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12 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 SCOTT PIRON, personal representative of THE  
15 ESTATE OF PATRICK L. PIRON, on behalf of  
16 himself and all others similarly situated,

17 Plaintiff,

18 v.

19 SWIFT TRANSPORTATION CO., INC.,

20 Defendant.

No. \_\_\_\_\_

**CLASS ACTION**

**CLASS ACTION COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF AND DAMAGES**

21 Plaintiff, by his undersigned attorneys for his class action petition, alleges upon  
22 personal knowledge as to himself and his own acts, and upon information and belief (based  
23 on the investigation of counsel) as to all other matters, as to which allegations they believe  
24 substantial evidentiary support will exist after a reasonable opportunity for further  
25 investigation and discovery, as follows:  
26

CLASS ACTION COMPLAINT

- 1 -

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1 **I. NATURE OF THE CASE**

2 1. This proposed class action is brought by plaintiff against Swift Transportation  
3 Co., Inc., one of the country’s largest publicly held truckload carrier.

4 2. For each trip made by its drivers, Swift is obligated to pay its drivers for each  
5 mile actually traveled. Each driver also accrues benefits based on the number of actual miles  
6 traveled.

7 3. Contrary to this obligation, Swift has failed and continues to refuse to  
8 compensate its drivers for actual miles traveled. Instead, and as has been documented in a  
9 federal investigation, Swift pays each driver *materially less* than the actual miles driven by  
10 the driver on the run.

11 4. This is a uniform practice that has been conceived and implemented at Swift’s  
12 national headquarters in Phoenix, and which adversely and unfairly impacts all Swift drivers  
13 nationwide.

14 5. Accordingly, plaintiff brings claims for breach of contract and breach of the  
15 covenant of good faith and fair dealing on behalf of a nationwide class of Swift truck drivers.  
16 This suit is necessary to end Swift’s unfair practices, remedy Swift’s breaches of contract  
17 and the covenant of good faith and fair dealing with its drivers, and to provide Swift drivers  
18 their full compensation that has been wrongfully withheld by Swift.

19 **II. JURISDICTION AND VENUE**

20 6. This Court has subject matter jurisdiction pursuant to A.R.S. §12-123.

21 7. Venue is proper in this county under A.R.S. § 12-401 because the acts upon  
22 which this action is based occurred in part in Maricopa County, where defendant is  
23 headquartered. A substantial part of the trade and commerce giving rise to plaintiff’s claims  
24 occurred within Maricopa County and incidentally, significantly, and/or predominantly  
25 affected trade and commerce within the State of Arizona. Defendant maintains an office,  
26 transacts business, has an agent, and is domiciled in the County of Maricopa and is therefore,

1 subject to the jurisdiction of this Court for purposes of service of process.

2 8. The total amount in controversy as to plaintiff and each individual class  
3 member, including actual, compensatory, or treble damages, restitution, declaratory and/or  
4 equitable relief of any nature, and/or any other unspecified relief, is less than \$75,000.00  
5 each, exclusive of interest and costs. Plaintiff and class members do not assert any federal  
6 question or any claim arising under a federal statute. Plaintiff and class members' state law  
7 claims are not preempted by federal law.

8 9. Among other things Plaintiff alleges that defendant, acting directly or through  
9 agents that were at the time acting with actual and/or apparent authority, and within the  
10 scope of such authority, has:

11 (a) transacted business in this state and county;

12 (b) contracted to import or supply into or obtain services or goods in this  
13 state and county;

14 (c) intentionally availed itself of the benefits of doing business in this state  
15 and county;

16 (d) produced, promoted, imported, sold, marketed and/or distributed its  
17 products or services in this state and county and, thereby, purposefully profited from  
18 their access to this state and county's markets;

19 (e) caused damage by act or omission in this state and county;

20 (f) caused damage in this state and county by acts or omissions committed  
21 outside this state while:

22 (i) regularly doing or soliciting business in this state, and/or

23 (ii) engaging in other persistent courses of conduct within this state,  
24 and/or

25 (iii) deriving substantial revenue from goods used or consumed or  
26 services rendered in this state and county;

1 (g) committed acts and omissions that defendants knew or should have  
2 known would cause damage (and, in fact, did cause damage) in this state to plaintiff  
3 and class members while:

4 (i) regularly doing or soliciting business in this state, engaging in  
5 other persistent courses of conduct within this state, and/or

6 (ii) deriving substantial revenue from goods used or consumed or  
7 services rendered in this state and county; and

8 (h) otherwise had the requisite minimum contacts with this state and county  
9 such that, under the circumstances, it is fair and reasonable to require defendant to  
10 come to this Court to defend this action.

