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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF NAPA

ESTEFANIA CARRETO, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

WE SHIP EXPRESS, INC., form unknown; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 20CV001136

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT**

- (1) Inaccurate Itemized Wage Statements
(Lab. Code § 226(a));**
- (2) Unreimbursed Business Expenses
(Lab. Code § 2802);**
- (3) Unfair or Unlawful Business Practices
(Bus. & Prof. Code §§ 17200 et seq.); and**
- (4) Violations of the California Labor Code
(Lab. Code §§ 2698 et seq.)**

DEMAND OVER \$25,000.00

1 On behalf of herself and other similarly situated current and former employees of Defendants,
2 and as a proxy for the State of California, Plaintiff, Estefania Carreto, submits this Class and
3 Representative Action Complaint against Defendant, We Ship Express, Inc., and Does 1 through 50
4 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic employment practices resulting
7 in violations of the California Labor Code against individuals who worked for Defendants. The
8 Complaint addresses Defendants’ violations of Labor Code sections 226 and 2802, and seeks penalties,
9 damages, and other relief pursuant to, among other provisions, Labor Code sections 226, 226.3, 2698 et
10 seq., and 2802, and the Unfair Competition Law, codified at Business and Professions Code sections
11 17200 *et seq.* (the “UCL”).¹

12 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
13 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
14 failing to provide accurate itemized wage statements and failing to reimburse necessary and reasonable
15 business expenses.

16 3. Defendants routinely failed to provide accurate itemized wage statements to Plaintiff and
17 other employees. Specifically, Defendants issue wage statements to Plaintiff and other employees that do
18 not show the name of the legal entity that is the employer. Instead, “We Ship Express, Inc.”—an entity
19 which is not among the corporations, limited liability companies, and limited partnerships of record
20 with the California Secretary of State—is shown on wage statements.

21 4. Defendants also routinely failed to reimburse Plaintiff and other employees for necessary
22 business expenses incurred in performing their work for Defendants. Specifically, Plaintiff and other
23 employees were required to use their personal cell phones and internet data to perform their jobs,
24 including when they worked from home. Although Plaintiff and other employees were expected to use
25 their personal cell phones and internet data in performing their jobs, they were not reimbursed for their
26 expenses for such use.

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¹ Except as otherwise noted, all “Section” references are to the Labor Code.

5. Plaintiff is informed and believes that Defendants have engaged in, among other things, a system of willful violations of the Labor Code by creating and maintaining policies, practices, and customs that knowingly deny its employees the above stated rights and benefits.

6. The policies, practices, and customs of Defendants resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the Labor Code.

JURISDICTION AND VENUE

7. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of Defendants' violations of Sections 226 and 2802, and the UCL.

8. Venue is proper in the County of Napa. Plaintiff worked for Defendants in American Canyon, California.

PARTIES

9. Plaintiff began working for Defendants in or about April of 2020. Until her employment as a customer service representative ended in or about September of 2020, Plaintiff was regularly required to use her personal cell phone and internet data to perform work duties for Defendants. She, however, was not reimbursed for her related expenses for such use. Plaintiff also was not provided with accurate itemized wage statements. Plaintiff thus is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived her of the rights guaranteed by the Labor Code and the UCL.

10. Plaintiff is informed and believes that Defendant, We Ship Express, Inc., was and is a Delaware, Florida, or New York corporation. Plaintiff is informed and believes that at all times herein mentioned named defendants and Does 1 through 50, were and are corporations, business entities, individuals, or partnerships that are and were licensed to do business and actually doing business in the State of California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to Sections 226 and 2802, and the UCL.

11. Plaintiff does not know the true names or capacities of the defendants sued herein as Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names

1 and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was
2 responsible in some way for the matters alleged herein and proximately caused the illegal employment
3 practices, wrongs, and injuries complained of herein.

4 12. At all times herein mentioned, each of said Defendants participated in the doing of the
5 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
6 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
7 scope of said agency and employment.

