

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KING

CHANCE WHITE, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

ZEEK’S PIZZA, INC., a Washington corporation;  
THOMAS VIAL, an individual; DOUGLAS  
MCLURE, an individual; DANIEL BLACK, an  
individual; NORTHSTAR PIZZA COMPANY, LLC,  
a Washington limited liability company;  
MONICA PAVELKA, an individual; and CHRIS  
FLANDERS, an individual,

Defendants.

NO.

**CLASS ACTION COMPLAINT**

Plaintiff Chance White, by his undersigned counsel, for his class action complaint  
against Defendants Zeek’s Pizza, Inc., Thomas Vial, Douglas McLure, Daniel Black, Northstar  
Pizza Company, LLC, Monica Pavelka, and Chris Flanders alleges as follows:

**I. INTRODUCTION**

1.1 Nature of Action. Defendants Zeek’s Pizza, Inc., Thomas Vial, Douglas McLure,  
and Daniel Black (the “Zeek’s Defendants”) own and operate a pizza chain that employs



1 2.3 Governing Law. The claims asserted on behalf of Plaintiff and members of the  
2 Class and Subclass are brought solely under state law causes of action and are governed  
3 exclusively by Washington law.

4 2.4 Lack of CAFA Jurisdiction. Federal jurisdiction is inappropriate under the Class  
5 Action Fairness Act, 28 U.S.C. § 1332(d)(4)(A), because more than two-thirds of the members  
6 of the proposed plaintiff classes in the aggregate are citizens of Washington; Defendants are  
7 defendants from whom significant relief is sought by members of the plaintiff classes; the  
8 alleged conduct of Defendants forms a significant basis for the claims asserted by the  
9 proposed plaintiff classes; Defendants are citizens of Washington; the principal injuries  
10 resulting from the alleged conduct were incurred in Washington; and during the three-year  
11 period preceding the filing of this action, no other class action has been filed asserting same  
12 or similar factual allegations against Defendants on behalf of the same or other persons.  
13 Alternatively, federal jurisdiction is inappropriate under the Class Action Fairness Act, 28  
14 U.S.C. § 1332 (d)(4)(B), because two-thirds or more of the members of all proposed plaintiff  
15 classes in the aggregate, and Defendants, are citizens of the state of Washington.

### 16 III. PARTIES

17 3.1 Plaintiff Chance White. Plaintiff has been working as a delivery driver for  
18 Defendants since January 2021. During the duration of his employment, Plaintiff has been and  
19 remains a resident of Washington. Plaintiff performs his work for Defendants in King County,  
20 Washington.

21 3.2 Defendant Zeek's Pizza, Inc. Defendant Zeek's Pizza, Inc. is a Washington  
22 corporation that employs hundreds of employees at more than a dozen locations throughout  
23 Washington. Defendant Zeek's is an employer for purposes of the Washington Minimum  
24 Wage Act (MWA) and has been an employer or joint employer of hundreds of drivers in  
25 Washington during the class period. As a joint employer with the other Defendants, Zeek's has  
26 employed and continues to employ Plaintiff White for purposes of the MWA.

1           3.3     Defendant Thomas Vial. Defendant Thomas Vial is an individual residing in the  
2 State of Washington. Mr. Vial is an owner and operator of Defendant Zeek’s Pizza, Inc. Mr.  
3 Vial has employed more than 100 members of the Class and more than 40 members of the  
4 Subclass during the relevant period. As a joint employer with the other Defendants, Mr. Vial  
5 has employed Plaintiff White since January 2021 for purposes of the MWA.

6           3.4     Defendant Douglas McLure. Defendant Douglas McLure is an individual residing  
7 in the State of Washington. Mr. McLure is an owner and operator of Defendant Zeek’s Pizza,  
8 Inc. Mr. McLure has employed more than 100 members of the Class and more than 40  
9 members of the Subclass during the relevant period. As a joint employer with the other  
10 Defendants, Mr. McLure has employed Plaintiff White since January 2021 for purposes of the  
11 MWA.

12          3.5     Defendant Daniel Black. Defendant Daniel Black is an individual residing in the  
13 State of Washington. Mr. Black is an owner and operator of Defendant Zeek’s Pizza, Inc. Mr.  
14 Black has employed more than 100 members of the Class and more than 40 members of the  
15 Subclass during the relevant period. As a joint employer with the other Defendants, Mr. Black  
16 has employed Plaintiff White since January 2021 for purposes of the MWA.

