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16 C.R. England, Inc.

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 BARRETTE JASPER and DARRIN) CASE NO. 08-CV-05266 GW (CWx)
20 COOK on behalf of)
21 themselves and all others similarly)
22 situated,)
23 Plaintiffs,)
24 vs.)
25 C.R. ENGLAND, INC.,)
26 and DOES 1 through 100, inclusive,)
27 Defendants.)
28

**ANSWER AND AFFIRMATIVE
DEFENSES OF DEFENDANT,
C.R. ENGLAND, INC., TO
PLAINTIFFS' THIRD
AMENDED COMPLAINT**

1 **ANSWER**

2 Defendant, C.R. England, Inc., by counsel, pursuant to Fed.R.Civ.P. 8(b), and
3 for its answer to Plaintiffs' Third Amended Complaint (the "TAC"), denies each and
4 every allegation contained in the TAC, except those specifically admitted herein as
5 being true, and further states as follows:

6 1. The allegations contained in paragraph 1 are assertions about the
7 Plaintiffs' reasons for filing the TAC, and to which no response is required.

8 **I.**

9 **The Parties**

10 2. Defendant admits that Plaintiff, Barrette Jasper ("Jasper"), is a former
11 employee of Defendant who worked as a driver for Defendant from August, 2007 to
12 February, 2008. Defendant is without knowledge or information sufficient to form a
13 belief as to the truth as to whether Jasper is a resident of California and therefore
14 denies the same. Defendant denies the remaining allegations contained in paragraph 2
15 of the TAC.

16 3. Defendant admits that Plaintiff, Darrin Cook ("Cook"), is a former driver
17 for Defendant, and that Cook started his employment with Defendant in
18 approximately November, 2006. Defendant is without knowledge or information
19 sufficient to form a belief as to the truth as to whether Cook is a resident of California
20 and therefore denies the same. Defendant denies the remaining allegations contained
21 in paragraph 3 of the TAC.

22 4. Defendant admits the material allegations contained in paragraph 4 of the
23 TAC.

24 5. Defendant is without information sufficient to form a belief as to the truth
25 of the allegations contained in paragraph 5 of the TAC and, therefore, denies the
26 same.

1 **II.**

2 **Jurisdiction and Venue**

3 6. Defendant admits the material allegations of paragraph 6 of the TAC.

4 7. Defendant admits venue is proper in this Court, but denies the remaining
5 allegations contained in paragraph 7 of the TAC.

6 **III.**

7 **Procedural Background of Claims**

8 8. Defendant admits the allegations contained in paragraph 8 of the TAC.

9 9. Defendant admits the allegations contained in paragraph 9 of the TAC.

10 10. Defendant admits that, during the pendency of these related actions, the
11 named Plaintiffs have alleged, among others, the claims and causes of actions listed in
12 paragraph 10 of the TAC, but Defendant denies that any of those claims or causes of
13 action has merit.

14 11. Defendant admits the allegations contained in paragraph 11 of the TAC.

15 12. Defendant admits that the Court certified the four subclasses identified in
16 paragraph 12 of the TAC but denies the remaining allegations contained in paragraph
17 12 of the TAC to the extent they are inconsistent with the Court's order certifying
18 those subclasses.

19 **IV. CRE'S LEGAL OBLIGATIONS AND CONDUCT TOWARD THE CLASS**

20 **A. Meal and Rest Breaks**

21 13. The allegations contained in paragraph 13 are assertions of law to which
22 no response is required. To the extent a response is required, Defendant denies the
23 allegations contained in paragraph 13 of the TAC.

24 14. The allegations contained in paragraph 14 are assertions of law to which
25 no response is required. To the extent a response is required, Defendant denies the
26 allegations contained in paragraph 14 of the TAC.

1 15. The allegations contained in paragraph 15 are assertions of law to which
2 no response is required. To the extent a response is required, Defendant denies the
3 allegations contained in paragraph 15 of the TAC.

