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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MIGUEL QUIROZ, and AGUSTIN MARIN,
GONZALEZ, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

WESTERN MERCHANDISE EXPRESS,
INC., a California Corporation; and DOES 1
through 100,

Defendants.

CASE NO.: 22STCV21549

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) UNPAID HOURLY WAGES
- (2) MEAL PERIOD VIOLATIONS
- (3) REST PERIOD VIOLATIONS
- (4) FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENDITURES
- (5) FAILURE TO PROVIDE ACCURATE
WAGE STATEMENTS
- (6) UNLAWFUL DEDUCTIONS FROM
WAGES
- (7) WAITING TIME VIOLATIONS
- (8) UNFAIR COMPETITION
- (9) CIVIL PENALTIES – PRIVATE
ATTORNEY GENERAL ACTION
("PAGA")

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

INTRODUCTION

1. Plaintiff Miguel Quiroz and Agustin Marin Gonzalez ("Plaintiffs") were hired
by Defendants Western Merchandise Express, Inc. ("WME") and Does 1 through 100

FILED
Superior Court of California
County of Los Angeles

12/15/2023

David W. Slayton, Executive Officer / Clerk of Court

By: T. Bivins Deputy

(collectively, “Defendants”) to perform delivery services on behalf of Defendants as truck drivers. Defendants misclassified Plaintiffs and failed to provide them with legally required conditions and benefits of employment including, but not limited to, timely meal and rest periods, premium pay for missed or delayed meal and rest periods, reimbursement for business expenses, and overtime compensation.

2. This is a Class Action pursuant to Code of Civil Procedure section 382. Plaintiffs bring this action and the causes of action alleged herein on Plaintiffs’ behalf and on behalf of the Proposed Class and Proposed Subclass as follows:

a. **The Driver Class**: All persons (including individuals acting as a sole proprietorship, or as a business entity formed as a partnership, limited liability company, limited liability partnership, or corporation) who directly contracted with or were directly hired by a Defendant and who personally performed services in the State of California during the Class Period as a truck driver for a Defendant and were classified, referred to, or compensated by a Defendant as an independent contractor (the “Driver Class” or “Proposed Class”). The Class Period is January 1, 2020 through May 18, 2023”.

b. **The Waiting Time Penalty Subclass**: All members of the Driver Class who separated from their working relationship with Defendants during the Class Period(the “Waiting Time Penalty Subclass” or “Proposed Subclass”). On information and belief, all members of the Waiting Time Penalty Subclass that are no longer working for Defendants were not paid all wages due at the time of their respective separation/termination.

3. Plaintiffs allege on behalf of themselves and members of the proposed class of drivers (“Drivers” or “Class Members”) that Defendants violated various provisions of the California Labor Code, the applicable Industrial Welfare Commission (IWC) Wage Order(s), and the California Business & Professions Code, and seek redress therefore.

JURISDICTION AND VENUE

4. Plaintiffs, on behalf of themselves and all other similarly situated, hereby brings this Complaint for recovery of unpaid wages and penalties under California Business and Professions Code § 17200, *et seq.*, applicable provisions of the California Labor Code, including 201, 202, 203, 204, 206, 221, 223, 224, 226, 226.3, 226.7, 510, 512, 1194 *et seq.*, 2810.5 and 1198, and the applicable Industrial Welfare Commission Wage Order, in addition to declaratory relief and restitution. This court has jurisdiction over Defendants' violations of the California Labor Code because the amount in controversy exceeds this court's jurisdictional minimum. Venue in this court is proper because Defendants actively and regularly conducted business in Los Angeles County, and a significant portion of the events giving rise to this action occurred here.

PARTIES

5. Plaintiff Quiroz is an individual over the age of eighteen. At all relevant times mentioned herein, Plaintiff Quiroz was a resident of and domiciled in California and Plaintiff is currently a resident of and domiciled in California. Preceding the filing of the Complaint in this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff Quiroz was employed by Defendants and misclassified as an independent contractor. Plaintiff Quiroz was and is a victim of Defendants' policies and/or practices complained of herein, lost money and/or property, and has been deprived of rights guaranteed by the California Labor Code, California Business and Professions Code, and the applicable IWC Wage Order.

6. Plaintiff Gonzalez is an individual over the age of eighteen. At all relevant times mentioned herein, Plaintiff Gonzalez was a resident of and domiciled in California and Plaintiff is currently a resident of and domiciled in California. Preceding the filing of the Complaint in this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff Gonzalez was employed by Defendants and misclassified as an independent contractor. Plaintiff Gonzalez was and is a victim of Defendants' policies and/or practices complained of herein, lost money and/or property,

1 and has been deprived of rights guaranteed by the California Labor Code, California
2 Business and Professions Code, and the applicable IWC Wage Order.