17          3.6     Defendant Northstar Pizza Company, LLC. Defendant Northstar is a Washington  
18 limited liability company that owns and operates at least two Zeek’s restaurants in  
19 Washington. Defendant Northstar has been a joint employer of more than 40 members of the  
20 Subclass during the relevant period. As a joint employer with the other Defendants, Northstar  
21 has employed Plaintiff White since January 2021 for purposes of the MWA.

22          3.7     Defendant Monica Pavelka. Defendant Monica Pavelka is an individual residing  
23 in the State of Washington. Ms. Pavelka is an owner and operator of Defendant Northstar  
24 Pizza, LLC. Ms. Pavelka has employed more than 40 members of the Subclass during the  
25 relevant period. As a joint employer with the other Defendants, Ms. Pavelka has employed  
26 Plaintiff White since January 2021 for purposes of the MWA.

27

1 3.8 Defendant Chris Flanders. Defendant Chris Flanders is an individual residing in  
2 the State of Washington. Mr. Flanders is an owner and operator of Defendant Northstar Pizza,  
3 LLC. Mr. Flanders has employed more than 40 members of the Subclass during the relevant  
4 period. As a joint employer with the other Defendants, Mr. Flanders has employed Plaintiff  
5 White since January 2021 for purposes of the MWA.

6 **IV. CLASS ACTION ALLEGATIONS**

7 4.1 Class Definition. Under Washington Civil Rule 23, Plaintiff brings this case as a  
8 class action on behalf of a Class defined as follows:

9 All individuals who are or have been employed as delivery drivers  
10 at any Zeek's Pizza restaurant in the State of Washington from  
11 May 24, 2018 through the date of final disposition of this action.

12 Excluded from the Class are any entity in which Defendants have a controlling interest or  
13 which has a controlling interest in any Defendant, and Defendants' legal representatives,  
14 assignees, and successors. Also excluded are the judge to whom this case is assigned and any  
15 member of the judge's immediate family.

16 4.2 Subclass Definition. Under Washington Civil Rule 23, Plaintiff brings this case as  
17 a class action on behalf of the Subclass defined as follows:

18 All individuals who are or have been employed as delivery drivers  
19 at the Zeek's Pizza restaurants owned by Northstar Pizza, LLC in  
20 the State of Washington from May 24, 2018 through the date of  
21 final disposition of this action.

22 Excluded from the Subclass are any entity in which Defendants have a controlling interest or  
23 which has a controlling interest in any Defendant, and Defendants' legal representatives,  
24 assignees, and successors. Also excluded are the judge to whom this case is assigned and any  
25 member of the judge's immediate family.

26 4.3 Numerosity. Plaintiff believes that more than one hundred people have worked  
27 as delivery drivers at Zeek's Pizza restaurants in Washington during the relevant time period.

1 Plaintiff also believes that more than 40 people have worked at Zeek’s Pizza restaurants  
2 owned by Northstar Pizza, LLC in Washington during the relevant time period.

3 4.4 Commonality. There are numerous questions of law and fact common to  
4 Plaintiff and members of the Class and Subclass. These questions include, but are not limited  
5 to, the following:

6 a. Whether the Zeek’s Defendants are joint employers of members of the  
7 Subclass;

8 b. Whether Defendants have engaged in a common course of failing to pay  
9 members of the Class and Subclass for all hours worked;

10 c. Whether Defendants have engaged in a common course of failing to  
11 provide members of the Class and Subclass with a ten-minute rest break for every four hours  
12 of work;

13 d. Whether Defendants have engaged in a common course of requiring  
14 members of the Class and Subclass to work more than three consecutive hours without a rest  
15 break;

16 e. Whether Defendants have engaged in a common course of failing to  
17 ensure that members of the Class and Subclass take the rest breaks to which they are entitled;

18 f. Whether Defendants have engaged in a common course of failing to  
19 disclose to customers that all or part of the automatic “delivery charges” collected from  
20 customers are retained by Defendants and not paid directly to the delivery drivers serving the  
21 customers;