4 16. The allegations contained in paragraph 16 are assertions of law to which
5 no response is required. To the extent a response is required, Defendant denies the
6 allegations contained in paragraph 16 of the TAC.

7 17. The allegations contained in paragraph 17 are assertions of law to which
8 no response is required. To the extent a response is required, Defendant denies the
9 allegations contained in paragraph 17 of the TAC.

10 18. Defendant denies the allegations contained in paragraph 18 of the TAC.

11 **B. Deductions and Late Payment of Wages**

12 19. The allegations contained in paragraph 19 are assertions of law to which
13 no response is required. To the extent a response is required, Defendant denies the
14 allegations contained in paragraph 19 of the TAC.

15 20. The allegations contained in paragraph 20 are assertions of law to which
16 no response is required. To the extent a response is required, Defendant denies the
17 allegations contained in paragraph 20 of the TAC.

18 21. The allegations contained in paragraph 21 are assertions of law to which
19 no response is required. To the extent a response is required, Defendant denies the
20 allegations contained in paragraph 21 of the TAC.

21 22. The allegations contained in paragraph 22 are assertions of law to which
22 no response is required. To the extent a response is required, Defendant denies the
23 allegations contained in paragraph 22 of the TAC.

24 23. The allegations contained in paragraph 23 are assertions of law to which
25 no response is required. To the extent a response is required, Defendant denies the
26 allegations contained in paragraph 23 of the TAC.

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1 24. The allegations contained in paragraph 24 are assertions of law to which
2 no response is required. To the extent a response is required, Defendant denies the
3 allegations contained in paragraph 24 of the TAC.

4 25. Defendant denies the material allegations contained in paragraph 25 of
5 the TAC.

6 26. Defendant denies the material allegations contained in paragraph 26 of
7 the TAC.

8 27. Defendant denies the material allegations contained in paragraph 27 of
9 the TAC.

10 28. Defendant denies the material allegations contained in paragraph 28 of
11 the TAC.

12 29. Defendant denies the material allegations contained in paragraph 29 of
13 the TAC.

14 30. Defendant denies the material allegations contained in paragraph 30 of
15 the TAC.

16 31. Defendant denies the material allegations contained in paragraph 31 of
17 the TAC.

18 **C. Non-Payment of All Wages Due Under the California Labor Code**

19 32. The allegations contained in paragraph 32 are assertions of law to which
20 no response is required. To the extent a response is required, Defendant denies the
21 allegations contained in paragraph 32 of the TAC.

22 33. The allegations contained in paragraph 33 are assertions of law to which
23 no response is required. To the extent a response is required, Defendant denies the
24 allegations contained in paragraph 33 of the TAC.

25 34. The allegations contained in paragraph 34 are assertions of law to which
26 no response is required. To the extent a response is required, Defendant denies the
27 allegations contained in paragraph 34 of the TAC.

28 35. The allegations contained in paragraph 35 are assertions of law to which

1 no response is required. To the extent a response is required, Defendant denies the
2 allegations contained in paragraph 35 of the TAC.

3 36. The allegations contained in paragraph 36 are assertions of law to which
4 no response is required. To the extent a response is required, Defendant denies the
5 allegations contained in paragraph 36 of the TAC.

6 37. The allegations contained in paragraph 37 are assertions of law to which
7 no response is required. To the extent a response is required, Defendant denies the
8 allegations contained in paragraph 37 of the TAC.

9 38. The allegations contained in paragraph 38 are assertions of law to which
10 no response is required. To the extent a response is required, Defendant denies the
11 allegations contained in paragraph 38 of the TAC.

12 39. Defendant admits that it has paid Plaintiffs and other class members
13 either on a flat-daily-rate pay plan (paid to certain class members during the time they
14 were trainee employee drivers) or through a mileage-based pay plan, but denies the
15 remaining allegations contained in paragraph 39 of the TAC.