3 7. Defendant Western Merchandise Express, Inc. ("WME") is a California
4 corporation. Defendant WME is in the business of providing transportation services
5 throughout California. To operate its business at the cost of its drivers, Defendant WME
6 willfully classifies owner operators who perform Defendant WME's core business
7 functions as independent contractors rather than employees. Plaintiffs and other similarly
8 situated persons should be classified as non-exempt employees of Defendant WME
9 because, and among other reasons, they provide services that are within the usual
10 course of Defendant WME's business, i.e., transportation and delivery services.

11 8. Plaintiffs are informed and believe, and based thereon alleges, that during
12 the Class Period, Defendants did (and continue to do) business as a transportation
13 service provider and employed Plaintiffs and other, similarly-situated non-exempt persons
14 within Los Angeles County and the state of California and, therefore, were (and are)
15 doing business in Los Angeles County and the State of California. For avoidance of
16 doubt, the persons referenced herein include individuals who acted as a sole
17 proprietorship, or as a business entity formed as a partnership, limited liability company,
18 limited liability partnership, or corporation and who directly contracted with and personally
19 performed services for Defendant(s). See Labor Code § 2776.

20 9. Plaintiffs do not know the true names or capacities, whether individual,
21 partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for
22 that reason, said defendants are sued under such fictitious names, and Plaintiffs will seek
23 leave from this Court to amend this Complaint when such true names and capacities are
24 discovered. Plaintiffs are informed and believe, and based thereon alleges, that each of
25 said fictitious defendants, whether individual, partners, or corporate, were responsible in
26 some manner for the acts and omissions alleged herein, and proximately caused
27 Plaintiffs and the Proposed Class and Proposed Subclass to be subject to the unlawful
28 employment practices, wrongs, injuries and damages complained of herein.

1 10. At all times herein mentioned, each of said Defendants participated in the
2 doing of the acts hereinafter alleged to have been done by the named Defendants; and
3 furthermore, the Defendants, and each of them, were the agents, servants, and
4 employees of each and every one of the other Defendants, as well as the agents of all
5 Defendants, and at all times herein mentioned were acting within the course and scope of
6 said agency and employment. Defendants, and each of them, approved of, condoned,
7 and/or otherwise ratified each and every one of the acts or omissions complained of
8 herein.

9 11. At all times mentioned herein, Defendants, and each of them, were
10 members of and engaged in a joint venture, partnership, and common enterprise, and
11 acting within the course and scope of and in pursuance of said joint venture, partnership,
12 and common enterprise. Further, Plaintiffs allege that all Defendants were joint
13 employers for all purposes of Plaintiffs and all members of the Driver Class.

14 **GENERAL FACTUAL ALLEGATIONS**

15 12. Plaintiffs are informed, and believe, and thereon allege, that at all times
16 mentioned herein, Defendants were and are the employers of Plaintiffs and all members
17 of the Proposed Class as defined in Paragraph 2 and Paragraph 19. Plaintiff Quiroz
18 worked for Defendants as an “owner operator” during periods from September 2017 to
19 October 2021. Plaintiff Gonzalez worked for Defendants as an “owner operator” during
20 periods from 2015 to January 2022.

21 13. Plaintiffs were paid on a piece-rate basis whereby they received a flat
22 piece-rate amount for each haul delivered depending on its weight. However, Plaintiffs
23 were not separately compensated for time spent working on tasks which were not
24 compensated on a piece-rate basis and were therefore not paid at least the minimum
25 wage for all hours worked. These tasks included but were not limited to, loading and
26 preparing products for transportation and waiting for products to be delivered to loading
27 sites.

1 14. Defendants have employed numerous drivers and contracted with
2 numerous retail and wholesale clients throughout California to provide transportation
3 services. Defendants require their drivers, including Plaintiffs, to sign lengthy contracts
4 which mischaracterize each driver as an “Independent Contractor.” The contracts are
5 designed to conceal the fact that Defendants and their drivers are in an employer-
6 employee relationship. Defendants also required certain drivers to form corporate
7 entities, for example Limited Liability Companies, to further conceal and obfuscate the
8 true nature of the employer-employee relationship.

9 15. Defendants exercise significant behavioral and financial control over Drivers
10 establishing that they are in fact employees including, but not limited to, the following
11 conduct:

- 12 a. Drivers are required to display signage with the name of Defendants on
13 their vehicles advertising and identifying they are vehicles belonging specifically to
14 Defendants.
- 15 b. Drivers are required to use wireless telecommunications products and
16 services in order to accept work assignments from Defendants. Drivers are
17 expected to complete deliveries in the time specified and determined by
18 Defendants. Drivers are required to check in with Defendants' dispatchers using
19 their wireless telecommunications products throughout daily shifts.
- 20 c. Drivers also are not able to work for others, and are required to comply with
21 Defendants' policies, procedures and practices.
- 22 d. Defendants have the authority to terminate drivers, including Plaintiffs, for
23 failing to abide by Defendants' policies and practices.
- 24 e. Drivers are assigned deliveries from Defendants' dispatchers. Defendants
25 do not allow Drivers to exchange assignments amongst themselves or to
26 subcontract the delivery to another person or entity.
- 27 f. Drivers deliver goods on behalf of Defendants to their clients at their
28 direction and Defendants collect the money directly from Defendants' customers.