### 11 III. THE PARTIES

12 10. Plaintiff is a resident of the County of Maricopa. During the Class Period,  
13 Patrick Piron, on whose behalf plaintiff files suit in his capacity as personal representative of  
14 Patrick Piron's estate, was employed by Swift as a driver, and was not paid for the total  
15 actual miles that he drove as required by Swift's agreement with its drivers.

16 11. Defendant Swift Transportation Co., Inc. is a Nevada corporation with its  
17 principal place of business and headquarters located at 2200 South 75<sup>th</sup> Avenue, Phoenix,  
18 Arizona 85043. All Swift corporate policies that are implemented in the United States,  
19 including those complained of herein, originate from the Phoenix headquarters.

### 20 IV. FACTUAL ALLEGATIONS COMMON 21 TO ALL CAUSES OF ACTION

22 12. Defendant Swift is the largest publicly held truckload carrier in the United  
23 States with annual revenues of over \$2.5 Billion. It owns or leases approximately 16,500  
24 truck tractors, 49,000 trailers and has over 19,000 drivers.

25 13. As Swift represents, its "success has come through the integrity and dedication  
26 of the professional drivers and Owner Operators that deliver an astonishing 98.9% on-time

1 rate.”

2 14. These drivers form the backbone of this country’s trucking system, serving  
3 America’s largest corporations for Swift, including Allegiance Healthcare, Costco,  
4 Freightliner Corp., Georgia Pacific, General Motors, JC Penney, K-Mart, Kimberly-Clark,  
5 Lowes, Michelin, Potlach, Procter & Gamble, Quaker Oats, Sears, Target, WalMart,  
6 Weyerhauser and others.

7 15. The Swift driver compensation package was represented to be based on the  
8 number of miles traveled by the driver on each trip. For each trip, Swift is obligated to pay  
9 its drivers *per mile* as Swift affirmatively represents in the examples attached hereto at  
10 Exhibit A and printed from Swift’s website at [www.swifttruckingjobs.com](http://www.swifttruckingjobs.com). Presently, the  
11 typical per mile rate is 32 cents per driver team, or 16 cents per mile per driver “for all the  
12 miles the truck runs.”

13 16. Benefits also accrue on a per-mile basis, and Swift represents that its “benefits  
14 package is worth 9.5 cents per mile.”

15 17. In order to collect compensation for a trip, drivers submit records to Swift  
16 containing, among other things, the stop locations and the miles actually driven for each run.

17 18. In breach of its promise to compensate each driver for all of the actual miles  
18 that the truck runs on each trip, Swift pays each driver for *materially less* than the actual  
19 miles traveled by the driver on the run.

20 19. Swift’s practice of paying for materially fewer miles than the miles actually  
21 traveled by the driver on the run is uniform and affects all drivers throughout the country.  
22 This practice was conceived and implemented nationwide by Swift at its Phoenix, Arizona  
23 headquarters. Although the practice saves Swift millions of dollars annually, this savings  
24 has come at the expense of Swift’s hardworking and dedicated drivers and in breach of  
25 Swift’s agreement with the drivers. Upon information and belief, Plaintiff alleges that  
26 Defendant purposely ignores the miles actually driven, despite Swift’s express promise to its

1 drivers that they would be paid for miles driven, opting instead for an artificial calculation or  
2 estimate of miles driven.

