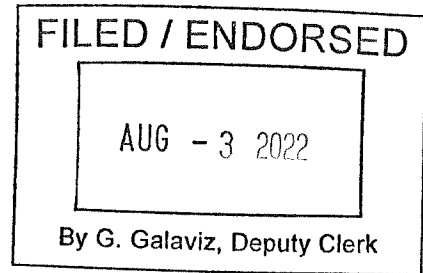


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Attorneys for Plaintiffs Sigifredo Perez Jr., Israel Alcantar,
and David Macias, as individuals, and on behalf of others similarly situated

(Additional counsel listed on the following page)

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO**

SIGIFREDO PEREZ JR., ISRAEL
ALCANTAR, and DAVID MACIAS, as
individuals, and on behalf of all others
similarly situated and on behalf of the
general public,

Plaintiffs,

v.

SIERRA MOUNTAIN EXPRESS, INC., a
limited liability company, WILLIAM E.
SCANLON, and DOES 1 through 10,
inclusive,

Defendants.

Case No. 34-2020-00279284-CU-OE-GDS

*Assigned for All Purposes to the:
Honorable Jill H. Talley
Department 25*

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Provide Meal Periods;
3. Failure to Permit Paid Rest Breaks;
4. Failure to Pay All Wages to Piece-Rate Workers for Time Spent in Rest Breaks
5. Failure to Pay Wages Upon Separation of Employment
6. Failure to Pay Wages Within the Required Time;
7. Failure to Provide Accurate Itemized Wage Statements;
8. Failure to Reimburse Necessary Business Expenses;
9. Failure to Refrain from Unlawful Deductions;
10. Violation of California Business; and Professions Code §§ 17200, *et seq.*
11. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

BY FAX

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Attorneys for Plaintiffs Sigifredo Perez Jr., Israel Alcantar,
and David Macias, as individuals, and on behalf of others similarly situated

1 Plaintiffs Sigifredo Perez Jr., Israel Alcantar, and David Macias, as individuals, and on behalf
2 of all others similarly situated, allege as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Sigifredo Perez Jr., Israel Alcantar, and David Macias, (collectively
5 “Plaintiffs”) bring this putative class putative class and representative action pursuant to the Private
6 Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*, against Sierra Mountain Express,
7 Inc., William E. Scanlon, and Does 1 through 10, inclusive (collectively “Defendants”) on behalf of
8 themselves, as individuals, and on behalf of Defendants’ non-exempt employees who were
9 misclassified as independent contractors.

10 2. Defendants are in the business of providing transportation of cars throughout
11 California.

12 3. Through this action, Plaintiffs are alleging that Defendants have engaged in a
13 systematic pattern of wage and hour violations under the California Labor Code (“Labor Code”), all
14 of which contribute to Defendants’ deliberate unfair competition.

15 4. Plaintiffs are informed and believe, and thereon allege, during the relevant time
16 period, Defendants had a consistent policy of violating state wage and hour laws by, among other
17 things:

- 18 (a) Misclassifying Plaintiffs and drivers as independent contractors;
- 19 (b) Failing to pay all wages for all hours worked;
- 20 (c) Failing to authorize or permit rest breaks or provide compensation in lieu
21 thereof;
- 22 (d) Failing to provide meal periods or compensation in lieu thereof;
- 23 (e) Failing to pay wages to piece-rate workers for time spent in rest breaks and/or
24 recovery periods;
- 25 (f) Secretly paying a lower wage while purporting to pay the wages designated
26 by statute or by contract;
- 27 (g) Willfully failing to provide accurate semi-monthly itemized wage statements;
- 28 (h) Failing to pay all wages due upon separation of employment;

- (i) Failing to reimburse all business expenses incurred by class members in direct consequence of the discharge of his or her duties; and
- (j) Unlawfully deducting items from class members' pay or requiring forced patronage.

5. Plaintiffs bring this lawsuit seeking monetary relief against Defendants on behalf of themselves, and all others similarly to recover, among other things, unpaid wages and benefits, interest, attorney's fees, costs and expenses and penalties pursuant to Labor Code §§ 201-204, 210, 221, 223, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 450, 512, 558, 558.1, 1182.12, 1194, 1194.2, 1197, 1197.1, 2750.3, 2800, 2802, and 2698, *et seq.*

6. Plaintiffs, on behalf of themselves and all class members, pursuant to Business and Professions Code sections 17200, *et seq.*, also seek injunctive relief and restitution for the unfair, unlawful, or fraudulent practices alleged in this Complaint

JURISDICTION AND VENUE

7. The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

8. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all cases except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

9. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

10. Venue is proper in this Court because, upon information and belief, Defendants transact business or have at least one facility in this county, or acts and omissions alleged herein took place in this county.