1 g. Drivers receive work assignments from Defendants on wireless
2 telecommunications devices or over the phone. Routes provided by Defendants
3 specify the point of origin, the destination, and the appointment time.

4 16. Defendants regularly violate Drivers' rights as employees, including failure
5 to pay overtime wages, rest period violations, meal period violations, wage statement
6 violations, and waiting time penalties. These violations include the following:

7 a. Drivers regularly drive in excess of eight hours per day and/or forty hours
8 per workweek as dictated by Defendants.

9 b. Drivers are regularly denied timely meal breaks due to delivery deadlines
10 imposed by Defendants. Drivers are often unable to take a lunch break, or
11 alternatively take a "working lunch." Lunch breaks often occur after five hours of
12 work. Drivers working longer than 10 hours regularly do not have an opportunity to
13 take a second lunch break.

14 c. Drivers are unable to regularly take timely rest breaks due to delivery
15 deadlines imposed by Defendants. Drivers are often unable to take a rest break in
16 the first four hours of work. Drivers are also regularly unable to take a second rest
17 break after six hours worked.

18 d. Wage statements provided by Defendants do not include the aggregate
19 number of hours worked by Drivers and other information required by law.

20 17. Defendants' unlawful conduct has been widespread, repeated, and
21 consistent throughout their operations in California. Defendants knew or should have
22 known that their policies and practices have been unlawful and unfair. As set forth above,
23 Plaintiffs allege that Defendants engaged in a pattern of knowingly violating numerous
24 Labor Code sections, including 201, 202, 203, 204, 206, 221, 223, 224, 226, 226.3,
25 226.7, 510, 512, 1194 et seq., 2810.5 and 1198. In particular, Defendant WME has
26 violated the following California wage and hour obligations:

27 a. Failing to pay Drivers for all hours worked, in violation of the applicable
28 Wage Order and Labor Code sections 204, 221, 223, and 1194 et seq.

- 1 b. Failing to permit Drivers to take timely, off-duty, 30-minute meal breaks for
2 each five consecutive hours of work in violation of Labor Code sections 226.7 and
3 512 and the applicable Wage Order.
- 4 c. Failing to permit Drivers to take a 10-minute rest break for each four hours
5 of work, or major fraction thereof, in violation of Labor Code section 226.7 and the
6 applicable Wage Order.
- 7 d. Failing to pay Drivers premium pay for missed or untimely meal breaks and
8 rest breaks, in violation of Labor Code sections 226.7 and 512.
- 9 e. Failing to pay Drivers overtime in violation of the applicable Wage Order
10 and Labor Code section 510, 1194 et seq.
- 11 f. Failing to pay Drivers all earned wages (including minimum wage, overtime
12 compensation, and premium pay for missed meal and rest breaks) at least twice a
13 month in violation of Labor Code section 204.
- 14 g. Failing to pay Drivers all earned wages (including overtime compensation
15 and premium pay for missed meal breaks) at the time of termination or within 72
16 hours of resignation in violation of Labor Code sections 201, 202, 203, and 206.
- 17 h. Failing to reimburse Drivers for all necessary expenditures or losses
18 incurred by them in direct consequence to the discharge of their duties, or of their
19 obedience of the direction of the Defendants, in violation of Labor Code section
20 2802.
- 21 i. Failing to provide Drivers with accurate itemized wage statements in
22 violation of Labor Code section 226(a).
- 23 j. Failing to pay wages owed to the Waiting Time Penalty Subclass at the time
24 of separation from employment in violation of Labor Code section 203. For
25 avoidance of doubt, the unpaid wages include, but are not limited to, unpaid but
26 owed meal and rest period premiums. *Naranjo v. Spectrum Security Services, Inc.*
27 (2022) 13 Cal. 5th 93.
- 28

1 18. Plaintiffs bring this lawsuit as a class action under Code of Civil Procedure
2 section 382 on behalf of the Class set forth and described herein.

3 **CLASS ACTION ALLEGATIONS**

4 19. Plaintiffs bring this action on behalf of themselves and all others similarly
5 situated as a Class Action pursuant to § 382 of the California Code of Civil Procedure.
6 Plaintiffs seek to represent a proposed class composed of and defined as follows:

7 a. **The Driver Class**: All persons (including individuals acting as a sole
8 proprietorship, or as a business entity formed as a partnership, limited liability
9 company, limited liability partnership, or corporation) who directly contracted with
10 or were directly hired by a Defendant and who personally performed services in
11 the State of California during the Class Period as a truck driver for a Defendant
12 and were classified, referred to, or compensated by a Defendant as an
13 independent contractor (the “Driver Class” or “Proposed Class”). The Class Period
14 is January 1, 2020 through May 18, 2023.

