

26 26. Plaintiffs are ignorant about the true names of Defendants sued as DOES 1
27 through 10, inclusive, and their wrongful conduct, and therefore sue these
28 Defendants by fictitious names. Plaintiffs will seek Court leave to amend this

1 complaint to allege their true names and capacities when ascertained.

2 27. Plaintiffs allege on information and belief that at all relevant times, DOES 1-
3 10, inclusive, were agents, servants, employees, representatives, partners, and
4 related or affiliated entities of Defendants, and in doing the things hereinafter
5 mentioned, were acting in the course and scope of their agency, employment, or
6 retention with Defendants' permission, consent, authority and ratification.

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

8 28. The term "FLSA Class" as used in this Complaint refers to ~~Castro~~ and a
9 nationwide class of all customer service representatives employed by Swift who
10 were scheduled to work more than 40 hours in a workweek and were not paid at
11 the rate of time and one-half for all hours worked over forty in a week within three
12 years of the filing of this Complaint pursuant to the FLSA's collective action
13 provisions. 29 U.S.C. § 216(b).

14 29. ~~Castro~~ brings claims under the FLSA individually and for the FLSA Class to
15 redress Swift's failure to pay wages at the rate of time and one-half for all hours
16 worked over forty in a week.

17 30. Excluded from the FLSA Class are Swift's legal representatives, officers,
18 directors, assigns, and successors, or any individual who has, or who had at any
19 time during the four years prior to the filing of the complaint, a controlling interest
20 in Swift; the Judge(s) to whom this case is assigned and any member of the Judges'
21 immediate family; and all persons who will submit timely and otherwise proper
22 requests for exclusion from the class. Also excluded from the FLSA Class are
23 people whose claims are barred by the applicable statutes of limitation. Also
24 excluded from the FLSA Class are those people who resolved their claims in
25 *Flores v. Swift Transportation Company, et al.*, 2:14 Civ. 02900-AB-E (C.D. Cal)
26 and the corresponding individual arbitrations.

1 **IV. FACTUAL BACKGROUND**

2 31. Swift has employed CSRs throughout the country, in terminals located
3 throughout the country, including in Arizona, California, Florida, Georgia, Idaho,
4 Illinois, Indiana, Kansas, Michigan, Minnesota, Nevada, New Mexico, New York,
5 Ohio, Oklahoma, Oregon, Tennessee, Texas, Utah, Virginia, Washington, and
6 Wisconsin.

7 32. In California, Swift has employed CSRs in its terminals in Fontana, Lathrop,
8 Otay Mesa, Wilmington, and Willows.

9 33. Swift has also employed CSRs in dedicated offices throughout the United
10 States.

11 34. ~~Castro~~ worked for Swift in Irwindale, California as a CSR from
12 approximately November 2013 until approximately November 2014.

13 35. CSRs were assigned to process bills of lading for specific customers and to
14 keep those customers updated as to the progress of their freight.

15 36. Swift scheduled CSRs around the country, including ~~Castro~~, to work more
16 than 40 hours in a workweek.

17 37. CSRs around the country, including ~~Castro~~, regularly worked more than 40
18 hours in a workweek.

19 38. ~~Castro~~ was scheduled to work Monday thru Friday from 6:00 A.M. until
20 4:00 P.M.

21 39. As a result of the hours Swift scheduled ~~Castro~~ to work Monday thru Friday,
22 he worked at least 45 hours a week.

23 40. ~~Castro~~ was scheduled to work approximately every third Saturday from 9:00
24 A.M. until 5:00 P.M. When ~~Castro~~ worked on a Saturday, he was scheduled to
25 work approximately 52 hours a week.

26 41. Swift paid CSRs, including ~~Castro~~, on a salary basis.

27 42. CSRs, including ~~Castro~~, were not paid overtime compensation at the rate of
28 time and one-half the regular rate for hours worked more than 40 in a workweek.

1 43. Because of this uncompensated work, Swift failed to pay CSRs, including
2 ~~Castro~~, overtime premium pay at the rate of time and one-half the regular rate for
3 hours worked more than 40 in a workweek as required by the FLSA.

4 44. Swift also failed to pay CSRs who worked in California, including ~~Castro~~,
5 overtime at the rate of time and one-half the regular rate for hours worked more
6 than 40 in a workweek as required by California law.