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THE PARTIES

11. Plaintiff Sigifredo Perez Jr. is a citizen of California. Plaintiff Perez was employed by Defendants during the Class Period in California.

12. Plaintiff Israel Alcantar is a citizen of California. Plaintiff Alcantar was employed by Defendants during the Class Period in California.

13. Plaintiff David Macias is a citizen of California. Plaintiff Macias was employed by Defendants during the Class Period in California.

14. Defendants were and are, upon information and belief, a corporation doing business throughout the State of California, and at all times hereinafter mentioned, an employer as defined in and subject to the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, whose employees are and were engaged throughout this county and the State of California.

15. The true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants sued herein as Does 1 to 10, inclusive, are currently unknown to Plaintiffs, who therefore sues said Defendants by such fictitious names under California Code of Civil Procedure § 474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants designated herein as a Doe is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

16. Plaintiffs are informed and believe, and based thereon allege, that Defendant William E. Scanlon is the employer or other person acting on behalf of the employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates or causes to be violated, Sections 203, 226, 226.7, 1194, or 2801, may can be held liable as the employer for such violation pursuant to Labor Code § 558.1(a).

17. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants are

legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employers and/or joint employers of Plaintiffs and the class members.

CLASS ACTION ALLEGATIONS

18. Plaintiffs bring this action under Code of Civil Procedure § 382 on behalf of themselves and all other members of the general public similarly situated who were affected by Defendants' Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

19. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized by California law.

20. Plaintiffs' proposed Class consists of and is defined as follows:

Class

All California citizens who performed work for Defendants in the State of California as drivers, who were misclassified as independent contractors from April 6, 2016¹ to the date of class certification.

21. Plaintiffs also seek to certify the following Subclass:

Waiting Time Subclass

All members of the Class who separated their working relationship from Defendants from April 6, 2017 to the date the Subclass is certified.

22. Members of the Class and Subclass described above will collectively be referred to as "class members." Plaintiffs reserve the right to establish other or additional subclasses, or modify any Class or Subclass definition, as appropriate based on investigation, discovery and specific theories of liability.

23. This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure § 382 because there are common questions of law and fact as to the Class that predominate over questions affecting only individual members including, but not limited to:

¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

- a. Whether Defendants misclassified Plaintiffs and class members as independent contractors rather than non-exempt employees;
- b. Whether Defendants failed to pay at least minimum wage for all hours worked by Plaintiffs and class members;
- c. Whether Defendants failed to provide Plaintiffs and class members with meal periods;
- d. Whether Defendants deprived Plaintiffs and class members of paid rest breaks or required Plaintiffs and class members to work through rest breaks without compensation;
- e. Whether Defendants failed to pay all wages to Plaintiffs and class members for time spent in rest breaks;
- f. Whether Defendants secretly paid a lower wage to Plaintiffs and class members while purporting to pay the wages designated by statute or by contract;
- g. Whether Defendants failed to timely pay Plaintiffs and class members all earned wages during their employment;
- h. Whether Defendants failed to timely pay Plaintiffs and former class members all wages due upon termination or within 72 hours of resignation;
- i. Whether Defendants failed to furnish Plaintiffs and class members with accurate itemized wage statements;
- j. Whether Defendants required Plaintiffs and class members to use their personal funds for business expenses and then failed to adequately reimburse them;
- k. Whether Defendants made unlawful deductions from Plaintiffs' and class members' pay;
- l. Whether Defendants' conduct was willful or reckless; and
- m. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

24. There is a well-defined community of interest in the litigation and the Class is readily ascertainable.

(a) Numerosity: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiffs at this time, on information and belief, the Class is estimated to be greater than 100 individuals. The identity of the class members are readily ascertainable by inspection of Defendants' employment and payroll records.

(b) Typicality: The claims (or defenses, if any) of Plaintiffs are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiffs are also typical of the injuries sustained by the Class because they arise out of and are caused by Defendants' common course of conduct as alleged herein.