15 b. **The Waiting Time Penalty Subclass**: All members of the Driver Class
16 who separated from their working relationship with Defendants during the Class
17 Period. On information and belief, all members of the Waiting Time Penalty
18 Subclass that are no longer working for Defendants were not paid all wages due at
19 the time of their respective separation/termination.

20 20. Plaintiffs reserve the right under Rule 3.765(b) of the California Rules of
21 Court to amend or modify the class description with greater specificity, by division into
22 subclasses, or by limitation to particular issue.

23 21. This action has been brought and may properly be maintained as a class
24 action under the provisions of § 382 of the Code of Civil Procedure because there is a
25 well-defined community of interest in the litigation and the Proposed Class are easily
26 ascertainable.

27 22. **Numerosity**. The members of the Proposed Class and Proposed Subclass
28 are so numerous that joinder of all members would be unfeasible and not practicable.

1 The membership of the class and subclass are unknown to Plaintiffs at this time;
2 however, it is estimated that the Proposed Class and Proposed Subclass number greater
3 than fifty (50) individuals. The identity of such membership is readily ascertainable via
4 inspection of Defendants' employment and personnel records.

5 23. Typicality. Plaintiffs' claims are typical of the claims of the members of the
6 Proposed Class. Defendants subjected all owner operators they misclassified as
7 independent contractors to identical violations of the California Labor Code, the Wage
8 Orders of the California Industrial Welfare Commission, and the California Business and
9 Professions Code. The factual grounds of Defendants' violations are common to all Class
10 members and represent a common thread of unlawful conduct resulting in injury to all
11 members of the Classes.

12 24. Commonality. Common questions of law and fact exist with respect to the
13 all members of the Class and predominate over any questions solely affecting individual
14 members. Issues of law and fact common to the Proposed Class include:

- 15 a. Whether Class Members were improperly classified as independent
16 contractors;
- 17 b. Whether Class Members were paid for all the hours they worked in
18 accordance with the California Labor Code and its implementing regulations;
- 19 c. Whether Defendants had a policy of not compensating Class Members for
20 all hours worked;
- 21 d. Whether Defendants violated Labor Code sections 201 and/or 202 by not
22 paying Class Members who are no longer employed by Defendants all earned
23 wages, including straight time wages, overtime wages, and wages due under
24 Labor Code section 510 and 1194, upon their separation of employment.
- 25 e. Whether Defendants violated Labor Code section 226.7 by failing to permit
26 non-exempt employees proper meal breaks in accordance with California law.
- 27 f. Whether Defendants violated Labor Code section 226.7 by failing to permit
28 non-exempt employees proper rest breaks in accordance with California law.
- g. Whether Defendants violated Labor Code section 2802 by failing to reimburse

1 Drivers for all necessary expenditures or losses incurred by them in direct
2 consequence to the discharge of their duties, or of their obedience of the direction
3 of the Defendants.

4 h. Whether Defendants violated Labor Code section 226 by failing to provide Drivers
5 with accurate itemized wage statements including all legally required information.

6 i. Whether Defendants violated Labor Code section 203 by failing to pay wages
7 owed to the Waiting Time Penalty Subclass at the time of separation from
8 employment, including but are not limited to, unpaid but owed meal and rest period
9 premiums. *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal. 5th 93.

10 j. Whether Defendants violated the Unfair Competition Law, Business & Professions
11 Code, section 17200, et seq., by engaging in the conduct alleged in this
12 Complaint.

13 25. Adequacy. Plaintiffs will fairly and adequately represent the interests of the
14 Proposed Class and Proposed Subclass and has no interests adverse to or in conflict
15 with other Class members. Plaintiffs are represented by attorneys who have class action
16 experience in wage and hour and class action law and are committed to vigorously
17 prosecuting this action on behalf of the members of the Class.

18 26. Superiority. A class action is superior to the other available methods for the
19 fair and efficient adjudication of this controversy since, among other things, joinder of all
20 Class members is impracticable, and a class action will reduce the risk of inconsistent
21 adjudications or repeated litigation over the same conduct. Further, the expense and
22 burden of individual lawsuits would make it virtually impossible for Class members,
23 Defendant, or the court to cost-effectively redress separately the unlawful conduct
24 alleged. Plaintiffs know of no difficulties to be encountered in the management of this
25 action that would preclude its maintenance as a class action.
26
27
28

FIRST CAUSE OF ACTION
UNPAID HOURLY WAGES
(Plaintiffs on Behalf of the Themselves and the Proposed Class against All Defendants)

27. Plaintiffs, on behalf of themselves and the Driver Class, incorporate by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

28. Under Labor Code §§ 204, 215, 216, 218.5, 510, 1194, 1194.2, 1197, 1199, and the applicable IWC Wage Order, it is unlawful for an employer to suffer or permit an employee to work without paying wages for all hours worked. "Hours worked" is defined to include the time an employee is suffered or permitted to work, whether or not required to do so. At all relevant times, Defendants have failed to pay Plaintiffs and Class Members for all hours worked and/or have regularly and consistently maintained policies and practices of refusing to pay Class Members for all hours worked.