22 g. Whether Defendants have engaged in a common course of retaining  
23 money received as automatic “delivery charges” and not distributing that money to delivery  
24 drivers but instead using it to cover costs of doing business;

25  
26  
27

1 h. Whether Defendants have engaged in a common course of failing to pay  
2 members of the Class and Subclass all of the wages to which they are entitled, including all  
3 tips and gratuities;

4 i. Whether Defendants unlawfully reduced the wages of Plaintiff and  
5 members of the Class and Subclass by failing to pay them reimbursements for their  
6 automobile expenses for all miles driven as a requirement of their employment;

7 j. Whether Defendants failed to keep true and accurate records of the  
8 rate or rates of pay, gross wages, and all deductions for each pay period;

9 k. Whether Defendants failed to furnish itemized pay statements to  
10 Plaintiff and members of the Class and Subclass;

11 l. Whether Defendants willfully deprived Plaintiff and members of the  
12 Class and Subclass of the wages to which they were entitled;

13 m. Whether Defendants have violated RCW 49.12.020;

14 n. Whether Defendants have violated WAC 296-126-092;

15 o. Whether Defendants have violated RCW 49.46.090;

16 p. Whether Defendants have violated RCW 49.46.160;

17 q. Whether Defendants have violated RCW 49.48.010;

18 r. Whether Defendants have violated WAC 296-126-025;

19 s. Whether Defendants have violated WAC 296-126-028;

20 t. Whether Defendants have violated RCW 49.52.050; and

21 u. The nature and extent of injury to members of the Class and Subclass  
22 and the measure of compensation for such injury.

23 4.5 Typicality. Plaintiff's claims are typical of the claims of the members of the Class  
24 and Subclass because Plaintiff has worked for Defendants in Washington as a delivery driver.  
25 The claims of Plaintiff, like the claims of the Class and Subclass, arise out of the same common  
26 course of conduct by Defendants and are based on the same legal and remedial theories.

1 4.6 Adequacy. Plaintiff will fairly and adequately protect the interests of the Class  
2 and Subclass. Plaintiff has retained competent and capable attorneys who are experienced  
3 trial lawyers with significant experience in complex and class action litigation, including  
4 employment law. Plaintiff and his counsel are committed to prosecuting this action vigorously  
5 on behalf of the Class and Subclass and have the financial resources to do so. Neither Plaintiff  
6 nor his counsel have interests that are contrary to or that conflict with those of the proposed  
7 Class and Subclass.

8 4.7 Predominance. Defendants have engaged in a common course of wage and  
9 hour abuse toward Plaintiff and members of the Class and Subclass. The common issues  
10 arising from this conduct that affect Plaintiff and members of the Class and Subclass  
11 predominate over any individual issues.

12 4.8 Superiority. Plaintiff and members of the Class and Subclass have suffered and  
13 will continue to suffer harm and damages due to Defendants' unlawful and wrongful conduct.  
14 Absent a class action, however, most members of the Class and Subclass likely would find the  
15 cost of litigating their claims prohibitive. Class treatment is superior to multiple individual suits  
16 or piecemeal litigation because it conserves judicial resources, promotes consistency and  
17 efficiency of adjudication, provides a forum for small claimants, and deters illegal activities.  
18 There will be no significant difficulty in the management of this case as a class action. The  
19 members of the Class and Subclass are readily identifiable from Defendants' records.

## 20 **V. SUMMARY OF FACTUAL ALLEGATIONS**

21 5.1 Joint employment. The Zeek's Defendants are the employers or joint employers  
22 of all Zeek's pizza delivery drivers, regardless of whether they work out of a corporate or  
23 franchise restaurant, including members of the Class and Subclass.

24 5.2 The Zeek's Defendants regularly exercise control over the employment of all  
25 Zeek's drivers, including members of the Class and Subclass. For example, the Zeek's  
26  
27



1 Defendants have a common operations manual that dictates how each Zeek’s restaurant  
2 operates on a day-to-day basis, including both corporate and franchise restaurants.

3           5.3     The Zeek’s Defendants use one system for customer orders at all locations,  
4 whether corporate or franchise, and this in turn impacts the schedules of all drivers, including  
5 members of the Class and Subclass.

6           5.4     The Zeek’s Defendants have made a considerable investment in the  
7 infrastructure necessary for the work of all drivers, including members of the Class and  
8 Subclass.