7 45. ~~Castro~~ and other CSRs working in California regularly worked more than
8 eight hours in a day.

9 46. Swift also failed to pay CSRs who worked in California, including ~~Castro~~,
10 overtime at the rate of time and one-half the regular rate for hours worked more
11 than eight in a day as required by California law.

12 47. Swift knew or should have known that CSRs, including ~~Castro~~, were
13 working more than 40 hours a week.

14 48. Swift knew or should have known that CSRs, including ~~Castro~~, were
15 working more than eight hours a day.

16 49. ~~Castro~~ worked for more than five consecutive hours without taking a 30
17 minute meal break as required by California law.

18 50. ~~Castro~~ frequently worked for more than four consecutive hours without
19 taking a rest break as required by California law.

20 51. Upon arriving at work, Swift required CSRs, including ~~Castro~~, to enter their
21 employee number into the telephone at their workstation. CSRs, including ~~Castro~~,
22 were also required to enter a code into the telephone at the start of their shift, when
23 they took a meal break, when they took a break, or when they were unavailable to
24 make or receive telephone calls.

25 52. The work status of each CSR at the terminal was displayed on a screen that
26 other employees at the terminal could see, including whether the CSR was on a
27 meal or rest break.

28 53. Swift did not pay ~~Castro~~ his earned wages within 72 hours of his separation

1 from Swift.

2 54. Swift did not pay ~~Castro~~ his earned wages within 30 days of his separation
3 from Swift.

4 55. Swift's conduct as described herein was willful and has caused significant
5 damages to CSRs, including ~~Castro~~.

6 56. In 1998 and 2002, the U.S. Department of Labor investigated Swift's
7 overtime pay practices.

8 57. As of November 1, 2015, Swift reclassified CSRs as non-exempt under the
9 FLSA.

10 **V. CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION**
12 **(Fair Labor Standards Act)**

13 **(Brought by ~~Castro~~ on behalf of himself and the nationwide FLSA Class)**

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

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

24 60. The FLSA requires each covered employer, such as Swift, to compensate all
25 non-exempt employees for all hours worked and overtime at a rate of not less than
26 one and one-half times the regular rate of pay for work performed in excess of
27 forty hours in a workweek.

28 61. CSRs were entitled to be paid compensation at the rate of one and one-half

1 times the regular rate of pay for work performed in excess of forty hours in a
2 workweek.

3 62. At all relevant times, Swift, pursuant to its policies and practices, failed and
4 refused to pay appropriate overtime to ~~Castro~~ and the FLSA Class for all hours
5 worked in excess of forty hours in a workweek.

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

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

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

16 66. ~~Castro~~, on behalf of himself and the FLSA Class, seeks recovery of their
17 attorneys' fees and costs of action to be paid by Swift, as provided by the FLSA,
18 29 U.S.C. § 216(b).

19 **SECOND CAUSE OF ACTION**
20 **(Failure to Pay Overtime Wages)**
21 **(Brought by Castro)**

22 67. ~~Castro~~ is entitled to overtime compensation for overtime work performed for
23 Swift in an amount according to proof.

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

28 69. Additionally, ~~Castro~~ is entitled to attorneys' fees, and costs, pursuant to

1 California Labor Code, section 1194 and prejudgment interest, pursuant to
2 California Labor Code § 218.6.

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

4 **THIRD CAUSE OF ACTION**
5 **(Failure to Provide Meal Periods)**

6 71. ~~Castro~~ is entitled to an hour of pay for each day that Swift failed to afford
7 one or more meal periods, in an amount according to proof.

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

12 73. Additionally, ~~Castro~~ is entitled to attorneys' fees and costs and prejudgment
13 interest.

14 74. Wherefore, ~~Castro~~ requests relief as hereinafter prayed for.

15 **FOURTH CAUSE OF ACTION**
16 **(Failure to Provide Rest Periods)**

17 75. ~~Castro~~ is entitled to an hour of pay for each day that Swift failed to afford
18 one or more rest periods, in an amount according to proof.

19 76. Pursuant to California Labor Code, section 226.7, ~~Castro~~ seeks the payment
20 of all rest period compensation which she 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 77. Additionally, ~~Castro~~ is entitled to attorneys' fees and costs and prejudgment
24 interest.