29. Plaintiffs and Class Members should have received regular wages according to the hours worked during employment. Defendants owe Class Members regular wages and have failed and refused, and continue to fail and refuse, to pay Plaintiffs and Class Members the amounts owed as regular wages. Plaintiffs and Class Members were entitled to overtime compensation for all overtime hours worked during their employment. Defendants failed and continue to fail to pay Plaintiffs and Class Members for all hours worked, including overtime hours, and Plaintiffs and Class Members are therefore entitled to the amounts owed as overtime wages.

30. Plaintiffs and Class Members are entitled to liquidated damages under Labor Code section 1194.2(a) and, separately, liquidated damages under The Fair Labor Standards Act ("FLSA"), See 29 U.S.C. 216(b).

31. As a direct and proximate result of Defendants' conduct, as set forth herein, Plaintiffs has sustained damages and been deprived of wages and overtime compensation that are owed in amounts to be proven at trial. Plaintiffs are entitled to recovery of such amounts, plus interest, liquidated damages, and attorneys' fees and costs

SECOND CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(Plaintiffs on Behalf of the Themselves and the Proposed Class against All Defendants)

32. Plaintiffs, on behalf of themselves and the Driver Class, incorporate by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

33. California Labor Code §512 provides, in pertinent part, as follows: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee."

34. California Labor Code §512 further provides: "An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not."

35. Cal. Labor Code §226.7(a) provides: "No employer shall require an employee to work during any meal . . . period mandated by an applicable order of the Industrial Welfare Commission."

36. The Wage Orders provide, in pertinent part, as follows: "Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

37. As alleged herein, pursuant to Defendants' policies, Defendants routinely fail and failed to permit, authorize and/or provide Plaintiffs and Class Members with meal periods in violation of all applicable Wage Order, California Regulations and California Labor Code sections.

38. During the relevant time period, Plaintiffs and Class Members who worked in excess of ten (10) hours but not longer than twelve (12) hours, and who did not waive

1 their legally-mandated meal periods by mutual consent were required to work in excess
2 of ten (10) hours without receiving a second uninterrupted meal period of not less than
3 thirty (30) minutes.

4 39. By failing to provide Plaintiffs and Class Members with these meal periods,
5 Defendants violated California Labor Code sections 512 and 226.7, as well as applicable
6 provisions of the IWC Wage Orders. As a result of the unlawful acts of Defendants set
7 forth herein, Plaintiffs and Class Members have been unfairly and illegally deprived meal
8 periods and are entitled to one additional hour of premium pay for each missed meal
9 period.

10 **THIRD CAUSE OF ACTION**
11 **REST PERIOD VIOLATIONS**
(Plaintiffs on Behalf of the Themselves and the Proposed Class against All Defendants)

12 40. Plaintiffs, on behalf of themselves and the Driver Class, incorporate by
13 reference all other paragraphs of this Complaint as if they were re-alleged and set forth
14 herein.

15 41. The Wage Orders authorize employees to take paid rest periods based on
16 the total hours worked daily at the rate of ten minutes rest per four hours or major fraction
17 thereof.

18 42. Cal. Labor Code §226.7(a) provides: "No employer shall require an
19 employee to work during any ... rest period mandated by an applicable order of the
20 Industrial Welfare Commission."

21 43. Defendants had and still have a uniform policy and practice of not providing
22 employees with lawful rest breaks. Plaintiffs and Class Members did not and do not
23 receive timely and full rest breaks. During the relevant time period, Defendants required
24 Plaintiffs and the Class Members to work (8) hours (or more) without providing them any
25 rest period and failed to pay Plaintiffs and the other Class Members the full rest period
26 premium for work performed during rest periods.

27 44. By requiring Plaintiffs and the Class Members to miss these rest periods,
28 Defendants violated the Wage Orders and California Labor Code section 226.7. As a

1 result of the unlawful acts of Defendants set forth herein, Plaintiffs and the Class
2 Members have been unfairly and illegally deprived of rest periods, and are entitled to one
3 additional hour of premium pay for each missed rest period.

4 **FOURTH CAUSE OF ACTION**
5 **FAILURE TO REIMBURSE EMPLOYEE FOR**
6 **NECESSARY EXPENDITURES OR LOSSES**
7 **(Plaintiffs on Behalf of the Themselves and the Proposed Class against All**
8 **Defendants)**

9 45. Plaintiffs, on behalf of themselves and the Proposed Class, incorporate by
10 reference all other paragraphs of this Complaint as if they were re-alleged and set forth
11 herein.