8 13. Plaintiff is informed and believes that at all times material hereto, each of said
9 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
10 each of the other Defendants and was acting within the course and scope of such agency, employment,
11 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by
12 certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or
13 omissions of the acting Defendants.

14 14. Plaintiff is informed and believes that at all times material hereto each of the Defendants
15 (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the
16 alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in
17 pursuance of, a joint venture, partnership, or common enterprise.

18 CLASS ACTION ALLEGATIONS

19 15. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class
20 certification of the following classes: (i) all current and former employees of Defendants in the State of
21 California since May 2, 2019 (the "Wage Statement Class"), and (ii) all current and former employees
22 of Defendants in the State of California since May 2, 2016 (the "Expense Class"). The Wage Statement
23 Class and Expense Class are collectively referred to as the "Class."

24 16. **Numerosity and Ascertainability:** The members of the Class are so numerous that
25 joinder of all members would be impractical, if not impossible. The identities of the members of the
26 Class are readily ascertainable by review of Defendants' records, including payroll records. Plaintiff is
27 informed and believes that Defendants violated Sections 226 and 2802, and the UCL against Plaintiff
28

1 and the Class by failing to provide accurate itemized wage statements and failing to reimburse
2 necessary and reasonable business expenses.

3 17. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
4 represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready,
5 willing, and able to fully and adequately represent Plaintiff and the Class. Plaintiff's attorneys have
6 prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-
7 and-hour class actions currently pending in California state and federal courts.

8 18. **Common Question of Law and Fact:** There are predominant common questions of law
9 and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is
10 informed and believes that Defendants uniformly administer a corporate policy and practice of (i)
11 routinely failing to provide accurate itemized wage statements and (ii) routinely failing to reimburse
12 necessary and reasonable business expenses.

13 19. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
14 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class
15 suffered. As with other members of the Class, Plaintiff was regularly required to use her personal cell
16 phone and internet data to perform work duties for Defendants. She, however, was not reimbursed for her
17 related expenses for such use. Plaintiff also was not provided with accurate itemized wage statements.
18 Plaintiff thus is a member of the Class and has suffered the alleged violations of the Labor Code.

19 20. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
20 in establishing minimum working conditions and requirements in California. These labor standards
21 protect employees from onerous terms and conditions of employment or exploitation by employers who
22 have superior economic and bargaining power.

23 21. The nature of this action and the format of laws available to Plaintiff and members of the
24 Class make the class action format a particularly efficient and appropriate procedure to redress the
25 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
26 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and
27 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
28 legal resources. Requiring each member of the Class to pursue an individual remedy would also

discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former or current employer for real and justifiable fear of retaliation and permanent damage to their careers at their current or subsequent employment.

22. The prosecution of separate actions by individual members of the Class, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual members of the Class that would establish potentially incompatible standards of conduct for Defendants, or (b) adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests of other members of the Class not parties to the adjudications. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering the concomitant costs and expenses.

23. Defendants' pattern, practice, and uniform administration of corporate policy in violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the rights of Plaintiff and the Class to recover damages and restitution, including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit under Sections 226 and 2802, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5.

24. This action is brought for the benefit of the Class, which is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendant.

FIRST CAUSE OF ACTION

Inaccurate Itemized Wage Statements (Lab. Code § 226(a))

(By Plaintiff and the Wage Statement Class Against All Defendants)

25. The preceding paragraphs are re-alleged and incorporated by this reference.

26. Section 226(a) requires an employer to furnish to its employees itemized wage statements that show accurate information, including without limitation, the name of the legal entity that is the employer.

27. As a matter of policy and practice, Defendants failed to provide accurate itemized wage statements to Plaintiff and the Wage Statement Class. Defendants issue wage statements to Plaintiff and

1 the Wage Statement Class that do not show the name of the legal entity that is the employer. Instead,
2 “We Ship Express, Inc.”—an entity which is not among the corporations, limited liability companies,
3 and limited partnerships of record with the California Secretary of State—is shown on wage statements.