16 40. Defendant denies the material allegations contained in paragraph 40 of
17 the TAC.

18 41. Defendant denies the material allegations contained in paragraph 41 of
19 the TAC.

20 42. Defendant denies the material allegations contained in paragraph 42 of
21 the TAC.

22 **D. Failure to Keep and Provide Accurate Records and Wage Statements**

23 43. The allegations contained in paragraph 43 are assertions of law to which
24 no response is required. To the extent a response is required, Defendant denies the
25 allegations contained in paragraph 43 of the TAC.

26 44. The allegations contained in paragraph 44 are assertions of law to which
27 no response is required. To the extent a response is required, Defendant denies the
28 allegations contained in paragraph 44 of the TAC.

1 45. The allegations contained in paragraph 45 are assertions of law to which
2 no response is required. To the extent a response is required, Defendant denies the
3 allegations contained in paragraph 45 of the TAC.

4 46. The allegations contained in paragraph 46 are assertions of law to which
5 no response is required. To the extent a response is required, Defendant denies the
6 allegations contained in paragraph 46 of the TAC.

7 47. The allegations contained in paragraph 47 are assertions of law to which
8 no response is required. To the extent a response is required, Defendant denies the
9 allegations contained in paragraph 47 of the TAC.

10 48. The allegations contained in paragraph 48 are assertions of law to which
11 no response is required. To the extent a response is required, Defendant denies the
12 allegations contained in paragraph 48 of the TAC.

13 49. Defendant denies the allegations contained in paragraph 49 of the TAC.

14 50. The allegations contained in paragraph 50 are assertions of law to which
15 no response is required. To the extent a response is required, Defendant denies the
16 allegations contained in paragraph 50 of the TAC.

17 51. The allegations contained in paragraph 51 are assertions of law to which
18 no response is required. To the extent a response is required, Defendant denies the
19 allegations contained in paragraph 51 of the TAC.

20 52. The allegations contained in paragraph 52 are assertions of law to which
21 no response is required. To the extent a response is required, Defendant denies the
22 allegations contained in paragraph 52 of the TAC.

23 53. The allegations contained in paragraph 53 are assertions of law to which
24 no response is required. To the extent a response is required, Defendant denies the
25 allegations contained in paragraph 53 of the TAC.

26 54. The allegations contained in paragraph 54 are assertions of law to which
27 no response is required. To the extent a response is required, Defendant denies the
28 allegations contained in paragraph 54 of the TAC.

1 55. The allegations contained in paragraph 55 are assertions of law to which
2 no response is required. To the extent a response is required, Defendant denies the
3 allegations contained in paragraph 55 of the TAC.

4 56. The allegations contained in paragraph 56 are assertions of law to which
5 no response is required. To the extent a response is required, Defendant denies the
6 allegations contained in paragraph 56 of the TAC.

7 57. Defendant denies the material allegations contained in paragraph 57 of
8 the TAC.

9 58. Defendant denies the material allegations contained in paragraph 58 of
10 the TAC.

11 59. Defendant denies the material allegations contained in paragraph 59 of
12 the TAC.

13 60. Defendant denies the material allegations contained in paragraph 60 of
14 the TAC.

15 61. The allegations contained in paragraph 61 are assertions of law to which
16 no response is required. To the extent a response is required, Defendant denies the
17 allegations contained in paragraph 61 of the TAC.

18 62. The allegations contained in paragraph 62 are assertions of law to which
19 no response is required. To the extent a response is required, Defendant denies the
20 allegations contained in paragraph 62 of the TAC.

21 **V. CAUSES OF ACTION BY NAMED PLAINTIFFS AND THE CLASS**

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MEAL AND REST BREAKS OR PREMIUM**
24 **WAGES IN LIEU THEREOF**

25 **(By Plaintiffs and the Class against C.R. England)**

26 63. For its answer to paragraph 63, Defendant incorporates by reference its
27 answers to paragraphs 1-62 of the TAC.
28

1 64. The allegations contained in paragraph 64 are assertions of law to which
2 no response is required. To the extent a response is required, Defendant denies the
3 allegations contained in paragraph 64 of the TAC.

