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Superior Court of California  
County of Los Angeles

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By: Aldwin Lim, Deputy

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11 Plaintiffs NATHAN FLOWERS and DONDAY ORR

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF LOS ANGELES

14 UNLIMITED JURISDICTION

15 ·NATHAN FLOWERS *et al.*,  
16 Plaintiffs,

17 v.

18 LOS ANGELES COUNTY  
19 METROPOLITAN TRANSPORTATION  
20 AUTHORITY; and DOES 1-50,  
21 Defendants.

Civil Case No. BC515136

CLASS ACTION

ASSIGNED FOR ALL PURPOSES TO THE  
HONORABLE WILLIAM F. HIGHBERGER,  
DEPARTMENT 322

**FOURTH AMENDED CLASS ACTION  
COMPLAINT FOR VIOLATIONS OF  
AND/OR RECOVERY OF:**

- (1) THE CALIFORNIA LABOR CODE  
AND/OR CALIFORNIA  
INDUSTRIAL WELFARE  
COMMISSION WAGE ORDERS;  
and
- (2) CIVIL PENALTIES UNDER THE  
LABOR CODE PRIVATE  
ATTORNEYS GENERAL ACT OF  
2004, CALIFORNIA LABOR CODE  
§ 2699(a),(f) ("PAGA" CLAIMS).

**JURY TRIAL DEMANDED**

22 Plaintiffs Nathan Flowers and Donday Orr (collectively, "Plaintiffs"), on behalf of  
23 themselves and all others similarly situated, and all others who consent to become Party  
24 Plaintiffs, allege as follows:

25 **NATURE OF THE CASE**

- 26 1. Plaintiff Nathan Flowers was, and Donday Orr is, employed as an operator by

1 Defendant Los Angeles County Metropolitan Transportation Authority (hereinafter  
2 “Defendant”), and have pursued this action to represent other current and former bus and/or  
3 train operators (collectively hereinafter “Operator” or “Operators”) in this class action and  
4 representative PAGA action against Defendant alleging that Defendant has engaged in an  
5 unlawful pattern and practice of failing to pay its Operators for all compensable work  
6 performed by such employees in violation of the California Labor Code and the California  
7 Industrial Welfare Commission Order No. 9-2001 (hereinafter “Wage Order No. 9”). These  
8 claims are based on non-waivable statutory rights. This lawsuit seeks to enforce non-waivable  
9 statutory rights and to recover damages resulting from Defendant’s failure to pay its Operators  
10 for time that is necessary and integral to these employees’ principal duties. Plaintiffs seek  
11 declaratory and injunctive relief, compensation for all uncompensated work, liquidated and/or  
12 other damages as permitted by applicable law, penalties, interest, attorneys’ fees and costs.

13 **JURISDICTION AND VENUE**

14 1. The Court has personal jurisdiction over Defendant pursuant to California  
15 Code of Civil Procedure § 410.10 because it is doing business in the State of California, has  
16 committed acts or omissions in California with respect to one or more causes of action arising  
17 from these acts or omissions, and/or has caused effects in California with respect to one or  
18 more causes of action arising from these effects.

19 2. Venue is proper in the County of Los Angeles in accordance with Code of  
20 Civil Procedure § 395(a) because at least some of Plaintiff’s injury is alleged to have occurred  
21 in this county.

22 3. Venue is proper in this Court under California Code of Civil Procedure  
23 § 395.5. Some of the actions alleged herein occurred in the County of Los Angeles.

24 **PARTIES**

25 4. Plaintiff Nathan Flowers was employed by Defendant as an operator. He sues  
26 on his own behalf, and as class representative on behalf of similarly situated Operators who  
27 are or were employed by Defendant within the applicable statute of limitations period.

28 5. Plaintiff Donday Orr is employed by Defendant as an operator. He sues on his

1 own behalf, and as class representative on behalf of similarly situated Operators who are or  
2 were employed by Defendant within the applicable statute of limitations period.

3 6. Defendant Los Angeles County Metropolitan Transportation Authority  
4 operates a public transportation system. Its principal place of business is in Los Angeles,  
5 California.