9           5.5     The work performed by drivers is one step—delivering pizzas—in the sequence  
10 of steps necessary to the business model of Defendant Zeek’s Pizza, Inc. and does not require  
11 specialized skills or a high degree of judgment.

12           5.6     The process for pizza delivery can pass from one driver to another without any  
13 material changes. Regardless of who acts as a franchisee, the work directed by Defendant  
14 Zeek’s Pizza, Inc. remains the same.

15           5.7     Drivers do not have an opportunity for profit or loss depending on their  
16 managerial skills.

17           5.8     There has been a permanence in the working relationship between Defendant  
18 Zeek’s Pizza, Inc. and drivers.

19           5.9     The service drivers have rendered is an integral part of Defendant Zeek’s Pizza,  
20 Inc.’s business.

21           5.10    As a matter of economic reality, drivers are controlled by, dependent on, and  
22 employed by Defendant Zeek’s Pizza, Inc.

23           5.11    Failure to pay for all hours worked. Defendants have engaged in a common  
24 course of failing to pay Plaintiff and members of the Class and Subclass at least minimum  
25 wage for all hours worked.

26  
27

1           5.12    For example, Defendants require drivers to clock out when a restaurant closes  
2 even if the driver still has deliveries to complete. As a result, driver are routinely required to  
3 complete deliveries without pay after a restaurant has closed.

4           5.13    Failure to provide rest breaks. Defendants have engaged in a common course  
5 of failing to provide Plaintiff and members of the Class and Subclass with a paid ten-minute  
6 rest break for every four hours of work.

7           5.14    Defendants have engaged in a common course of requiring or permitting  
8 Plaintiff and members of the Class and Subclass to work more than three consecutive hours  
9 without a rest break.

10          5.15    Defendants have engaged in a common course of failing to ensure Plaintiff and  
11 members of the Class and Subclass have taken the rest breaks to which they are entitled.

12          5.16    Defendants have engaged in a common course of failing to provide Plaintiff and  
13 members of the Class and Subclass with ten minutes of additional pay for each missed rest  
14 break.

15          5.17    Each time a delivery driver misses a rest break, Defendants receive the benefit  
16 of 10 minutes worked without paying for the time worked.

17          5.18    Collecting and keeping automatic “Delivery Charges.” Defendants have  
18 engaged in a common course of retaining customers’ money received as automatic delivery  
19 charges and not distributing those funds to their delivery drivers. Instead Defendants retain  
20 the “delivery charges” collected from customers for their own financial profit or benefit.

21          5.19    Defendants have engaged in a common course of collecting a “delivery charge”  
22 from their customers, which are imposed automatically on each customer’s receipt.

23          5.20    Defendants have engaged in a common course of failing to disclose in itemized  
24 receipts or in menus provided to customers that all or part of the automatic “delivery charge”  
25 collected from customers is retained by Defendants and not paid directly to the delivery  
26 drivers serving the customers.

27

1           5.21 Defendants have engaged in a common course of failing to disclose in their  
2 itemized receipts or in menus provided to customers the amount of the automatic service  
3 charges, if any, paid to the employee or employees serving the customer.

4           5.22 Failing to pay delivery drivers all tips and gratuities. Defendants have engaged  
5 in a common course of failing to pay delivery drivers all of the wages to which they are  
6 entitled, including the full amount of tips and gratuities given to drivers by customers.

7           5.23 Defendants have a practice of operating mandatory “tip-pools,” a procedure  
8 whereby Defendants require delivery drivers to give to non-delivery employees (such as  
9 managers and kitchen staff) a percentage of the tips the drivers received from customers for  
10 delivery services.

11           5.24 Indeed, Defendants collect all tips until payday. Defendants disclose on a  
12 driver’s paystub, the dollar amount paid to that driver as “tips.” But Defendants do not  
13 provide an accounting of the amount in tips actually paid to each driver from customers or an  
14 accounting of how Defendants distributed the driver’s tips as part of Defendants’ mandatory  
15 tip pool.

16           5.25 Failure to reimburse drivers for necessary business expenses. Defendants have  
17 engaged in a common course of depriving Plaintiffs and Class members full reimbursement for  
18 all of their necessary business expenditures.