(c) Adequacy: Plaintiffs are qualified to, and will fairly and adequately represent and protect the interests of all members of the Class because it is in their best interest to prosecute the claims alleged herein to obtain full compensation and penalties due him and the Class. Plaintiffs' attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and are versed in the rules governing class action discovery, certification and settlement. Plaintiffs have incurred and, throughout the duration of this action, will continue to incur attorneys' fees and costs that have been and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same

manner and at the same time for each Class. If appropriate this Court can, and is empowered to, fashion methods to efficiently manage this case as a class and/or collective action.

(e) Public Policy Considerations: Employers in the State of California and other states violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as affording them privacy protections.

GENERAL ALLEGATIONS

25. Plaintiffs performed services for Defendants in California during the relevant time period. During the relevant time period, Plaintiffs were classified by Defendants as an independent contractor.

26. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned herein, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California wage and hour law, employment and personnel practices and the requirements of California.

27. Through this action, Plaintiffs allege that Defendants have engaged in a systematic pattern of wage and hour violations under the California Labor Code and IWC Wage Orders, all of which contribute to Defendants' deliberate unfair competition.

28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive wages for all time worked (including minimum wages) and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and class members were not paid wages (including minimum wages) for all hours worked when

Defendants failed to pay or underpaid Plaintiffs and class members for all hours worked, and failed to pay for time spent in rest breaks, among other things.

29. Plaintiffs are informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive all rest breaks or payment of one (1) additional hour of pay at Plaintiffs and class members' regular rate of pay when a rest break was missed, and were entitled to payment of wages for time spent when rest breaks were taken. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and class members did not receive paid rest breaks or payment of one (1) additional hour of pay at Plaintiffs and class members' regular rate of pay when a rest break was missed.

30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive all meal periods or payment of one (1) additional hour of pay at Plaintiffs and class members' regular rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and class members did not receive all meal periods or payment of one (1) additional hour of pay at Plaintiffs' and class members' regular rate of pay when they did not receive a timely, uninterrupted meal period.

31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known they had a duty to separately compensate Plaintiffs and class members who were piece-rate workers for time spent during rest breaks, when rest breaks were taken. In violation of the Labor Code, Defendants did not pay piece-rate workers for time spent during rest breaks, when rest breaks were taken.

32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to timely payment of wages during their employment. In violation of the California Labor Code, Plaintiffs and class members did not receive payment of all wages within permissible time periods.

33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and Waiting Time class members were entitled to timely payment of wages upon separation of employment. In violation of the California Labor Code, Plaintiffs and

1 Waiting Time class members did not receive payment of all wages including, but not limited to,
2 unpaid wages within permissible time periods.

3 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and class members were entitled to receive complete and accurate
5 wage statements in accordance with California law. In violation of the California Labor Code,
6 Plaintiffs and class members were not furnished with complete and accurate wage statements
7 showing their total hours worked, number of hours or pieces worked at each hourly or piece rate, and
8 gross and net wages, among other things.

9 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
10 should have known that Plaintiffs and class members were entitled to reimbursement for necessary
11 expenditures incurred in connection with the performance and execution of their job duties. In
12 violation of the California Labor Code, Plaintiffs and class members did not receive adequate
13 reimbursement for necessary business expenses.

14 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that Plaintiffs and class members were entitled to pay without unlawful
16 deductions or forced patronage. In violation of the California Labor Code, Plaintiffs and class
17 members did not their wages free of unlawful deductions.

18 37. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
19 herein, Defendants knew or should have known that it had a duty to compensate Plaintiffs and class
20 members, and that Defendants had the financial ability to pay such compensation but willfully,
21 knowingly and intentionally failed to do so, all in order to increase Defendants' profits.

22 38. Therefore, Plaintiffs bring this lawsuit seeking monetary and injunctive relief against
23 Defendants on behalf of themselves and all class members to recover, among other things, unpaid
24 wages, interest, attorneys' fees, penalties, reimbursements, costs and expenses.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 **(Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197; Violation of IWC Wage Order)**

4 39. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 40. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees fixed
7 by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than
8 the minimum so fixed is unlawful.

9 41. During the relevant time period, failed to pay Plaintiffs and class members all
10 minimum wages owed when Defendants did not pay for all hours worked, and did not pay for time
11 spent in rest breaks, among other reasons. Plaintiffs and class members were not being paid at least
12 minimum wage for their work.

13 42. During the relevant time period, Defendants regularly failed to pay at least minimum
14 wage to Plaintiffs and class members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

15 43. Defendants' failure to pay Plaintiffs and class members the minimum wage as
16 required violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiffs and class
17 members are entitled to recover the unpaid balance of their minimum wage compensation as well as
18 interest, costs and attorney's fees.