6 7. The true names and capacities, whether individual, corporate, associate or  
7 otherwise, of each of the Defendants designated herein as DOES are unknown to Plaintiffs at  
8 this time and therefore said Defendants are sued by such fictitious names. Plaintiffs will  
9 amend this Complaint to show their true names and capacities when ascertained. Plaintiffs are  
10 informed and believe and thereon allege that each Defendant designated herein as a DOE  
11 defendant is legally responsible in some manner for the events and happenings herein alleged  
12 and in such manner proximately caused damages to Plaintiffs as hereinafter further alleged.

13 8. Plaintiffs are informed and believe and thereon allege that each of the  
14 Defendants were acting as the agent, employee, partner, or servant of each of the remaining  
15 Defendants and was acting within the course and scope of that relationship, and gave consent  
16 to, ratified, and authorized the acts alleged herein to each of the remaining Defendants.

17 **FACTS COMMON TO ALL CAUSES OF ACTION**

18 9. Throughout the putative class period, Defendant has used a computer software  
19 program called Hastus for both scheduling and calculating predetermined pay amounts for all  
20 Operators. Defendant uses Hastus to develop schedules for every route for all of its bus  
21 divisions. Defendant also uses Hastus to create "Work Runs" that list "run numbers," which  
22 identify the Operator's daily assignment. The Work Runs documents also identify a  
23 predetermined daily pay amount for each run number, *i.e.*, for each Operator's daily  
24 assignment. That daily pay amount is calculated by determining the total amount of "Straight  
25 Time" which consists of a predetermined number of compensable hours for the various  
26 categories of time listed for that run, including: (1) vehicle time (*i.e.*, the time a vehicle is in  
27 service from pull-out time until pull-in time); (2) miscellaneous time (which includes vehicle  
28 preparatory time (*i.e.*, the time allowed for obtaining supplies and readying equipment for

1 service prior to placing equipment in revenue service); (3) sign-off time (*i.e.*, the time allowed  
2 for storing equipment after completion of assignments or work runs at Division points or  
3 outside locations and walking to their division points); (4) travel time (*i.e.*, the scheduled time  
4 allowed for traveling between relief points and divisions and two relief points); and (5) in  
5 limited instances, additional time paid in order to ensure that an Operator receives eight hours  
6 of guaranteed daily pay.

7 10. In violation of the terms of California law, Defendant has at all material times  
8 failed and refused to pay its Operators for all compensable time, including but not limited to:  
9 (1) mandatory meetings, (2) the differential between scheduled run times and actual run times,  
10 (3) time spent completing mandatory reports, (4) time spent turning in various documents, and  
11 (5) time spent reviewing various documents and performing related pre-departure tasks.

12 11. Meeting Time. Defendant requires Operators to attend mandatory meetings  
13 while employed by Defendant, including trainings, safety meetings, and meetings with  
14 supervisors to discuss various items related to Defendant's business. The time that Operators  
15 spend in connection with such meetings is called "meeting time" in this Complaint.

16 12. This meeting time is caused by Defendant's requirement and is for the  
17 convenience/benefit of Defendant only.

18 13. Despite the requirements of California law, Defendant has failed to pay  
19 Operators for all meeting time actually incurred.

20 14. Routinely Late Time. The amount an Operator receives in compensation for  
21 driving the bus or train is set by a predetermined schedule rather than the actual time driving.  
22 The amount of the driving time allocated for a particular run depends on the variables that  
23 Defendant uses during route construction. Defendant's runs routinely arrive at their end points  
24 after the scheduled arrival time because Defendant does not add enough running time to their  
25 runs (a differential referred to hereinafter as "routinely late" time).

26 15. Despite the requirements of California law, Defendant has failed to pay  
27 Operators for all routinely late time actually incurred.

28 16. Report Time. Operators are required to complete various reports including, but

1 not limited to, accident reports, "miscellaneous" reports, and/or daily logs. This type of  
2 activity is referred to hereinafter as "report time."

3 17. Despite the requirements of California law, Defendant has failed to pay  
4 Operators for all report time actually incurred.

5 18. Turn-in Time. Operators are required to perform various tasks at the end of  
6 their run assignment, including without limitation parking the transit vehicle, performing a  
7 post-trip inspection, and turning in various documents. This type of activity is referred to  
8 hereinafter as "turn-in time."

9 19. Despite the requirements of California law, Defendant has failed to pay  
10 operators for all turn-in time actually incurred.