4 65. Defendant denies the material allegations contained in paragraph 65 of
5 the TAC.

6 66. Defendant denies the material allegations contained in paragraph 66 of
7 the TAC.

8 67. Defendant denies the material allegations contained in paragraph 67 of
9 the TAC.

10 68. Defendant denies the material allegations contained in paragraph 68 of
11 the TAC.

12 69. Defendant denies the material allegations contained in paragraph 69 of
13 the TAC.

14 70. Defendant denies the material allegations contained in paragraph 70 of
15 the TAC.

16 **SECOND CAUSE OF ACTION**

17 **WITHHOLDING AND LATE PAYMENT OF EARNED WAGES**

18 **(By Plaintiffs and the Class against Defendant C.R. England)**

19 71. For its answer to paragraph 71, Defendant incorporates by reference its
20 answers to paragraphs 1-70 of the TAC.

21 72. The allegations contained in paragraph 72 are assertions of law to which
22 no response is required. To the extent a response is required, Defendant denies the
23 allegations contained in paragraph 72 of the TAC.

24 73. Defendant denies the material allegations contained in paragraph 73 of
25 the TAC.

26 74. Defendant denies the material allegations contained in paragraph 74 of
27 the TAC.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(By Named Plaintiffs and the Class against C.R. England)**

4 85. For its answer to paragraph 85, Defendant incorporates by reference its
5 answers to paragraphs 1-84 of the TAC.

6 86. The allegations contained in paragraph 86 are assertions of law to which
7 no response is required. To the extent a response is required, Defendant denies the
8 allegations contained in paragraph 86 of the TAC.

9 87. The allegations contained in paragraph 87 are assertions of law to which
10 no response is required. To the extent a response is required, Defendant denies the
11 allegations contained in paragraph 87 of the TAC.

12 88. Defendant denies the material allegations contained in paragraph 88 of
13 the TAC.

14 89. Defendant denies the material allegations contained in paragraph 89 of
15 the TAC.

16 **II.**

17 **AFFIRMATIVE DEFENSES**

18 Defendant, by counsel, pursuant to Fed.R.Civ.P. 8(c), and for its affirmative
19 defenses to the TAC and the claims of the putative class members Plaintiffs represent,
20 states as follows:

21 1. The TAC should be dismissed because each claim set forth in the TAC
22 fails to state a claim upon which relief can be granted.

23 2. The TAC should be dismissed because Plaintiffs have failed to exhaust
24 all administrative remedies available and required to secure the benefits and
25 protections to which they claim to have been entitled pursuant to California law.

26 3. The TAC should be dismissed because questions regarding the benefits
27 and protections to which Plaintiffs claim to have been entitled, including Plaintiffs'
28 entitlement to those benefits, and the amount of any benefits, are within the exclusive

1 and primary jurisdiction of certain California state and/or federal administrative
2 agencies.

3 4. Plaintiffs' claims for damages are barred, in whole or in part, by
4 Plaintiffs' failure to mitigate their damages.

5 5. Some or all of Plaintiffs' claims are barred by the doctrine of laches.

6 6. Some or all of Plaintiffs' claims are barred by the doctrine of unclean
7 hands and/or the doctrine of waiver. To the extent that Defendant provided Plaintiffs
8 with the opportunity to take a meal or rest break and they declined, failed or refused to
9 do so, Plaintiffs cannot recover.

10 7. Plaintiffs have waived their right to some or all of the meal and/or rest
11 breaks by failing to take breaks provided to them as required by law, by choosing to
12 take breaks that were authorized and permitted, or by waiving the right to take breaks.

13 8. Some or all of Plaintiffs' claims are barred by the doctrine of estoppel.

14 9. Some or all of Plaintiffs' claims are barred because Defendant has paid
15 Plaintiffs in full.