19           5.26 Defendants requires their delivery drivers to maintain and pay for safe, legally-  
20 operable, and insured automobiles when delivering pizza and other food items.

21           5.27 Defendants’ delivery drivers incur costs for gasoline, vehicle parts and fluids,  
22 automobile repair and maintenance services, automobile insurance, and depreciation while  
23 delivering pizzas for the primary benefit of Defendants.

24           5.28 Defendants do not reimburse drivers for the expenses they incur using their  
25 own vehicles to deliver Defendants’ pizzas.

26  
27

1 5.29 In 2018, the IRS business mileage reimbursement rate was \$0.545 cents; in  
2 2019, the rate was \$0.58; in 2020, the rate was \$0.575.; and the current rate is \$0.56 per mile.

3 5.30 The driving conditions associated with the pizza delivery business cause more  
4 frequent maintenance costs, higher costs due to repairs associated with driving, and more  
5 rapid depreciation from driving as much as, and in the manner of, a delivery driver.  
6 Defendants' delivery drivers further experience lower gas mileage and higher repair costs than  
7 the average driver used to determine the average cost of owning and operating a vehicle  
8 described above due to the nature of the delivery business, including frequent starting and  
9 stopping of the engine, frequent braking, short routes as opposed to highway driving, and  
10 driving under time pressures.

11 5.31 Members of the Class and Subclass were all subject to the same  
12 reimbursement policy under which they did not receive any reimbursements for their  
13 necessary business expenses.

14 5.32 Defendants uniformly fail to reimburse delivery drivers at any reasonable  
15 approximation of the cost of owning and operating their vehicles for Defendants' benefit.

16 **VI. FIRST CLAIM FOR RELIEF**  
17 **(Violations of RCW 49.12.020 and WAC 296-126-092 —**  
18 **Failure to Provide Rest Periods)**

19 6.1 Plaintiff and the Class and Subclass reallege and incorporate by reference each  
20 and every allegation set forth in the preceding paragraphs.

21 6.2 RCW 49.12.010 provides that “[t]he welfare of the state of Washington  
22 demands that all employees be protected from conditions of labor which have a pernicious  
23 effect on their health. The state of Washington, therefore, exercising herein its police and  
24 sovereign power declares that inadequate wages and unsanitary conditions of labor exert  
25 such pernicious effect.”

1 6.3 RCW 49.12.020 provides that “[i]t shall be unlawful to employ any person in  
2 any industry or occupation within the state of Washington under conditions of labor  
3 detrimental to their health.”

4 6.4 Under RCW 49.12.005 and WAC 296-126-002, conditions of labor “means and  
5 includes the conditions of rest and meal periods” for employees.

6 6.5 WAC 296-126-092 provides that employees shall be allowed certain paid rest  
7 periods during their shifts.

8 6.6 Under Washington law, Defendants have an obligation to provide employees  
9 with the rest breaks to which they are entitled.

10 6.7 Under Washington law, Defendants have an obligation to ensure that  
11 employees take the rest breaks to which they are entitled.

12 6.8 Under Washington law, Defendants have an obligation to provide employees  
13 with ten minutes of additional pay for each missed rest break.

14 6.9 By the actions alleged above, Defendants have violated the provisions of RCW  
15 49.12.020 and WAC 296-126-092.

16 6.10 As a result of the unlawful acts of Defendants, Plaintiff and members of the  
17 Class and Subclass have been deprived of compensation in amounts to be determined at trial  
18 and under RCW 49.48.030, Plaintiff and members of the Class and Subclass are entitled to  
19 recovery of such damages, including interest thereon, as well as attorneys’ fees and costs.

20 **VII. SECOND CLAIM FOR RELIEF**  
21 **(Violation of RCW 49.46.090 — Payment of Wages Less Than Entitled)**

22 7.1 Plaintiff and the Class and Subclass reallege and incorporate by reference each  
23 and every allegation set forth in the preceding paragraphs.

24 7.2 Under RCW 49.46.090, employers must pay employees all wages to which they  
25 are entitled under the MWA.

1           7.3     By the actions alleged above, Defendants violated the provisions of RCW  
2 49.46.090 by failing to pay any wage whatsoever to Plaintiff and members of the Class and  
3 Subclass for their missed rest breaks.