11 20. Document Review Time. Operators must spend time reviewing various  
12 documents including but not limited to walking/traveling to gather and review the documents,  
13 gathering and reviewing documents, and then walking/traveling to another location to perform  
14 other work activities. This type of activity is referred to hereinafter as "document review  
15 time."

16 21. Defendant designs numerous runs that start at a relief point. For those runs,  
17 Defendant maintains a policy and practice of requiring Bus Operators to travel to the relief  
18 point in a CEA Vehicle. Prior to performing such travel time Bus Operators are required to:  
19 (a) check into a terminal; (b) obtain the keys of the CEA vehicle; (c) check their mailboxes  
20 and review the bulletin boards for detours and schedule changes; (d) walk to the CEA vehicle;  
21 (e) perform an inspection of the vehicle for damage and cleanliness; and (f) if damage is  
22 found to notify supervisory or maintenance personnel prior to leaving the division yard.

23 22. Despite its policy and practice of requiring Operators to spend time performing  
24 these activities, Defendant has maintained a policy and practice of not including the time  
25 spent on these activities in the Work Runs that it creates using Hastus. Indeed, Defendant has  
26 maintained a policy and practice of not paying for such time.

27 23. Despite the requirements of California law, Defendant has failed to pay  
28 operators for all document review time.



1 requirement embraces three factors: (1) common questions of law or fact that predominate  
2 over questions affecting individual members; (2) class representatives with claims or defenses  
3 that are typical of the class; and (3) class representatives who can adequately represent the  
4 class.” *Id.* at 689. Those requirements are met here.

5 27. Numerosity. Defendant has employed thousands of individuals as Operators  
6 during the relevant time periods.

7 28. Existence and Predominance of Common Questions. Common questions of  
8 law and/or fact exist as to the members of the proposed class and, in addition, common  
9 questions of law and/or fact predominate over questions affecting only individual members of  
10 the proposed class. The common questions include the following:

- 11 a. Whether Defendant has maintained a policy and/or practice of not  
12 compensating its Operators for all working time, including but not limited  
13 to meeting time, routinely late time, report time, turn-in time, and  
14 document review time;
- 15 b. Whether Defendant’s policies and practices violate California law;
- 16 c. Whether the class members are entitled to unpaid wages and other relief;
- 17 d. Whether Defendant’s affirmative defenses, if any, raise common issues of  
18 fact or law as to Plaintiffs and the class members; and
- 19 e. Whether Plaintiffs and the proposed class are entitled to damages and  
20 equitable relief, including, but not limited to, a preliminary and/or  
21 permanent injunction, and if so, the proper measure and formulation of  
22 such relief.

23 29. Typicality. Plaintiff’s claims are typical of the claims of the proposed class.  
24 Defendant’s common course of conduct in violation of law as alleged herein has caused  
25 Plaintiff and the proposed class to sustain the same or similar injuries and damages.  
26 Plaintiff’s claims are therefore representative of and co-extensive with the claims of the  
27 proposed class.

28 30. Adequacy. Plaintiff is an adequate representative of the proposed class because

1 his interests do not conflict with the interests of the members of the class he seeks to  
2 represent. Plaintiff has retained counsel competent and experienced in class action litigation,  
3 and Plaintiff intends to prosecute this action vigorously. Plaintiff and his counsel will fairly  
4 and adequately protect the interests of members of the proposed class.

5 31. Superiority. The class action is superior to other available means for the fair  
6 and efficient adjudication of this dispute. The injury suffered by each member of the  
7 proposed class, while meaningful on an individual basis, is not of such magnitude as to make  
8 the prosecution of individual actions against Defendant economically feasible. Individualized  
9 litigation increases the delay and expense to all parties and the court system presented by the  
10 legal and factual issues of the case. By contrast, the class action device presents far fewer  
11 management difficulties and provides the benefits of single adjudication, economies of scale,  
12 and comprehensive supervision by a single court.

13 32. In the alternative, the proposed class may be certified because: the prosecution  
14 of separate actions by the individual members of the proposed class would create a risk of  
15 inconsistent or varying adjudication with respect to individual members of the proposed class  
16 that would establish incompatible standards of conduct for Defendant; and Defendant has  
17 acted and/or refused to act on grounds generally applicable to the proposed class, thereby  
18 making appropriate final and injunctive relief with respect to members of the proposed class  
19 as a whole.