4 28. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
5 entitles Plaintiff and the Wage Statement Class to recover applicable penalties, attorneys’ fees, and costs
6 of suit.

7 **SECOND CAUSE OF ACTION**

8 **Unreimbursed Business Expenses (Lab. Code § 2802)**

9 **(By Plaintiff and the Expense Class Against All Defendants)**

10 29. The preceding paragraphs are re-alleged and incorporated by this reference.

11 30. Section 2802 requires that an employer must reimburse employees for all necessary
12 expenditures and losses incurred in the performance of their jobs. Section 2802 is intended to prevent
13 employers from placing their operating expenses and cost of doing business on employees. *Cochran v.*
14 *Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

15 31. As a matter of policy and practice, Defendants failed to reimburse Plaintiff and the Expense
16 Class for necessary business expenses incurred in performing their work for Defendants. As a matter of
17 policy and practice, Plaintiff and the Expense Class were required to use their personal cell phones and
18 internet data to perform their jobs, including when they worked from home. Although Plaintiff and the
19 Expense Class were expected to use their personal cell phones and internet data in performing their jobs,
20 they were not reimbursed for their expenses for such use.

21 32. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
22 entitles Plaintiff and the Class to recover unreimbursed expenses, including interest thereon, attorneys’
23 fees, and costs of suit.

24 **THIRD CAUSE OF ACTION**

25 **Unfair or Unlawful Business Practices (Bus. & Prof. Code §§ 17200 et seq.)**

26 **(By Plaintiff and the Expense Class Against All Defendants)**

27 33. The preceding paragraphs are re-alleged and incorporated by this reference.

34. Plaintiff is informed and believes that at Defendants have engaged and continue to engage in unfair and unlawful business practices in California by utilizing the employment policies and practices alleged herein, including the failures to reimburse necessary and reasonable business expenses.

35. Defendants' utilization of such unfair and unlawful business practices constitutes unfair and unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed by the UCL. Defendants have deprived Plaintiff and the Expense Class the minimum working condition standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.

36. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Expense Class to full restitution of all monies withheld, acquired, or converted by Defendants by means of the unfair practices complained of herein, including interest thereon, attorneys' fees, and costs of suit.

FOURTH CAUSE OF ACTION

Violation of Labor Code §§ 2698 *Et Seq.*

(By Plaintiff and Aggrieved Employees Against All Defendants)

37. The preceding paragraphs are re-alleged and incorporated by this reference.

38. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.* (“PAGA”), Plaintiff brings this cause of action as a proxy for the State of California. In this capacity, Plaintiff seeks penalties for Defendants’ violations of Sections 226 and 2802 committed since May 2, 2019, against all aggrieved employees.

39. As stated herein, Defendants fail to provide accurate itemized wage statements and reimburse necessary and reasonable business expenses. Under Section 2699(c), Plaintiff is an “aggrieved employee,” as one or more of the alleged violations was committed against Plaintiff as an employee of Defendants.

40. On or about October 30, 2020, Plaintiff sent written notice to the Labor & Workforce Development Agency (“LWDA”) of specific facts and theories for Defendants’ violations of Sections 226 and 2802. Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notice.

41. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable penalties for Defendants' violations against all aggrieved employees for the period described above.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for penalties pursuant to Section 226, and for costs and attorneys' fees;
5. Upon the Second Cause of Action for damages, including interest thereon, pursuant to Section 2802, and for costs and attorneys' fees;
6. Upon the Third Cause of Action restitution of all funds unlawfully acquired by Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon, and for costs and attorneys' fees;
7. Upon the Fourth Cause of Action for penalties according to proof pursuant to Sections 226.3, 2699, and 2802, and for costs and attorneys' fees;
8. Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5, 226, 1198, 2699, and 2802, and Code of Civil Procedure section 1021.5; and
9. For such other and further relief that the Court may deem just and proper.

DATED: November 2, 2020

DIVERSITY LAW GROUP, P.C.

By:

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