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Sherri R. Carter, Executive Officer/Clerk

By  Deputy
Jenny D. TruongLAW OFFICES OF THOMAS W. FALVEY
THOMAS W. FALVEY, SBN 65744

MICHAEL H. BOYAMIAN, SBN 256107

ARMAND R. KIZIRIAN, SBN 293992

550 North Brand Boulevard, Suite 1500
Glendale, California 91203

Telephone: (818) 547-5200

Facsimile: (818) 500-9307

E-mail(s): thomaswfalvey@gmail.com, mike.falveylaw@gmail.com
armand.falveylaw@gmail.com

MARLIN & SALTZMAN, LLP

Stanley D. Saltzman, Esq. (SBN 90058)

William A. Baird, Esq. (SBN 296061)

29800 Agoura Road, Suite 210

Agoura Hills, California 91301

Telephone: (818) 991-8080

Facsimile: (818) 991-8081

E-mail(s): ssaltzman@marlinsaltzman.com
tbaird@marlinsaltzman.comAttorneys for Plaintiffs PEDRO ESPINOZA, ROBERT ALFARO,
and MARIO NAVARRO, Individually
and on Behalf of All Similarly Situated IndividualsSUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELESPEDRO ESPINOZA, an individual,
ROBERT ALFARO, an individual;
MARIO NAVARRO, an individual;
Individually, and on Behalf of All
Similarly Situated Individuals,

Plaintiffs,

vs.

WILLIAMS-SONOMA, INC., a
Delaware corporation; WILLIAMS-
SONOMA DIRECT, INC., a California
corporation; WILLIAMS-SONOMA
RETAIL SERVICES, INC., a California
corporation; WILLIAMS-SONOMA
SOURCING, INC., a California
corporation; WILLIAMS-SONOMA
DTC, INC., a California corporation;
MXD GROUP, INC., a California
corporation, and DOES 1 through 25,
Inclusive,

Defendants.

CASE NO.

BC693245

[CLASS ACTION]

COMPLAINT FOR:

1. UNPAID WAGES (LABOR CODE §§ 216 and 1194)
2. FAILURE TO PAY MINIMUM WAGE (LABOR CODE § 1194)
3. FAILURE TO PAY OVERTIME COMPENSATION (LABOR CODE §§ 510 and 1194);
4. FAILURE TO PROVIDE MEAL AND REST PERIODS (LABOR CODE §§ 512 and 226.7);
5. FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS (LABOR CODE § 226);
6. WAITING TIME PENALTIES (LABOR CODE §§ 201-203);
7. INDEMNIFICATION (LABOR CODE §§ 2800 and 2802);
8. CONVERSION (LABOR CODE §§ 3336 and 3294); and
9. UNFAIR COMPETITION (LABOR CODE §§ 17200 *et seq.*).

JURY TRIAL DEMANDED

14:36:09 2018-02-13

1 Plaintiffs Pedro Espinoza, Robert Alfaro, and Mario Navarro (“Plaintiffs”), individually
2 and on behalf of all similarly situated individuals, allege as follows:

3 **GENERAL ALLEGATIONS**

4 1. This is a proposed class action brought against Defendants WILLIAMS-
5 SONOMA, INC., WILLIAMS-SONOMA DIRECT, INC., WILLIAMS-SONOMA RETAIL
6 SERVICES, INC., WILLIAMS-SONOMA SOURCING, INC., WILLIAMS-SONOMA DTC,
7 INC., MXD GROUP, INC., and DOES 1-25, inclusive (collectively, “Defendants”), on behalf of
8 Plaintiffs and all other non-employee workers who worked in California as a Driver and/or
9 Helper for Defendants at any time during the four years preceding the filing of this action, and
10 continuing while this action is pending (“Class Period”), who were denied the benefits and
11 protections required under the California Labor Code and other statutes and regulations
12 applicable to California employees.