25 78. Wherefore, ~~Castro~~ requests relief as hereinafter prayed for.

26 **FIFTH CAUSE OF ACTION**
27 **(Failure to Pay Wages of Terminated or Resigned Employees)**

28 79. Upon ending his employment with Swift, ~~Castro~~ was entitled to be promptly

1 paid lawful overtime compensation and other premiums, as required by California
2 Labor Code, sections 201-203.

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

5 81. Additionally, ~~Castro~~ is entitled to attorneys' fees and costs, pursuant to
6 California Labor Code, section 203, and prejudgment interest, pursuant to
7 California Labor Code § 218.6.

8 82. Wherefore, ~~Castro~~ requests relief as hereinafter prayed for.

9
10 **SIXTH CAUSE OF ACTION**
11 **(Violations of the Unfair Competition Law)**
12 **(Brought by Plaintiff Castro)**

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

20 84. This cause of action is brought under Business and Professions Code §§
21 17203 and 17204, commonly called the Unfair Competition Law. Under this cause
22 of action and pursuant to Business and Professions Code § 17208, Castro seeks
23 restitution of overtime wages and rest and meal period pay owed and where
24 applicable, the penalties which are provided under the California Labor Code §
25 203, where such wages and penalties were due, commencing four (4) years prior to
26 filing of this complaint, according to proof.

27 85. This cause of action is brought as a cumulative remedy as provided in
28 Business and Professions Code § 17205 and is intended as an alternative remedy
for restitution for ~~Castro~~ for the time period, or any portion thereof, commencing

1 four years prior to the filing of this action and continuing through the judgment
2 date, and as the primary remedy for the time period of the fourth year prior to the
3 filing of this complaint, as such one year time period exceeds the statute of
4 limitations on statutory wage claims.

5 86. As a result of Swift's unlawful and unfair business practice of failing to pay
6 overtime and prompt payment of wages in violation of the California Labor Code
7 §§ 201 and 202, ~~Castro~~ has suffered damages and are entitled to restitution in an
8 amount according to proof and injunctive relief pursuant to Business and
9 Professions Code § 17203.

10 87. Further, ~~Castro~~ requests Swift's violations alleged herein be enjoined, and
11 other equitable relief as this Court deems proper including payment for all hours
12 worked and requiring and furnishing rest and meal periods and requiring payment
13 by Swift of tax contributions on the accrued overtime compensation in the form of
14 FICA, Social Security, Medicare, Unemployment Insurance, or other appropriate
15 payments.

16 88. Wherefore, ~~Castro~~ requests relief as hereinafter prayed for.

17 **VI. PRAYER FOR RELIEF**

18 Wherefore, ~~Castro~~, and the FLSA Class he seeks to represent, pray for relief
19 and request that this Court enter an Order:

- 20 1. Declaring that Swift violated the FLSA;
- 21 2. Ordering notice sent to the class of all CSRs employed by Swift within three
22 years of the filing of this Complaint and giving them notice of the opportunity to
23 join this case pursuant to 29 U.S.C. § 216(b);
- 24 3. Certifying this action as a collective action;
- 25 4. Declaring that Swift's violations of the FLSA were willful;
- 26 5. Granting judgment to ~~Castro~~ and the FLSA Class for their claims of unpaid
27 wages as secured by the FLSA, as well as an equal amount in liquidated damages
28 and interest; and

1 6. Awarding ~~Castro~~ and the FLSA Class their costs, including expert witness
2 fees, and reasonable attorneys' fees.

3 With respect to the California state law claims:

4 a. Declaring that Swift violated the overtime pay, meal and rest break,
5 and wage payment provisions of the California Labor Law;

6 b. Declaring that Swift's violations of the California Wage Payment
7 provisions of the California Labor Codes were willful;

8 c. Declaring that Swift violated the California Unfair Competition Law;

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

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

13 f. Granting judgment to ~~Castro~~ for his claim of one hour of additional
14 pay at the regular rate of compensation for each workday that the proper meal
15 periods were not provided, and one hour of additional pay at the regular rate of
16 compensation for each workday that the proper rest period was not provided as
17 secured by the California Labor Law;

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