19 44. Pursuant to Labor Code § 1194.2, Plaintiffs and class members are entitled to recover
20 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PROVIDE MEAL PERIODS**

23 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

24 45. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
25 though fully set forth herein

26 46. Labor Code § 226.7 provides that no employer shall require an employee to work
27 during any meal period mandated by the IWC Wage Orders.
28

1 47. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall employ
2 any person for a work period of more than five (5) hours without a meal period of not less than 30
3 minutes, except that when a work period of not more than six (6) hours will complete the day’s
4 work the meal period may be waived by mutual consent of the employer and the employee.”

5 48. Labor Code § 512(a) provides that an employer may not require, cause, or permit
6 an employee to work for a period of more than five (5) hours per day without providing the
7 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the
8 total work period per day of the employee is not more than six (6) hours, the meal period may be
9 waived by mutual consent of both the employer and the employee.

10 49. Labor Code § 512(a) also provides that an employer may not employ an employee
11 for a work period of more than ten (10) hours per day without providing the employee with a second
12 meal period of not less than thirty (30) minutes, except that if the total hours worked is no more
13 than twelve (12) hours, the second meal period may be waived by mutual consent of the employer
14 and the employee only if the first meal period was not waived.

15 50. During the relevant time period, Plaintiffs and Class Members did not receive
16 compliant meal periods for working more than five (5) and/or ten (10) hours per day because their
17 meal periods were missed, late, short, interrupted, and/or they were not permitted to take a second
18 meal period.

19 51. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order requires
20 an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
21 compensation for each work day that a compliant meal period is not provided.

22 52. At all relevant times, Defendants failed to pay Plaintiffs and Class Members meal
23 period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code §
24 226.7(b) and section 11 of the applicable IWC Wage Order.

25 53. As a result of Defendants’ failure to pay Plaintiff and Class Members an additional
26 hour of pay for each day a compliant meal period was not provided, Plaintiffs and Class Members
27 suffered and continue to suffer a loss of wages and compensation.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PERMIT REST BREAKS**

3 **(Violation of Labor Code § 226.7; Violation of IWC Wage Order)**

4 54. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 55. Labor Code § 226.7(a) provides that no employer shall require an employee to work
7 during any rest period mandated by the IWC Wage Orders.

8 56. Section 12 of the applicable IWC Wage Order states “every employer shall authorize
9 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of
10 each work period” and the “authorized rest period time shall be based on the total hours worked daily
11 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the
12 total daily work time is less than three and one-half (3½) hours.

13 57. Labor Code 226.7(d) provides that a rest period mandated by state law or IWC Wage
14 Order “shall be counted as hours worked, for which there shall be no deduction from wages.”

15 58. During the relevant time period, Plaintiffs and class members did not receive a ten
16 (10) minute net rest period for every four (4) hours or major fraction thereof worked because they
17 were required to work through their daily rest periods and/or were not authorized to take their rest
18 periods.

19 59. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an
20 employer to pay an employee one additional hour of pay at the employee’s regular rate of
21 compensation for each work day that the rest period is not provided.

22 60. At all relevant times, Defendants failed to pay Plaintiffs and class members the full
23 rest period premium for missed or interrupted rest periods pursuant to Labor Code § 226.7(b) and
24 section 12 of the applicable IWC Wage Order.

25 61. As a result of Defendants’ failure to pay Plaintiffs and class members an additional
26 hour of pay for each day a rest period was not provided, Plaintiffs and class members suffered and
27 continue to suffer a loss of wages and compensation.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES TO PIECE-RATE WORKERS FOR REST BREAKS**

3 **(Violation of Labor Code § 226.2; Violation of IWC Wage Order)**

4 62. Plaintiffs hereby re-allege and incorporates by reference the previous paragraphs, as
5 though fully set forth herein.

6 63. Labor Code § 226.2 requires employees who are paid on a piece-rate basis to be
7 compensated for rest and recovery periods and other nonproductive time separate from any piece-
8 rate compensation.

9 64. Labor Code § 226.2(a) provides that employees compensated on a piece-rate basis
10 shall be compensated for rest and recovery periods, and other nonproductive time separate from any
11 piece-rate compensation. Employees shall be compensated at a regular hourly rate that is no less than
12 the higher of (a) An average hourly rate determined by dividing the total compensation for the
13 workweek, exclusive of compensation for rest and recovery periods and any premium compensation
14 for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.
15 (b) The applicable minimum wage.