3 20. Swift driver Patrick Piron, now deceased, was a typical victim of Swift's  
4 uniform practice of "shorting" the drivers. Below are examples of trips that Mr. Piron drove  
5 for Swift and for which Swift paid Mr. Piron based on materially fewer miles than Mr. Piron  
6 actually drove, recorded and submitted to Swift:

Trip	Swift Trip No.	Actual Miles Driven	Miles Swift Paid	Difference
Hampsted, MA to Baldwinsville, NY	F543007	435	377	58
Abuquerque, NM to Upper Marlborough, MD	F688754	2510	2444	66
Tunkhanmok, PA to Canton, MI	F568401	740	656	84
Henderson, NV to Tolleson, AZ	F425787	340	314	26
Swanee, GA to Lumberton/Garner, SC	E608583	500	480	20
Lauren, SC to Reno, NV	E614561	2860	2750	110
Sparks, NV to Phoenix, AZ	E723725	775	730	45
Souix Falls, SD to Covington, GA	E615982	1335	1275	60
Columbia, MO to Mesquite, TX	E907097	800	660	140
McDonough, GA to Marshall, MO	E891193	840	775	65
Decatur, GA to Jonesboro, GA	E853974	340	300	40
Perrysville, OH to Harrisonburg, PA	E865437	535	510	25

## V. CLASS ACTION ALLEGATIONS

21. Class Definition. Plaintiff brings all claims herein as class claims pursuant to Arizona Rule 23. Its requirements are met with respect to the National class defined below:

All persons in the United States who (1) were employed by Swift as a driver on or after January 30, 1998, and (2) were compensated by Swift on the basis of miles driven.

Specifically excluded from the class is Swift, any entity in which Swift has a controlling interest; any of its parents, subsidiaries, affiliates and officers and directors and the members

1 of their immediate families; and their heirs, successors and assigns.

2 22. Numerosity of the Class. The class consists of approximately nineteen  
3 thousand drivers, with at least several hundred class members residing in Arizona alone. The  
4 proposed class is therefore so numerous that the individual joinder of all its members is  
5 impractical. The exact number and identities of class members are unknown at this time, but  
6 can be ascertained through appropriate discovery.

7 23. Predominance of Common Questions of Law or Fact. Questions of law or fact  
8 of common and general interest to the class exist as to all members of the class and  
9 predominate over any questions affecting only individual members of the class. Such  
10 questions include:

- 11 a. Whether Swift represented that it would compensate drivers based on  
12 actual miles driven;
- 13 b. Whether Swift represented that it would calculate benefits due each  
14 driver based on actual miles driven;
- 15 c. Whether these representations were made a term of the agreement  
16 between Swift and its drivers;
- 17 d. Whether Swift compensated its drivers for actual miles driven or, in the  
18 alternative, compensated drivers for less than actual miles driven;
- 19 e. Whether Swift's uniform course of conduct constitutes a breach of  
20 contract and breach of the duty of good faith and fair dealing; and,
- 21 f. Whether plaintiff and the class are entitled to damages, and if so, what is  
22 the form of relief to be awarded.

23 24. Plaintiff's claims present class-wide legal and factual issues, which arise out of  
24 Swift's uniform course of conduct in failing to compensate drivers for all of the miles that  
25 they drove despite agreeing to compensate all drivers for all miles driven. All members of  
26 the class have sustained economic damages arising out of Swift's common course of conduct

1 as alleged herein.

2 25. Adequate Representation. Plaintiff will fairly and adequately protect the  
3 interests of the members of the class and has no interests antagonistic to those of the class  
4 members. Plaintiff has retained counsel experienced in the prosecution and successful  
5 settlement of nationwide and statewide class actions. A review of class cases in which  
6 counsel undersigned is acting as lead counsel can be found at its website: [www.hagens-](http://www.hagens-berman.com)  
7 [berman.com](http://www.hagens-berman.com).

8 26. Class Action Is An Appropriate Method of Adjudication. A class action is an  
9 appropriate, if not superior, method, which will fairly and efficiently adjudicate this  
10 controversy. Individual joinder of all members of the class is impractical, if not impossible.  
11 Furthermore, as the compensatory damages suffered by many individual members of the  
12 class are relatively small, the expense and burden of individual litigation would make it  
13 difficult, if not impossible, for those individual members to redress the wrongs done to them  
14 by a major corporation like Swift.

15 27. The cost to the court system of such individualized litigation would be  
16 substantial. Individualized litigation would also present the potential for inconsistent or  
17 contradictory judgments and would magnify the delay and expense to all parties and the  
18 court system in multiple trials of identical or similar complex factual issues of the case. By  
19 contrast, the conduct of this action as a class action presents fewer management difficulties,  
20 conserves the resources of the parties and the court system, protects the rights of each class  
21 member and maximizes recovery to them. Most importantly, without this class action,  
22 plaintiff and class members will effectively be left without a remedy.