13 2. During the Class Period, Defendants:

- 14 a. failed to pay wages for all hours worked by Drivers and Helpers;
15 b. failed to pay Drivers and Helpers the applicable legal minimum wage;
16 c. failed to pay overtime wages due to Drivers and Helpers;
17 d. failed to provide meal and rest periods due to Drivers and Helpers;
18 e. failed to provide the Drivers and Helpers with timely and accurate wage
19 and hour statements;
20 f. failed to pay the Drivers and Helpers compensation in a timely manner
21 upon their termination or resignation;
22 g. failed to maintain complete and accurate payroll records for the Drivers
23 and Helpers;
24 h. wrongfully withheld wages and compensation due to the Drivers and
25 Helpers; and
26 i. committed unfair business practices in an effort to increase profits and to
27 gain an unfair business advantage at the expense of the Drivers and
28 Helpers and the public.

1 3. The foregoing acts and other acts by Defendants - committed throughout
2 California and Los Angeles County - violated provisions of the California Labor Code, including
3 sections 201, 202, 203, 204, 226, 226.7, 226.8, 510, 512, 515, 551, 552, 558, 1194, and 1198
4 (collectively, "Employment Laws"), violated the applicable Wage Orders issued by California's
5 Industrial Welfare Commission, including Wage Orders 9-2001 during the Class Period
6 ("Regulations"), violated California's Unfair Business Practices Act, California Business &
7 Professions Code sections 17200 *et seq.*, and violated Plaintiffs' rights.

8 **JURISDICTION AND VENUE**

9 4. Venue is proper in this Judicial District and the County of Los Angeles because
10 work was performed by Plaintiffs and other members of the Class for Defendants in the County
11 of Los Angeles, California, and Defendants' obligations under the Employment Laws and
12 Regulations to pay overtime wages, to provide meal and rest periods and accurate wage
13 statements to Plaintiffs and other members of the Class arose and were breached in the County of
14 Los Angeles.

15 5. The California Superior Court has jurisdiction in this matter because Plaintiffs are
16 all residents of California, and Defendants are corporations qualified to do business in California
17 and regularly conduct business in California. Further, no federal question is at issue as the
18 claims are based solely on California law.

19 6. Plaintiffs do not seek more than seventy-five thousand dollars (\$75,000)
20 individually, and waive seeking more than seventy-five thousand dollars (\$75,000), including
21 attorneys' fees but excluding costs and interest, as to her share or portion of penalties or any other
22 recovery with respect to the violations alleged herein against Defendants. This case also raises
23 no federal questions.

24 **THE PARTIES**

25 7. Plaintiff Pedro Espinoza is, and at all relevant times was, a competent adult
26 residing in California. Mr. Espinoza brings suit on behalf of himself and all similarly situated
27 individuals pursuant to California Code of Civil Procedure section 382, and California Business
28 & Professions Code sections 17200, *et seq.* Mr. Espinoza was unlawfully classified by

1 Defendants as an independent contractor and worked as a Driver out of the warehouse located at
2 21508 Baker Parkway, City of Industry, California.

3 8. Plaintiff Robert Alfaro is, and at all relevant times was, a competent adult residing
4 in California. Mr. Alfaro brings suit on behalf of himself and all similarly situated individuals
5 pursuant to California Code of Civil Procedure section 382, and California Business &
6 Professions Code sections 17200, *et seq.* Mr. Alfaro was unlawfully classified by Defendants as
7 an independent contractor and worked as a Helper out of the warehouse located at 21508 Baker
8 Parkway, City of Industry, California

9 9. Plaintiff Mario Navarro is, and at all relevant times was, a competent adult
10 residing in California. Mr. Navarro brings suit on behalf of himself and all similarly situated
11 individuals pursuant to California Code of Civil Procedure section 382, and California Business
12 & Professions Code sections 17200, *et seq.* Mr. Navarro was unlawfully classified by
13 Defendants as an independent contractor and worked as a Driver out of the warehouse located at
14 21508 Baker Parkway, City of Industry, California

15 10. Defendant Williams-Sonoma, Inc. is, and at all relevant times was, an Delaware
16 corporation registered with the State of California's Secretary of State. Defendants
17 Williams-Sonoma Direct, Inc., Williams-Sonoma Retail Services, Inc., Williams-Sonoma
18 Sourcing, Inc., and Williams-Sonoma DTC, Inc. are, and at all relevant times were, California
19 corporations registered with the State of California's Secretary of State. The five entities listed
20 above are hereinafter collectively referred to as "Williams-Sonoma". Williams-Sonoma is one of
21 the nation's premier chain of department stores and is a retailer of a variety of private and in-
22 store brands. Upon information and belief, Williams-Sonoma is also the parent company or has
23 ownership interest with Pottery Barn, Pottery Barn Kids, Pottery Barn Teen, West Elm, and
24 others. Collectively, these various, identified brands along with five Williams-Sonoma entities
25 listed above are hereinafter referred to as "Williams Sonoma". Williams-Sonoma conducts
26 business throughout the State of California, including Los Angeles County.