16 65. During the relevant time period, Plaintiffs and Class Members paid on a piece-rate
17 basis were not compensated for rest and recovery periods and other nonproductive time separate
18 from any piece-rate compensation.

19 66. At all relevant times, Defendants knowingly and intentionally failed to comply with
20 Labor Code § 226.2 denying compensated rest and recovery periods to employees paid on a piece-
21 rate basis.

22 67. As a result of Defendants' failure to pay Plaintiffs and Class Members compensated
23 rest and recovery periods, Plaintiff and Class Members suffered and continue to suffer a loss of wages
24 and compensation.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES UPON SEPARATION**

3 **OF EMPLOYMENT AND WITHIN THE REQUIRED TIME**

4 **(Violations of Labor Code §§ 201, 202, 203; Violation of IWC Wage Order)**

5 68. Plaintiffs hereby re-allege and incorporates by reference the previous paragraphs, as
6 though fully set forth herein.

7 69. California Labor Code §§ 201 and 202 provide that if an employer discharges an
8 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
9 and that if an employee voluntarily leaves his or her employment, his or her wages shall become due
10 and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
11 two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled
12 to his or her wages at the time of quitting.

13 70. During the relevant time period, Defendants willfully failed to pay Plaintiffs and
14 Waiting Time Subclass Members all their earned wages upon termination including, but not limited
15 to, minimum wages, either at the time of discharge or within seventy-two (72) hours of their leaving
16 Defendants' employ.

17 71. Defendants' failure to pay Plaintiffs and Waiting Time Subclass Members all their
18 earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
19 employ, is in violation of California Labor Code §§ 201 and 202.

20 72. California Labor Code § 203 provides that if an employer willfully fails to pay wages
21 owed promptly upon discharge or resignation as required under California Labor Code §§ 201 and
22 202, then the wages of the employee shall continue as a penalty from the due date, and at the same
23 rate until paid or until an action is commenced; but the wages shall not continue for more than thirty
24 (30) days.

25 73. Defendants willfully failed to pay Plaintiffs and Waiting Time Subclass Members all
26 wages due and, as a result, owe Plaintiffs and Waiting Time Subclass Members regular daily wages
27 for each day they were not paid, at their regular rates of pay up to a thirty (30) day maximum pursuant
28 to California Labor Code § 203 all in an amount to be shown according to proof at trial.

74. Based on these violations, Plaintiffs and the Waiting Time Subclass they seek to represent request relief as described herein and below.

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES

(Violation of Labor Code §§ 204, 210; Violation of IWC Wage Order)

75. Plaintiffs hereby re-allege and incorporates by reference the previous paragraphs, as though fully set forth herein.

76. Labor Code § 204 provides, in pertinent part, “Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

77. Defendants failed to timely pay Plaintiffs and class members all of their earned wages as required by Labor Code Section 204.

78. Plaintiffs and class members have been deprived of their rightfully earned wages as a direct and proximate result of Defendants’ failure to pay said compensation. Plaintiffs and class members are entitled to recover such amounts, plus interest thereon, attorney’s fees and costs.

79. In addition, Plaintiffs and class members are entitled to penalties pursuant to Labor Code § 210 as follows: (1) for Defendants’ initial violation, \$100 for each failure to pay each Class Member; and (2) for each of Defendants’ subsequent violations, or any willful or intentional violation, \$200 for each failure to pay each Class Member, plus 25 percent of the amount unlawfully held.

SEVENTH CAUSE OF ACTION

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226; Violation of IWC Wage Order)

80. Plaintiffs hereby re-allege and incorporates by reference the previous paragraphs, as though fully set forth herein.

1 81. California Labor Code § 226(a) requires employers to furnish their employees with
2 an accurate itemized writing that shows gross wages earned, total hours worked, all deductions, net
3 wages earned, the inclusive dates of the period for which the employee is paid, the name of the
4 employee and the portion of his or her social security number as required by law, the name and
5 address of the legal entity that is the employer and all applicable hourly rates in effect during the pay
6 period and the corresponding number of hours worked at each hourly rate by the employee.

7 82. In addition, pursuant to Labor Code § 226.2(a)(2), the itemized statements of
8 employees paid on a piece-rate basis shall also state (1) the total hours of compensable rest and
9 recovery periods, the rate of compensation, and the gross wages paid for those periods during the
10 pay period; and (2) the total hours of other nonproductive time, the rate of compensation, and the
11 gross wages paid for that time during the pay period.