20 33. In the alternative, the proposed class may be certified and the action  
21 maintained for determination of particular issues. Cal. Rules of Court Rule 3.765(b) (“When  
22 appropriate, an action may be maintained as a class action limited to particular issues.”).

23 **FIRST CAUSE OF ACTION**

24 *[The first cause of action, for violations of the FLSA, was voluntarily dismissed]*

25 **SECOND CAUSE OF ACTION**

26 **Failure to Pay All Straight Time Hours Worked in Violation of Wage Order No. 9**  
27 **and/or California Labor Code §§ 1194, 1194.2, 1197, 1197.1, 1198**

28 **(By the Class)**





1 employ one or more employees, the civil penalty is five hundred dollars (\$500). (2) If, at the  
2 time of the alleged violation, the person employs one or more employees, the civil penalty is  
3 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial  
4 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each  
5 subsequent violation.” California Labor Code § 2699(f)(1)-(2). “Of the civil penalties  
6 recovered, 75 percent goes to the Labor and Workforce Development Agency, leaving the  
7 remaining 25 percent for the ‘aggrieved employees.’ *Iskanian v. CLS Transp. Los Angeles,*  
8 *LLC*, 59 Cal. 4th 348, 380 (2014) (quoting Cal. Lab. Code § 2699, subd. (i)).

9 40. “[T]he Legislature . . . authorized the LWDA to recover underpaid wages on  
10 behalf employees in the form of a civil penalty under section 558. Accordingly, an aggrieved  
11 employee acting as the LWDA’s proxy or agent by bringing a PAGA action may likewise  
12 recover underpaid wages as a civil penalty under section 558.” *Thurman v. Bayshore Transit*  
13 *Management, Inc.*, 203 Cal. App. 4th 1112, 1148 (2012). “[T]he language of section 558,  
14 subdivision (a) . . . provid[es] a civil penalty that consists of both the \$50 or \$100 penalty  
15 amount and any underpaid wages, with the underpaid wages going entirely to the affected  
16 employee or employees as an express exception to the general rule that civil penalties  
17 recovered in a PAGA action are distributed 75 percent to the Labor and Workforce  
18 Development Agency (LWDA) and 25 percent to the aggrieved employees (§ 2699, subd.  
19 (i)).” *Id.* at 1145.

20 41. Based on the violations set forth herein, on behalf of himself and the other  
21 current and former employees, Plaintiffs seek recovery pursuant to Labor Code § 558 of either  
22 fifty dollars (\$50) or one hundred dollars (\$100) for each underpaid employee for each pay  
23 period for which the employee was underpaid, to be distributed 75 percent to the Labor and  
24 Workforce Development Agency (LWDA) and 25 percent to the aggrieved employees.

25 42. Based on the violations set forth herein, on behalf of himself and the other  
26 current and former employees, Plaintiffs also seek recovery pursuant to Labor Code  
27 § 1197.1(a) of either one hundred dollars (\$100) or two hundred fifty dollars (\$250) for each  
28 underpaid employee for each pay period for which the employee is underpaid, to be

1 distributed 75 percent to the Labor and Workforce Development Agency (LWDA) and 25  
2 percent to the aggrieved employees.

3 43. In addition, on behalf of themselves and the other current and former  
4 employees, Plaintiffs seek recovery of the underpaid wages going entirely to the affected  
5 employees, as a civil penalty pursuant to Labor Code § 558.

6 44. PAGA also allows for recovery with respect to Labor Code § 1194 for “any  
7 employee receiving less than the legal minimum wage or the legal overtime compensation  
8 applicable to the employee.” See Labor Code § 2699.5 (listing, *inter alia*, § 1194).

9 Therefore, because of Defendant’s failure to pay the legal minimum wage as required by state  
10 law, as alleged herein, Defendant is liable for civil penalties under California Labor Code  
11 § 2699(f)(1)-(2) for each aggrieved employee per pay period.

12 45. PAGA also allows for recovery with respect to Labor Code § 1198 which  
13 provides, in relevant part: “The employment of any employee . . . under conditions of labor  
14 prohibited by the order [of the IWC] is unlawful.” See Labor Code § 2699.5 (listing, *inter*  
15 *alia*, § 1198). Therefore, because of Defendant’s violations of Wage Order No. 9, as alleged  
16 herein, Defendant is liable for civil penalties under California Labor Code § 2699(f)(1)-(2) for  
17 each aggrieved employee per pay period.