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1 11. Defendant MXD Group, Inc. (hereinafter referred to as “MXD”) is, and at all
2 relevant times was, a California corporation registered with the State of California’s Secretary of
3 State. MXD operates as a carrier for department stores providing logistics management.
4 Defendants have engaged in unlawful employment practices addressed in this Complaint
5 throughout California and in Los Angeles County.

6 12. Defendants Williams-Sonoma and MXD are, and at all relevant times were,
7 corporations conducting business in the State of California, including the County of Los Angeles.
8 Plaintiffs are informed and believe, and based upon such information and belief, allege that
9 Williams-Sonoma’s exercised control over the operations of MXD from its resources,
10 preparation, and management, to MXD utilizing Williams-Sonoma criteria and standards for
11 hiring personnel and performing deliveries.

12 13. The degree of control exercised by Williams-Sonoma, Inc. over Williams-Sonoma
13 Direct, Inc., Williams-Sonoma Retail Services, Inc., Williams-Sonoma Sourcing, Inc.,
14 Williams-Sonoma DTC, Inc. and a number of other corporate and partnership entities is enough
15 to reasonably deem Williams-Sonoma Direct, Inc., Williams-Sonoma Retail Services, Inc.,
16 Williams-Sonoma Sourcing, Inc., Williams-Sonoma DTC, Inc. as agents of Williams-Sonoma,
17 Inc. over traditional agency principles. Williams-Sonoma Direct, Inc., Williams-Sonoma Retail
18 Services, Inc., Williams-Sonoma Sourcing, Inc., Williams-Sonoma DTC, Inc. can legitimately be
19 describes only as a means through which Williams-Sonoma, Inc. acts and conducts its global
20 business. Williams-Sonoma, Inc., Williams-Sonoma Direct, Inc., Williams-Sonoma Retail
21 Services, Inc., Williams-Sonoma Sourcing, Inc., and Williams-Sonoma DTC, Inc. have such a
22 unity of interest and ownership that the separate personalities do not in reality exist and that the
23 corporate structure is just a shield for the alter ego of each other. Plaintiffs therefore are
24 informed and believe and thereupon allege that Williams-Sonoma, Inc., Williams-Sonoma
25 Direct, Inc., Williams-Sonoma Retail Services, Inc., Williams-Sonoma Sourcing, Inc., and
26 Williams-Sonoma DTC, Inc., and each of them, were their employer under California law, that
27 these entities did acts consistent with the existence of an employer-employee relationship with
28 Plaintiffs, and that Williams-Sonoma Direct, Inc., Williams-Sonoma Retail Services, Inc.,

Williams-Sonoma Sourcing, Inc., and Williams-Sonoma DTC, Inc. were owned, controlled, directly or indirectly, by Williams-Sonoma, Inc.

14. The degree of control exercised by Williams-Sonoma over MXD is enough to reasonably deem MXD as agents of Williams-Sonoma under traditional agency principles. MXD can legitimately be described as only a means through which Williams-Sonoma acts and conducts its global business. Defendants MXD and Williams-Sonoma have such a unity of interest and ownership that the separate personalities do not in reality exist and that the corporate structure is just a shield for the alter ego of each other. Plaintiffs therefore are informed and believe and thereupon allege Williams-Sonoma and MXD, and each of them, were their employer under California law, that Defendants herein did acts consistent with the existence of an employer-employee relationship with Plaintiffs - despite their unlawful classification of Plaintiffs as independent contractors - and that MXD was owned, controlled, directly or indirectly by Williams-Sonoma.

15. Plaintiffs are informed and believe and based thereon allege that Defendants uniformly apply their pay practices, and overtime policies to all Drivers and Driver Assistants.

16. Plaintiffs are currently unaware of the true names and capacities of the defendants sued in this action by the fictitious names DOES 1 through 25, inclusive, and therefore sue those defendants by such fictitious names. Plaintiffs will amend this Complaint to allege the true names and capacities of such fictitiously named defendants when they are ascertained.