12 83. Defendants have intentionally and willfully failed to provide Plaintiffs and class
13 members with complete and accurate wage statements. The deficiencies include, among other things,
14 the failure to list the gross wages earned, net wages earned, hours worked, and all applicable hourly
15 rates in effect during the pay period.

16 84. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiffs and
17 class members have suffered injury and damage to their statutorily protected rights. Specifically,
18 Plaintiffs and class members have been injured by Defendants' intentional violation of California
19 Labor Code § 226(a) because they were denied both their legal right to receive, and their protected
20 interest in receiving, accurate itemized wage statements under California Labor Code § 226(a). In
21 addition, because Defendants failed to provide the accurate rates of pay on wage statements,
22 Defendants have prevented Plaintiffs and class members from determining if all hours worked were
23 paid at the appropriate rate and the extent of the underpayment. Plaintiffs have had to file this lawsuit
24 in order to analyze whether in fact Plaintiffs were paid correctly and the extent of the underpayment,
25 thereby causing Plaintiffs to incur expenses and lost time. Plaintiffs would not have had to engage in
26 these efforts and incur these costs had Defendants provided the accurate rate of pay. This has also
27 delayed Plaintiffs' ability to demand and recover the underpayment of wages from Defendants.
28

1 85. California Labor Code § 226(a) requires an employer to pay the greater of all actual
2 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one
3 hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's
4 fees and costs, to each employee who was injured by the employer's failure to comply with California
5 Labor Code § 226(a).

6 86. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and
7 class members from knowing, understanding and disputing the wages paid to them, and resulted in
8 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
9 intentional failure to comply with California Labor Code § 226(a), Plaintiffs and class members have
10 suffered an injury, the exact amount of damages and/or penalties is all in an amount to be shown
11 according to proof at trial.

12 87. Plaintiffs and class members are also entitled to injunctive relief under California
13 Labor Code § 226(g), compelling Defendants to comply with California Labor Code § 226, and seek
14 the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

15 **EIGHTH CAUSE OF ACTION**

16 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**

17 **(Violation of Labor Code §§ 2800, 2802; Violation of IWC Wage Order)**

18 88. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
19 though fully set forth herein.

20 89. Labor Code § 2800 states that an employer shall in all cases indemnify its employee
21 for losses.

22 90. Labor Code § 2802 requires employers to indemnify their employees for all
23 necessary expenditures or losses incurred by employees in direct consequence of the discharge of
24 their duties.

25 91. Section 9 of the applicable IWC Wage Order states that when tools or equipment
26 are required by the employer or are necessary to the performance of a job, such tools and equipment
27 shall be provided and maintained by the employer.

28 92. During the relevant time period, Defendants required Plaintiffs and class members

1 to download an app onto their personal cellular devices in order to view, accept and process jobs,
2 without paying Plaintiffs and class members for a reasonable percentage of their cell phone bills.

3 93. During the relevant time period, Defendants required Plaintiffs and class members
4 to buy supplies or pay for other business expenses, without properly compensating them.

5 94. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify
6 Plaintiffs and class members for these expenses.

7 95. In committing the violations as herein alleged, Defendants have intentionally and
8 willfully failed to fully reimburse Plaintiffs and class members for necessary business-related costs
9 and expenses. As a direct result, Plaintiffs and class members have suffered and continue to suffer
10 substantial losses relating to the use and enjoyment of such compensation, wages, expenses, and
11 attorney's fees.

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO REFRAIN FROM UNLAWFUL DEDUCTIONS**

14 **(Violation of Labor Code §§ 221, 450; Violation of IWC Wage Order)**

15 96. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
16 though fully set forth herein.

17 97. Labor Code § 221 provides, in pertinent part, “[i]t shall be unlawful for any employer
18 to collect or receive from an employee any part of wages theretofore paid by said employer to said
19 employee.”

20 98. Labor Code § 223 provides, in pertinent part, “Where any statute or contract requires
21 an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage
22 while purporting to pay the wage designated by statute or by contract.”

23 99. Labor Code § 450 provides, in pertinent part, “No employer, or agent or officer
24 thereof, or other person, may compel or coerce any employee, or applicant for employment, to
25 patronize his or her employer, or any other person, in the purchase of any thing of value.”

26 100. During the relevant time period, Defendants made unlawful deductions from
27 Plaintiff's and class members' wages and required forced patronage.

28 101. During the relevant time period, Defendants agreed to pay Plaintiffs and other class

1 members wages at designated rates, but deducted business costs from the wages earned by Plaintiffs
2 and class members, thereby secretly paying a lower wage.