16 10. Some or all of Plaintiffs' claims imposing penalties would be inequitable
17 and unjust and are therefore barred because a good faith dispute exists as to whether
18 additional compensation is due and owing and Defendant has not intentionally or
19 willfully failed to pay such additional compensation.

20 11. Plaintiffs' claims are barred, in whole or in part, by the doctrine of
21 avoidable consequences.

22 12. Plaintiffs' claims regarding Defendant's alleged failure to provide meal
23 and rest break periods under California law are barred because they are an undue
24 burden upon interstate commerce in violation of the Commerce Clause of the U.S.
25 Constitution, U.S. CONST. art. I, § 8, cl. 3.

26 13. Plaintiffs' claims regarding Defendant's alleged failure to provide meal
27 and rest break periods under California law are preempted under the Supremacy
28 Clause of the U.S. Constitution, U.S. CONST. art. VI, cl. 2, because (a) California's

1 meal and rest break rules conflict with the federal hours of service regulations, 49
2 C.F.R. Part 395, by imposing a different standard than that carefully set at the federal
3 level by the Federal Motor Carrier Safety Administration (“FMCSA”); (b) the
4 FMCSA’s regulation of the hours of service of drivers in interstate commerce through
5 the federal hours of service regulations, 49 C.F.R. Part 395, leaves no room for
6 additional or supplemental state regulation of drivers’ hours of service; and (c)
7 California’s meal and rest break rules affect Defendant’s rates, routes, and services
8 within the meaning of the express preemption provision of the Federal Aviation
9 Administration Authorization Act (“FAAAA”), 49 U.S.C. § 14501.

10 14. Plaintiffs’ claims regarding Defendant’s alleged failure to provide meal
11 and rest breaks under California law are barred on the grounds that Cal. Labor Code §
12 226.7 does not provide for a private right of action.

13 15. Plaintiffs’ meal and rest break claims fail to state a cause of action
14 because Defendant authorized and permitted all of its employees who were subject to
15 California law to take meal and rest breaks and provided them such breaks in
16 accordance with California law.

17 16. Plaintiffs’ meal and rest break claims fail to state a cause of action
18 because there is no requirement to ensure that Plaintiffs actually take meal and rest
19 breaks.

20 17. To the extent Plaintiffs seek wages and/or penalties for both alleged meal
21 and rest break violations for the same working day, such wages and/or penalties are
22 duplicative and improper.

23 18. Plaintiffs cannot recover alleged unpaid meal and rest break
24 compensation under California Business & Professions Code § 17200 because any
25 payments under Cal. Labor Code § 226.7 are not subject to equitable relief.

26 19. The business practices alleged in the TAC are not “unfair” as that term is
27 defined and utilized in California Business & Professions Code § 17200.

1 20. Plaintiffs’ claims are barred, in whole or in part, because the alleged
2 practices are not unfair, the public is not likely to be deceived by any alleged
3 practices, Defendant gained no competitive advantage by such practices, and the
4 benefits of the alleged practices outweigh any harm or other impact they may cause.

5 21. Plaintiffs’ claims are barred, in whole or in part, because Defendant’s
6 business practices are not and were not “unlawful” in that they complied with all
7 applicable statutes and regulations regarding the payment of wages and the provision
8 of meal and rest breaks.

9 22. The imposition of replicating penalties, as applied to the alleged facts and
10 circumstances of this case, would violate Defendant’s due process rights under the
11 U.S. Constitution and the California Constitution.

12 23. Some or all of Plaintiffs’ claims are barred by the applicable statute of
13 limitations.

14 24. Some or all of Plaintiffs’ claims are barred because Plaintiffs consented
15 to the alleged conduct of Defendant.

16 25. Some or all of Plaintiffs’ claims should be reduced by the doctrine of set
17 off.