4           7.4     Defendants have also violated the MWA by failing to pay Plaintiff and Class  
5 members for all hours worked, including off the clock work.

6           7.5     Defendants have also violated the provisions of RCW 49.46.090 by failing to pay  
7 Plaintiff and members of the Class and Subclass all their tips and gratuities.

8           7.6     RCW 49.46.010 defines “wage” as “compensation due to an employee by  
9 reason of employment, payable in legal tender of the United States or checks on banks  
10 convertible into cash on demand at full face value, subject to such deductions, charges, or  
11 allowances as may be permitted by rules of the director.”

12          7.7     RCW 49.46.010’s broad definition of “wage” includes tips and gratuities.

13          7.8     Under Washington law, tips are wages that belong to the employee to whom  
14 they are given.

15          7.9     RCW 49.46.020(3)(a) requires employers to pay to employees “all tips and  
16 gratuities.”

17          7.10    Defendants’ mandatory tip pooling policy deprives delivery drivers of all the  
18 wages to which they are entitled in violation of RCW 49.46.090.

19          7.11    As a result of the unlawful acts of Defendants, Plaintiff and members of the  
20 Class and Subclass have been deprived of compensation in amounts to be determined at trial  
21 and under RCW 49.46.090(1), Plaintiff and members of the Class and Subclass are entitled to  
22 recovery of such damages, including interest thereon, as well as attorneys’ fees and costs.

**VIII. THIRD CLAIM FOR RELIEF**  
**(Violations of RCW 49.46.020, 49.46.090, and 49.46.160 —**  
**Washington Service Charge Collection and Payment Requirements)**

1  
2  
3       8.1     Plaintiff and the Class and Subclass reallege and incorporate by reference each  
4 and every allegation set forth in the preceding paragraphs.

5       8.2     RCW 49.46.160 defines a “service charge” as a “a separately designated  
6 amount collected by employers from customers that is for services provided by employees, or  
7 is described in such a way that customers might reasonably believe that the amounts are for  
8 such services.” RCW 49.46.160 requires “[a]n employer that imposes an automatic service  
9 charge related to food, beverages, entertainment, or portorage provided to a customer must  
10 disclose in an itemized receipt and in any menu provided to the customer the percentage of  
11 the automatic service charge that is paid or is payable directly to the employee or employees  
12 serving the customer.”

13       8.3     If employers fail to warn customers—via “an itemized receipt and in any menu  
14 provided to the customer”—that an automatic service charge is not payable to the employees  
15 servicing the customer, then, under and by virtue of RCW 49.46.020(3) and RCW 49.46.090(1),  
16 the money collected from the automatic service charge must be paid to the employees  
17 servicing the customer.

18       8.4     RCW 49.46.020(3) provides that “[a]n employer must pay to its employees . . .  
19 all service charges as defined under RCW 49.46.160 except those that, under RCW 49.46.160,  
20 are itemized as not being payable to the employee or employees servicing the customer.”

21       8.5     RCW 49.46.090(1) provides that “[a]ny employer who pays any employee less  
22 than wages to which such employee is entitled under or by virtue of this chapter, shall be  
23 liable to such employee affected for the full amount of such wage rate, less any amount  
24 actually paid to such employee by the employer, and for costs and such reasonable attorney’s  
25 fees as may be allowed by the court.”  
26  
27

1           8.6     By the actions alleged above, Defendants have violated RCW 49.46.020(3),  
2 RCW 49.46.090, and RCW 49.46.160 by collecting automatic delivery charges from customers  
3 while failing to disclose in itemized receipts or in menus provided to customers that all or part  
4 of these automatic service charges are retained by Defendants, not paid directly to the  
5 delivery drivers serving the customers.

6           8.7     As a result of the unlawful acts of Defendants, Plaintiff and members of the  
7 Class and Subclass have been deprived of compensation in amounts to be determined at trial  
8 and pursuant RCW 49.46.090, Plaintiff and members of the Class and Subclass are entitled to  
9 recovery of such damages, including interest thereon, as well as attorneys' fees and costs.

10                                   **IX. FOURTH CLAIM FOR RELIEF**  
11                                   **(Violation of RCW 49.52.060 and WAC 296-126-028 —**  
12                                   **Unlawful Deductions and Rebates)**

12           9.1     Plaintiff and the Class and Subclass reallege and incorporate by reference each  
13 and every allegation set forth in the preceding paragraphs.