3 102. Defendants' violations of Labor Code §§ 221, 223 and 450 caused Plaintiffs and
4 class members to suffer substantial monetary losses, and expenses and attorney's fees in seeking to
5 compel Defendants to fully perform their obligations under California law, as a result Plaintiffs and
6 class members suffered and continue to suffer a loss of wages and compensation.

7 **TENTH CAUSE OF ACTION**

8 **UNFAIR BUSINESS PRACTICES**

9 **(Violation of Business and Professions Code §§ 17200 *et seq.*)**

10 103. Plaintiffs hereby re-allege and incorporates by reference the previous paragraphs, as
11 though fully set forth herein.

12 104. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair
13 competition, which includes any "unlawful, unfair or fraudulent business act or practice"

14 105. A violation of California Business and Professions Code §§ 17200, *et seq.* may be
15 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and
16 practices have violated state law causing Plaintiffs and class members to suffer and continue to suffer
17 injuries in fact. As alleged herein, Defendants systematically engaged in unlawful conduct in
18 violation of the California Labor Code and IWC Wage Orders, such as failing to pay minimum
19 wages, failing to authorize or permit paid rest breaks, failing to provide meal periods, failing to pay
20 wages for time spent in rest breaks and/or recovery periods, failing to pay all wages due and owing
21 upon separation of employment and in a timely manner, failing to timely pay wages during
22 employment, failing to furnish accurate wage statements, failing to reimburse business expenses, and
23 failing to refrain from unlawful deductions, all in order to decrease their costs of doing business and
24 increase their profits.

25 106. At all times relevant herein, Defendants intentionally avoided paying Plaintiffs and
26 class members wages and monies, thereby creating for Defendants an artificially lower cost of doing
27 business in order to undercut their competitors and establish and/or gain a greater foothold in the
28 marketplace.

1 107. At the time Plaintiffs and class members were hired, Defendants knowingly,
2 intentionally and wrongfully misrepresented to each of them their conformance with the California
3 Labor Code and IWC Wage Orders including proper payments required by law.

4 108. At all relevant times herein, Defendants held themselves out to Plaintiffs and class
5 members as being knowledgeable concerning the labor laws of California.

6 109. At all times relevant herein, Plaintiffs and class members relied on and believed
7 Defendants' representations concerning their conformance with California's wage and hour laws all
8 to their detriment.

9 110. As a result of Defendants' intentional, willful, purposeful and wrongful
10 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
11 Plaintiffs and class members suffered a loss of wages and monies, all in an amount to be shown
12 according to proof at trial. By violating the foregoing statutes and regulations as herein alleged,
13 Defendants' acts constitute unfair and unlawful business practices under California Business and
14 Professions Code §§ 17200, *et seq.*

15 111. Defendants' violations of the California Labor Code and IWC Wage Orders and their
16 scheme to lower their payroll costs as alleged herein, constitute unlawful business practices because
17 they were done in a systematic manner over a period of time to the detriment of Plaintiffs and class
18 members.

19 112. As a result of the unfair business practices of Defendants, as alleged herein, Plaintiffs
20 and class members are entitled to injunctive relief, disgorgement and restitution in an amount to be
21 shown according to proof at trial.

22 113. Plaintiffs seek to enforce important rights affecting the public interest within the
23 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has
24 been, and continues to be, unfair, unlawful and harmful to Plaintiffs, class members and to the general
25 public. Based on Defendants' conduct as alleged herein, Plaintiffs and class members are entitled to
26 an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

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28 ///

1 **ELEVENTH CAUSE OF ACTION**

2 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. (“PAGA”)**

3 114. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs as
4 though fully set forth herein.

5 115. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for
6 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
7 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for
8 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an
9 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
10 to the procedures specified in Labor Code § 2699.3.

11 116. For all provisions of the Labor Code except those for which a civil penalty is
12 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
13 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
14 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
15 period in which Defendants violated these provisions of the Labor Code.