23 28. The Prerequisites to Maintaining a Class Action For Declaratory Relief Are  
24 Readily Apparent. The prerequisites to maintaining a class action for injunctive relief exist:  
25 Plaintiff and the members of the class have no adequate remedy at law for the injuries which  
26 are threatened to recur, in that, absent a declaration or rights under the driver contract by this

1 Court, Swift will continue to underpay its drivers.

2 29. Individual actions may, as a practical matter, be dispositive of the interests of  
3 the class.

4 30. Swift's actions are generally applicable to the class as a whole, and plaintiff  
5 seeks, *inter alia*, remedies with respect to the class as a whole.

6 **VI. TOLLING OF THE STATUTE OF LIMITATIONS**  
7 **AND FRAUDULENT CONCEALMENT**

8 31. Swift is estopped from relying on any statutes of limitation by virtue of its acts  
9 of fraudulent concealment and by not disclosing the material fact to its drivers that it  
10 systematically fails to calculate pay based on actual miles despite affirmatively representing  
11 and agreeing that it would. Swift had a good faith duty to disclose this material fact to  
12 plaintiff and class members but did not.

13 32. Swift's conduct was and is, by its nature, self-concealing. Swift, through a  
14 series of affirmative acts or omissions, suppressed the dissemination of truthful information  
15 regarding its illegal conduct, and has actively foreclosed plaintiff and class members from  
16 discovering Swift's illegal acts.

17 33. By reason of the foregoing, the claims of plaintiff and class members are  
18 timely under any applicable statute of limitations, pursuant to the discovery rule, the  
19 equitable tolling doctrine, and/or fraudulent concealment.

20 **CAUSES OF ACTION**

21 **COUNT I**  
22 **BREACH OF CONTRACT**

23 34. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set  
24 forth herein.

25 35. This claim is asserted on behalf of a national class.

26 36. Swift uniformly agreed with all drivers to pay per actual mile traveled and to  
base benefits on each actual mile traveled. This was and is a material term of the

1 employment agreement between Swift and each driver.

2 37. Contrary to this agreement, Swift failed to pay plaintiff and the class for actual  
3 miles traveled and instead paid them for a materially lesser amount. Swift also failed to  
4 calculate benefits due based on actual miles traveled and instead based benefit calculations  
5 on a materially lesser amount of miles. Swift's conduct constitutes a breach of contract.

6 38. As a direct and proximate result of Swift's breach, plaintiff and class members  
7 were injured or damaged and are entitled to damages to be proved at trial.

8 **COUNT II**  
9 **VIOLATION OF DUTY OF GOOD FAITH AND FAIR DEALING**

10 39. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set  
11 forth herein.

12 40. This claim is asserted on behalf of a national class.

13 41. Swift is under a duty to act in good faith and otherwise deal fairly with its  
14 employees, including plaintiff and the class members.

15 42. Swift has breached this duty of good faith and fair dealing by (1) using a  
16 methodology that Defendant knows does not determine miles actually driven, which  
17 Defendant further knows to be its obligation, and (2) by obscuring, hiding, and failing to  
18 disclose the fact that Defendant knows that its system does not determine miles actually  
19 driven.

20 43. As a direct and proximate result of Swift's breach, plaintiff and class members  
21 were injured or damaged and are entitled to damages to be proved at trial.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, plaintiff prays for the following judgment:

24 1. An order providing that this action is properly maintainable as a class action,  
25 and appointing plaintiff and his undersigned counsel to represent the class;

26 2. An award of compensatory damages and all monetary relief authorized by law

1 or referenced in the complaint, including damages associated with underpayment for miles  
2 driven and with the loss of benefits, along with an award of any other appropriate punitive,  
3 exemplary, or special damages;

4 3. An order declaring the rights of the class and the obligations of Swift under the  
5 standard contractual provisions at issue in this action;

6 4. An award of prejudgment and post judgment interest;

7 5. An award of the costs of this action, including a reasonable attorney's fee.

8 6. Such other and further relief as this Court may deem just, equitable or proper.

9  
10 DATED: January 30, 2004.

11 HAGENS BERMAN PLLC

12  
13 By: \_\_\_\_\_

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