14           9.2     Under RCW 49.52.060 and WAC 296-126-028, an employer may not make  
15 deductions from employee's wages except in limited circumstances.

16           9.3     Under Washington law, deductions and rebates must be identified and  
17 recorded "openly and clearly in employee payroll records." WAC 296-126-028(5); *see also*  
18 RCW 49.52.060; WAC 296-128-010(9).

19           9.4     Defendants' failure to reimburse drivers for all necessary business expenses has  
20 resulted in an unlawful rebate of the wages of Plaintiff and members of the Class and  
21 Subclass.

22           9.5     By the actions alleged above, Defendants violated Washington law.

23           9.6     As a result of the unlawful acts of Defendants, Plaintiff and members of the  
24 Class and Subclass have been deprived of compensation in amounts to be determined at trial.  
25 Under RCW 49.52.060 and WAC 296-126-028, Plaintiff and members of the Class and Subclass  
26  
27



1 are entitled to recovery of such damages, including interest thereon, as well as attorneys' fees  
2 under RCW 49.48.030 and costs.

3 **X. SIXTH CLAIM FOR RELIEF**  
4 **(RCW 49.52.050 – Willful Refusal to Pay Wages)**

5 10.1 Plaintiff and the Class and Subclass reallege and incorporate by reference each  
6 and every allegation set forth in the preceding paragraphs.

7 10.2 RCW 49.52.070 provides that any employer who “willfully and with intent to  
8 deprive the employee of any part of his wages, pays any employee a lower wage than the  
9 wage such employer is obligated to pay such employee by any statute, ordinance, or contract”  
10 is guilty of a misdemeanor.

11 10.3 RCW 49.52.070 provides that any employer who violates the foregoing statute  
12 shall be liable in a civil action for twice the amount of wages withheld, together with costs of  
13 suit and reasonable attorneys' fees.

14 10.4 The alleged unlawful actions by Defendants against Plaintiff and members of  
15 the Class and Subclass, as set forth above, were committed willfully and with intent to deprive  
16 Plaintiff and members of the Class and Subclass of part of their wages.

17 10.5 As such, based on the above allegations, Defendants violated the provisions of  
18 RCW 49.52.050.

19 10.6 As a result of the unlawful acts of Defendants, Plaintiff and members of the  
20 Class and Subclass have been deprived of compensation in amounts to be determined at trial,  
21 and under RCW 49.52.070 are entitled to recovery of twice such amounts, including interest  
22 thereon, attorneys' fees and costs.

23 **XI. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, on his own behalf and on behalf of the members of the Class  
25 and Subclass, prays for a judgment against Defendants, as follows:

- 26 A. Certify the proposed Class and Subclass;  
27 B. Appoint Plaintiff as representative of the Class and Subclass;

- 1 C. Appoint the undersigned attorneys as counsel for the Class and Subclass;  
2 D. Declare that the actions complained of herein violate Washington law;  
3 E. Award Plaintiff and members of the Class and Subclass compensatory and  
4 exemplary damages;  
5 F. Award attorneys' fees and costs to Plaintiff's attorneys, as allowed by law;  
6 G. Award pre-judgment and post-judgment interest to Plaintiff and members of  
7 the Class and Subclass, as provided by law; and  
8 H. Grant such other and further relief as this Court deems necessary.

9 RESPECTFULLY SUBMITTED AND DATED this 24th day of May, 2021.

10 TERRELL MARSHALL LAW GROUP PLLC

11 By: /s/ Toby J. Marshall, WSBA #32726  
12 Toby J. Marshall, WSBA #32726  
13 Email: tmarshall@terrellmarshall.com

14 By: /s/ Erika L. Nusser, WSBA #40854  
15 Erika L. Nusser, WSBA #40854  
16 Email: enusser@terrellmarshall.com

17 By: /s/ Sarah E. Smith, WSBA #55770  
18 Sarah E. Smith, WSBA #55770  
19 Email: ssmith@terrellmarshall.com  
20 936 North 34th Street, Suite 300  
21 Seattle, Washington 98103  
22 Telephone: (206) 816-6603  
23 Facsimile: (206) 319-5450

24 *Attorneys for Plaintiff*