16 117. Defendants’ conduct violates numerous Wage Order and Labor Code sections,
17 including, but not limited to, the following:

- 18 (a) violation of Labor Code §§ 201-203, 204, 210, 226.2, 558, 1182.12, 1194,
19 1194.2, 1197, and 1197.1 for failure to timely pay all earned wages (including
20 minimum wage wages) owed to Plaintiffs and other aggrieved employees
21 during employment and upon separation of employment as herein alleged;
- 22 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods
23 to Plaintiffs and other aggrieved employees and failure to pay premium
24 wages for missed meal periods as herein alleged;
- 25 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiffs
26 and other aggrieved employees and failure to pay premium wages for missed
27 rest periods as herein alleged;
- 28

- (d) violation of Labor Code § 226.2 for failure to pay all wages to Plaintiffs and other piece-rate workers for rest periods as herein alleged;
- (e) violation of Labor Code §§ 226 and 226.3 for failure to provide accurate itemized wage statements to Plaintiffs and other aggrieved employees as herein alleged;
- (f) violation of Labor Code §§ 226.8 and 2750.3 for willful misclassification of Plaintiffs and other aggrieved employees as independent contractors as herein alleged;
- (g) violation of Labor Code §§ 221, 225.5 and 450 for unlawful deductions from Plaintiffs and other aggrieved employees wages;
- (h) violation of Labor Code § 223 for secretly pay a lower wage while purporting to pay the wage designated by statute or by contract;
- (i) violation of Labor Code §§ 2800 and 2802 for failing to reimburse business expenses incurred by Plaintiffs and other aggrieved employees; and
- (j) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees.

118. Plaintiffs are “aggrieved employees” because they were employed by the alleged violator and had one or more of the violations committed against him, and therefore are properly suited to represent the interests of all other aggrieved employees.

119. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of themselves and all other aggrieved employees under PAGA.

120. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

121. For bringing this action, Plaintiffs are entitled to attorney’s fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of all others similarly situated, pray for judgment against Defendants as follows:

1. For certification of the proposed Class and Waiting Time Subclass and any other appropriate subclasses under California Code of Civil Procedure § 382;
2. For appointment of Sigifredo Perez Jr., Israel Alcantar, and David Macias as the class representatives;
3. For appointment of Aegis Law Firm, PC and Law Offices of Neda Aguirre, APC as class counsel for all purposes;
4. For general damages;
5. For special damages;
6. For liquidated damages pursuant to California Labor Code § 1194.2;
7. For statutory penalties to the extent permitted by law, including those pursuant to the California Labor Code and IWC Wage Orders;
8. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
9. For restitution as provided by California Business and Professions Code §§ 17200, *et seq.*;
10. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under California Business and Professions Code §§ 17200, *et seq.*;
11. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits and penalties according to proof, including interest thereon;
12. For pre-judgment interest;
13. For civil penalties;

14. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to California Code of Civil Procedure § 1021.5 and California Labor Code §§ 226(e), 1194, 2698 *et seq.*, 2802(c); and

15. For such other relief as the Court deems just and proper.

Dated: August 3, 2022

AEGIS LAW FIRM, PC

By:

Alexander G. Davies
Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On August 3, 2022, I served the foregoing document entitled:

5 • **SECOND AMENDED CLASS ACTION COMPLAINT**

6 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
copy thereof on the party(ies) addressed below as follows:

7 R. Scott Brink
8 James M. Neudecker
9 Taylor N. Burras
10 **JEFFER MANGELS BUTLER &
MITCHELL LLP**
11 1900 Avenue of the Stars, 71h Floor
Los Angeles, CA 90067
Tel.: (310) 203-8080
Fax: (310) 203-0567
12 rsb@jmbm.com
13 jneudecker@jmbm.com
tburras@jmbm.com

Neda Aguirre
LAW OFFICE OF NEDA AGUIRRE, APC
41593 Winchester Road, Suite 102
Temecula, CA 92590
Tel. 951-775-8445
Fax. 951-346-3876
naguirre@mysocallawyer.com

Co-Counsel for Plaintiff

14 *Attorneys for Defendant:*
15 SIERRA MOUNTAIN EXPRESS, INC.

16 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
17 correspondence for mailing. Under that practice it would be deposited with the U.S.
Postal Service on that same day with postage thereon fully prepaid at Irvine, California
18 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
19 day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
R. Civ. Proc. 5(a); *Fed. R. Civ. Proc.* 5(c).)

20 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
21 practice of Aegis Law Firm PC for collection and processing correspondence for
overnight delivery, and I caused such document(s) described herein to be deposited for
22 delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

23 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
24 electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

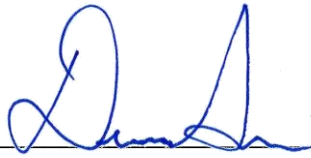
25 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
26 the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
5(b)(2)(A).)

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on August 3, 2022, at Irvine, California.

4 
5 _____
6 Delaney Graves
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