18 26. Plaintiffs are not entitled to any penalty award under any California
19 Labor Code provision because, at all times relevant and material herein, Defendant
20 acted in good faith and had reasonable grounds for believing that it did not violate the
21 California Labor Code, the California Business & Professions Code, or a California
22 Industrial Wage Order.

23 27. This action does not meet the requirements for class action treatment
24 under Fed.R.Civ.P. 23 and Plaintiffs cannot satisfy the requirements for maintenance
25 of a class action under Fed.R.Civ.P. 23, including, without limitation, ascertainability,
26 predominance, typicality, adequacy, and superiority.

27
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1 28. Plaintiffs have been fully compensated for any wages owed on a timely
2 basis and with proper itemization, and, by accepting the payments made to them,
3 Plaintiffs effectuated an accord and satisfaction of their claims.

4 29. Plaintiffs and class members received properly itemized wage statements
5 and even if that were not the case, Plaintiffs and class members have suffered no harm
6 as a result of any alleged violations.

7 30. All actions taken by Defendant toward Plaintiffs were lawful and not in
8 violation of public policy.

9 31. Even assuming for the sake of argument that Defendant violated a statute
10 in the California Labor Code or California Business & Professions Code, or an
11 Industrial Welfare Commission Wage Order, any such violation was a result of an act
12 or omission in good faith, and Defendant had reasonable grounds for believing such
13 act or omission was not a violation of any statute, order, regulation or policy.

14 32. Defendant has not willfully or intentionally failed to pay any
15 compensation to Plaintiffs so as to justify an award of penalties or fees to Plaintiffs on
16 that basis.

17 33. Any claim for penalties and/or punitive damages is unconstitutional
18 under the U.S. Constitution and the California Constitution.

19 34. To the extent Plaintiffs seek to recover equitable relief, Plaintiffs are not
20 entitled to such a relief because he has an adequate remedy at law.

21 35. Some or all of Plaintiffs' claims are barred because, at all times,
22 Defendant acted in good faith, did not engage in any unfair business practices, or
23 otherwise violate any applicable laws.

24 36. California Business & Profession Code § 17200, *et seq.* is
25 unconstitutional, vague and over broad in the manner in which Plaintiffs claim that the
26 statutes apply to Defendant's business practices and thus constitutes a violation of
27 Defendant's rights to due process and equal protection.
28

1 37. Pre-judgment interest may not be granted because the damages claimed
2 by Plaintiffs are not sufficiently certain to allow an award of pre-judgment interest.

3 38. To the extent that Plaintiffs seek putative damages based on the alleged
4 acts of Defendant, the TAC violates Defendant’s rights to substantive due process as
5 provided by the U.S. Constitution and the California Constitution.

6 39. Plaintiffs’ claims for penalties for alleged wrongful wage deductions are
7 barred because all deductions from Plaintiffs’ wages were authorized by Plaintiffs.

8 40. Plaintiffs’ claims against unmade “Doe” Defendants must be dismissed
9 because Plaintiffs have failed to identify and serve those purported Defendants in a
10 timely manner.

11 41. Defendant will rely on all defenses lawfully available to them at the time
12 of trial and reserve the right to amend their answer and affirmative defenses to include
13 additional defenses after the completion of discovery.

14 WHEREFORE, Defendant requests judgment as follows:

- 15 A. That this action be decertified as a class action;
- 16 B. That Plaintiffs take nothing by way of the TAC;
- 17 C. That judgment be entered against Plaintiffs and in favor of Defendant;
- 18 D. That Defendant be awarded its attorney fees and costs incurred in this
19 case; and
- 20 E. That Defendant be awarded all other necessary and proper relief.

21
22 Dated: February 24, 2014

SCOPELITIS, GARVIN, LIGHT,
HANSON & FEARY, P.C.

23
24
25 /s/ James H. Hanson
26 James H. Hanson

27 Attorney for Defendant,
28 C.R. England, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically on February 24, 2014. Notice of this filing will be sent to the following parties by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

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James H. Hanson

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