12 46. Plaintiffs and the Proposed Class incurred expenditures and/or losses as a
13 direct consequence of discharging Plaintiffs and the Proposed Class members' job duties
14 and/or obeying the directions of Defendants. The expenditures and losses that Plaintiffs
15 and the Proposed Class members incurred were necessary and reasonable.

16 47. Defendants failed to reimburse Plaintiffs and the Proposed Class members
17 for the full amount of the expenditures and/or losses as required by law, including Labor
18 Code section 2802(a), and Plaintiffs and the Proposed Class members have suffered
19 damages as a result.

20 **FIFTH CAUSE OF ACTION**
21 **UNLAWFUL DEDUCTIONS FROM WAGES**
22 **(Plaintiffs on Behalf of the Themselves and the Proposed Class against All**
23 **Defendants)**

24 48. Plaintiffs, on behalf of themselves and the Driver Class, incorporate by
25 reference all other paragraphs of this Complaint as if they were re-alleged and set forth
26 herein.

27 49. Cal. Labor Code § 221 provides: "It shall be unlawful for any employer to
28 collect or receive from an employee any part of wages theretofore paid by said employer
to said employee."

50. Cal. Labor Code § 223 provides: "Where any statute or contract requires an
employer to maintain the designated wage scale, it shall be unlawful to secretly pay a
lower wage while purporting to pay the wage designated by statute or by contract."

51. The Wage Orders provide that the only circumstance under which an employer can make a deduction from an employee's wage due to cash shortage, breakage, or loss of equipment is if the employer can show that the shortage, breakage, or loss was the result of the employee's gross negligence or dishonest or willful act.

52. These and related statutes, along with California's fundamental public policy protecting wages and wage scales, prohibit employers from subjecting employees to unanticipated or unpredicted reductions in their wages; making employees the insurers of their employer's business losses; otherwise passing the ordinary business losses of the employer onto the employee; taking deductions from wages for business losses in any form unless the employer can establish that the loss was caused by a dishonest or willful act, or gross negligence of the employee; or taking other unpredictable deductions that may impose a special hardship on employees.

53. Defendants have violated Cal. Labor Code §§ 221 and 223 and the applicable IWC wage order by unlawfully taking deductions from Plaintiffs' and plaintiff Class Members' compensation to cover certain ordinary business expenses of Defendants, including but not limited to various forms of insurance and equipment charges.

54. Because Defendants made unlawful deductions from Plaintiffs' and plaintiff Class Members' compensation, they are liable to Plaintiffs and plaintiff Class Members for the compensation that should have been paid but for the unlawful deductions, pursuant to Cal. Labor Code §§ 221 and 223 and IWC wage order No. 9, § 8.

55. By unlawfully deducting wages and failing to pay Plaintiffs and plaintiff Class Members, Defendants are also liable for penalties, interest and reasonable attorneys' fees and costs under Cal. Labor Code §§ 218.5 and 1194.

SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
(Plaintiffs on Behalf of the Themselves and the Proposed Class against All Defendants)

56. Plaintiffs, on behalf of themselves and the Driver Class, incorporate by

reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

57. Defendants knowingly and intentionally failed to provide timely, accurate, itemized wage statements in accordance with Cal. Lab. Code §226(a) and the applicable IWC Wage Order to Plaintiffs and the Driver Class. Such failure caused injury to Plaintiffs and the Driver Class by, among other things, impeding Plaintiffs and the Driver Class from knowing the amount of wages to which Plaintiffs and the Driver Class are and were legally entitled. At all times relevant herein, Defendants have failed to maintain records of hours worked by Plaintiffs and the Driver Class as required under Labor Code §1174(d).

58. Prior to the completion of discovery, and to the best of Plaintiffs' knowledge at the time of filing this Complaint, Plaintiffs' good faith estimate of the number of pay periods in which Defendants have failed to provide accurate itemized wage statements to Plaintiffs and the Driver Class in each and every pay period. Plaintiffs and the Proposed Class are entitled to damages in the amount provided under Cal. Lab. Code §226(e), including the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurred and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and is entitled to an award of costs and reasonable attorney's fees.

SEVENTH CAUSE OF ACTION
WAITING TIME VIOLATIONS

(Plaintiffs on Behalf of the Themselves and the Proposed Subclass against All Defendants)

59. Plaintiffs, on behalf of themselves and the Waiting Time Penalty Subclass, incorporate by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

60. California Labor Code §201(a) provides, in pertinent part, as follows: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

61. California Labor Code §202(a) provides, in pertinent part, as follows: "If an employee not having a written contract for a definite period quits his or her employment,

1 his or her wages shall become due and payable not later than 72 hours thereafter, unless
2 the employee has given 72 hours previous notice of his or her intention to quit, in which
3 case the employee is entitled to his or her wages at the time of quitting.”

4 62. California Labor Code §206(a) provides, in pertinent part, as follows: “In
5 case of a dispute over wages, the employer shall pay, without condition, and within the
6 time set by this article, all wages, or parts thereof, conceded by him to be due, leaving to
7 the employee all remedies he might otherwise be entitled to as to any balance claimed.”