18 46. PAGA also provides: “Any employee who prevails in any action shall be  
19 entitled to an award of reasonable attorney’s fees and costs.” California Labor Code  
20 § 2699(g)(1).

21 47. Plaintiffs bring this action under PAGA individually and as a representative  
22 suit on behalf of themselves and all current and former employees pursuant to  
23 the procedures in California Labor Code § 2699.3 or the in the alternative as a class action as  
24 alleged above.

25 48. Plaintiff Nathan Flowers satisfied the pre-filing notice and exhaustion of  
26 administrative remedies requirement under Labor Code section 2699.3(a). Plaintiff Flowers  
27 notified the LWDA and Defendant about violations of law by Defendant by letter dated July  
28 15, 2013, which was mailed by certified mail on that date to Defendant at One Gateway Plaza,

1 Los Angeles, CA 90012-2952 and to the LWDA. The facts and theories set forth in the letter,  
2 for example, that Defendant has “engaged in an unlawful pattern and practice of failing to pay  
3 its Operators for all compensable work performed by such employees,” and that Defendant  
4 has “failed and refused to pay its Operators for all compensable time, including but not  
5 limited to” time spent performing certain specified work activities, qualified as sufficient  
6 notice. Having received no response from the LWDA, Plaintiff Flowers filed the amended  
7 complaint alleging PAGA claims on August 23, 2013. Plaintiff Flowers subsequently  
8 received a letter from the LWDA dated August 26, 2013 stating that the LWDA “does not  
9 intend to investigate the allegations.”

10 49. As alleged above, Defendant has violated several provisions of the California  
11 Labor Code, including but not limited to Labor Code §§ 1194, 1197, 1198, and Wage Order  
12 No. 9, for which Plaintiffs seek recovery of civil penalties under Labor Code §§ 558, 1197.1,  
13 2698, and 2699(f).

14 50. WHEREFORE, Plaintiffs, on behalf of themselves and the other current and  
15 former employees, seek penalties and interest as allowed by law, attorneys’ fees and costs,  
16 and any further relief that the Court deems appropriate.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray for relief as follows:

- 19 a) For an order certifying that the Second and Third Causes of Action of this  
20 Complaint may be maintained as a class action on behalf of a class on behalf of a  
21 class as defined herein and that notice of the pendency of this action be provided to  
22 members of the class pursuant to applicable law, including without limitation Code  
23 of Civil Procedure section 382 and California Rules of Court Rule 3.765(b);
- 24 b) For an order designating Plaintiff as class representative and Plaintiff’s attorneys  
25 as counsel for the proposed class;
- 26 c) For an order awarding Plaintiffs and the class compensatory damages and statutory  
27 damages, including unpaid wages, liquidated damages, and all other sums of  
28 money owed, together with interest on these amounts;

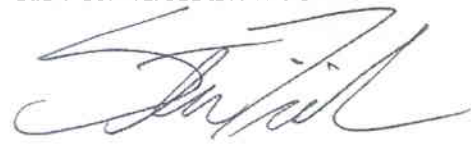
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- d) For preliminary, permanent, and mandatory injunctive relief prohibiting Defendant, its officers, and agents, from committing the violations of law herein alleged in the future;
- e) For a declaratory judgment that Defendant has violated California law and public policy as alleged herein;
- f) For pre- and post-judgment interest;
- g) For an award of any penalties that may be applied pursuant to Wage Order No. 9 and/or the California Labor Code as well as reasonable attorneys' fees as provided by California Labor Code §§ 1194, 2699(g)(1); California Code of Civil Procedure § 1021.5; and/or other applicable law;
- h) For all costs of suit; and
- i) For such other and further relief as the Court deems just and proper.

DATED: February 14, 2018

Respectfully submitted,

THE TIDRICK LAW FIRM



By:

STEVEN G. TIDRICK, SBN 224760  
JOEL B. YOUNG, SBN 236662

Attorneys for Individual and Representative  
Plaintiffs NATHAN FLOWERS and  
DONDAY ORR

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**JURY DEMAND**

Plaintiffs in the above-referenced action, on their own behalf and on behalf of all persons they seek to represent, hereby demand a trial by jury on all counts.

DATED: February 14, 2018

Respectfully submitted,

THE TIDRICK LAW FIRM



By:

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Plaintiffs NATHAN FLOWERS and  
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