8 63. Where an employer willfully fails to pay, without abatement or reduction, in
9 accordance with sections 201 through 203 of the California Labor Code, all wages due to
10 an employee who has been discharged or has quit, California Labor Code §203 entitles
11 the affected employee to receive from the employer a penalty of up to 30 days wages
12 calculated from the due date of the wages until the time an action to recover the wages is
13 commenced.

14 64. As alleged herein, Defendants have failed to pay earned wages (including
15 but not limited to premium pay for missed meal and rest breaks, overtime pay and base
16 pay for all hours worked) to Plaintiffs and the Waiting Time Penalty Subclass at the time
17 they became due and payable, and has thus violated sections 201, 202, 203 and 206 of
18 the California Labor Code.

19 65. Defendants’ failure to pay wages as alleged herein was willful in that
20 Defendants knew that Plaintiffs and the Waiting Time Penalty Subclass were not
21 receiving all of their earned compensation because, inter alia, Defendants knowingly did
22 not fully, fairly and properly compensate Plaintiffs and the Waiting Time Penalty Subclass
23 for required break periods, and did not pay them for all hours worked or for overtime.

24 66. It has been more than 30 days since the date of termination of Plaintiff’s
25 initial employment period and all members of the Waiting Time Penalty Subclass Class
26 that are no longer employed by Defendant.

27 67. As a result of Defendants’ willful, unlawful acts, discussed herein, Plaintiffs
28 and the Waiting Time Penalty Subclass Class are entitled to recover, pursuant to

1 California Labor Code §203, continuing wages as a penalty for a total of 30 days.

2 **EIGHTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION**

4 **(Plaintiffs on Behalf of the Themselves and the Proposed Class against All**
5 **Defendants)**

6 68. Plaintiffs, on behalf of themselves and the Driver Class, incorporate by
7 reference all other paragraphs of this Complaint as if they were re-alleged and set forth
8 herein.

9 69. Defendants' violations of the Labor Code and other laws and regulations as
10 alleged by this Complaint, including Defendants' failure and refusal to pay overtime
11 wages and minimum wages to Plaintiffs and the Proposed Class, Defendants' failure to
12 provide meal and rest breaks to Plaintiffs and the Proposed Class, Defendants' failure to
13 pay compensation due to Plaintiffs and the Proposed Class in a timely manner, and other
14 wrongful, tortious and illegal acts and omissions, all constitute unfair business practices
15 in violation of the Unfair Competition Law, Business and Professions Code § 17200 et
16 seq.

17 70. As a result of Defendants' unfair business practices, Defendants have
18 reaped unfair benefits and illegal profits at the expense of Plaintiffs and the Proposed
19 Class, and members of the public. Defendants' utilization of such unfair business
20 practices constitutes unfair competition and provides an unfair advantage over
21 Defendants' competition. Defendants should be made to disgorge the ill-gotten gains
22 and restore such monies to Plaintiffs and the Proposed Class.

23 71. Defendants' unfair business practices entitles Plaintiffs and the Proposed
24 Class to seek preliminary and permanent injunctive relief, including but not limited to
25 orders that Defendants account for, disgorge and restore to Plaintiffs and the Proposed
26 Class any compensation unlawfully withheld from them, and for which Defendants were
27 unjustly enriched.
28

NINTH CAUSE OF ACTION
CIVIL PENALTIES – PRIVATE ATTORNEY GENERAL ACT (“PAGA”)
(Plaintiff Quiroz Against Defendants)

72. Plaintiff Miguel Quiroz incorporates by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

73. Plaintiff Quiroz brings this cause of action on behalf of himself and all other aggrieved current and former employees of Defendants and seeks civil penalties for each and every violation alleged herein. Plaintiff Quiroz has filed a claim with the California Labor and Workforce Development Agency (hereafter, “LWDA”) and provided a copy by certified mail to Defendants.

74. Plaintiff Quiroz complied with all procedural requirements of Labor Code § 2699.3 before filing this Complaint. LWDA did not respond to his notice of the alleged violations within the statutory timeframe, and Plaintiff Quiroz has therefore exhausted administrative remedies. Plaintiff Quiroz is an aggrieved employee. He was employed by Defendants and the violations alleged herein were committed against him. He brings this action on behalf of himself and all other current and former aggrieved employees. At the time of each violation, Defendants employed one or more employees.

75. As a result of the aforesaid wrongful and illegal conduct of the Defendants, and each of them, Plaintiff Quiroz is entitled to civil penalties in an amount to be determined at trial, costs, and attorney’s fees against Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants:

1. For compensatory, general, and special damages in accordance with proof at the time of trial;

2. For compensatory damages in the amount of Plaintiffs’ and each Proposed Class Members hourly wage at the appropriate regular rate of compensation for each rest period that Defendants failed to provide during the Class Period, in accordance with proof at the time of trial;

3. For compensatory damages in the amount of Plaintiffs’ and each Proposed

1 Class member's hourly wage at the appropriate regular rate of compensation for each
2 meal period that Defendants failed to provide during the Class Period, in accordance with
3 proof at the time of trial;

4 4. For compensatory damages in the amount of Plaintiffs' and each Proposed
5 Class members' unreimbursed out of pocket expenses as a requirement of employment
6 in accordance with proof at the time of trial;;

7 5. For penalties pursuant to Labor Code §226(6) for Violation of Labor Code §
8 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a Violation
9 occurs and one hundred dollars (\$100) per employee for each Violation in a subsequent
10 pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000);

11 6. For waiting time penalties pursuant to Labor Code § 203 for Plaintiffs and
12 each Proposed Subclass member who was terminated or resigned equal to their daily
13 wage times thirty (30) days;

14 7. For temporary, preliminary, and permanent injunctive relief enjoining
15 Defendants from unlawfully depriving Plaintiffs and Proposed Class members from
16 proper rest periods, meal periods, reimbursement of expenses, accurate and itemized
17 wage statements, and wages upon termination/resignation in accordance with the law;

18 8. For restitution for unfair competition pursuant to Business and Professions
19 Code section 17200, *et seq.*, including disgorgement of profits, in an amount as may be
20 determined;

21 9. For civil penalties under PAGA in an amount to be determined at the time of
22 trial;

23 10. For all statutory penalties and liquidated damages as authorized by law;

24 11. Pre-judgment interest on any damages or other amounts deemed payable;

25 12. For attorney's fees and costs of suit;

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13. For Other or further relief as the Court deems just and proper.

Dated: October 16, 2023

HAULK & HERRERA LLP

By: 

MATTHEW A. HAULK, ESQ.
JOSE M. HERRERA, ESQ.
Attorneys for Plaintiffs

PROOF OF SERVICE

Miguel Quiroz v. Western Merchandise Express, Inc., et al.
Los Angeles County Superior Court, Case No.: 22STCV21549

1.	At the time of service, I was at least 18 years of age and not a party to this legal action.	
2.	My business address is 100 Pine Street, Suite 1250, San Francisco, CA 94111	
3.	I served copies of the following document(s): SECOND AMENDED CLASS ACTION COMPLAINT FOR: (1) UNPAID HOURLY WAGES (2) MEAL PERIOD VIOLATIONS (3) REST PERIOD VIOLATIONS (4) FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES (5) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS (6) UNLAWFUL DEDUCTIONS FROM WAGES (7) WAITING TIME VIOLATIONS (8) UNFAIR COMPETITION (9) CIVIL PENALTIES – PRIVATE ATTORNEY GENERAL ACTION (“PAGA”) DEMAND FOR JURY TRIAL	
4.	I served the documents listed above in Item 3 on the following persons at the addresses listed: Steve Gonzalez, Esq. Hua, Gallai & Gonzalez, LLP 201 North Brand Boulevard, Suite 200 Glendale, California 91203 Email: steve@hgglawyers.com nick@hgglawyers.com gg@hgglawyers.com Attorneys for Defendants Western Merchandise Express, Inc.	
5.	a.	By Personal Service. I personally delivered the documents on the date shown below to the person(s) at the addresses listed above in Item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney’s office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party delivery was made to the party or by leaving the documents in the party’s residence between the hours of eight in the morning and six in the evening with some person not less than 18 years of age.
	b.	By United States Mail. I enclosed the documents in a sealed envelope or package, in the mail at San Rafael, California, where I am a resident or employee in the County of

1		Marin where the mailing occurred. I addressed the sealed envelope or package to the persons at the addresses in Item 4 and (specify one):
2	(1)	Deposited the sealed envelope in a United States Postal Service mailbox with the postage fully prepaid on the date shown below
3	(2)	Placed the envelope for collection and mailing on the date shown below, following our ordinary business practices and I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
4	c.	By Overnight Delivery. Pursuant to California Rules of Court, Rule 8.25, I enclosed the documents on the date shown below in an envelope or package provided by an overnight delivery carrier and addressed to the person at the addresses in Item 4. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
5	d.	By Messenger Service. I served the documents on the date shown below by placing them in an envelope or package addressed to the person on the addresses listed in Item 4 and providing them to a professional messenger service for service.
6	e.	By Fax Transmission. Based on an agreement to accept service by fax transmission, I faxed the documents on the date shown below to the fax numbers of persons listed in Item 4. No error was reported by the fax machine that I used
7	f. X	By Electronic Transmission. I caused the documents to be electronically served on counsel of record by transmission to File & ServeXpress.
8	6.	I served the documents by the means described above on December 15, 2023

I declare under penalty of perjury that this document is signed in Los Angeles, California under the laws of the State of California and that the foregoing is true and correct.

December 15, 2023	Toni Gesin	
Date	(Type or Print Name)	(Signature of Declarant)