17. Plaintiffs are informed and believe and based thereon allege that each defendant sued in this action, including each defendant sued by the fictitious names DOES 1 through 25, inclusive, is responsible in some manner for the occurrences, controversies and damages alleged below.

18. Plaintiffs are informed and believe and based thereon allege that DOES 1 through 25, inclusive were the agents, servants and/or employees of Defendants and, in doing the things hereinafter alleged and at all times, were acting within the scope of their authority as such agents, servants and employees, and with the permission and consent of Defendants.

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1 19. Plaintiffs are informed and believe and based thereon allege that Defendants
2 ratified, authorized, and consented to each and all of the acts and conduct of each other as alleged
3 herein.

4 **FACTS COMMON TO ALL CAUSES OF ACTION**

5 20. Defendants unlawfully classified Plaintiffs and other similarly situated individuals
6 as independent contractors when, in fact, they were heavily regulated through a series of work-
7 related restrictions and directives. Williams-Sonoma directs MXD to secure truck owners to
8 have them contract with Williams-Sonoma for purposes of delivering Williams-Sonoma products
9 to its customers. These truck owners arrive at the warehouse located at 21508 Baker Parkway,
10 City of Industry, California. Upon information and belief, the warehouse is owned and/or
11 operated by Defendants. Williams-Sonoma and MXD go through a hiring process with
12 Williams-Sonoma employees who office at the same site. Truck owners are hired by Williams-
13 Sonoma and are required to have a Williams-Sonoma banner put on the truck. Truck owners
14 then bring on Drivers and Driver Assistant or commonly referred to by Defendants as “Helpers”,
15 like Plaintiffs, who are also evaluated by Williams-Sonoma and/or MXD employees for hiring
16 purposes.

17 21. After Defendants hired Plaintiffs, Williams-Sonoma instructed Plaintiffs to follow
18 a series of directives related to the delivery of Williams-Sonoma products. These directives
19 include, but are not limited to, the following:

- 20 a. the truck cannot be used for any other purposes while having the Williams-
21 Sonoma banner;
- 22 b. the truck must be left at the warehouse site at the end of the work day;
- 23 c. the delivery schedules is set and controlled by Williams-Sonoma and MXD and
24 cannot be varied by the Driver or the Driver Assistant;
- 25 d. the truck owners may hire Drivers and/or Driver Assistants but they must be
26 trained and approved by Williams-Sonoma and/or MXD;
- 27 e. Drivers and Driver Assistants must wear Williams-Sonoma distinct uniform and
28 clothing unique to Williams-Sonoma for the delivery of products;

- 1 f. Drivers and Driver Assistants must announce themselves to Williams-Sonoma
2 customers as “Williams-Sonoma delivery” and “from Williams-Sonoma” and
3 Drivers even have identification cards that they present to customers and others
4 carrying the Williams-Sonoma logo;
- 5 g. Drivers and Driver Assistants must carry out Williams-Sonoma’s exceptional
6 customer service in delivering products, and even use “white gloves” when
7 customers request Williams-Sonoma to have their items be delivered under the
8 “white glove” service.
- 9 h. Drivers and Driver Assistants must provide felt and plastic on their own;
- 10 i. each morning the Drivers and helpers must go through a process of where
11 Williams-Sonoma and/or MXD employees evaluate whether the Driver and/or
12 Driver Assistant has met Williams-Sonoma expectation of overall appearance,
13 delivery and customer service;
- 14 j. if a customer has furniture and offers it to the Driver or Helper, Williams-Sonoma
15 considers the donation as Williams-Sonoma property and it must be left at
16 warehouse;
- 17 k. Drivers and Driver Assistants must offer to vacuum the floor when they remove
18 furniture;
- 19 l. if Drivers or driver Assistants are requested to remove mattress, they must do it
20 even if it is covered in bedbugs, feces, or blood;
- 21 m. if any of the furniture is damaged, even if the damage comes from the store, the
22 driver and/or driver assistant must pay for it and/or receives a negative evaluation;
- 23 n. Drivers and Helpers must leave customers with a performance checklist with
24 “Williams-Sonoma” printed on it, and customers are encouraged to provide
25 feedback directly to Williams-Sonoma to rate the performance of the driver or
26 helper;

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- 1 o. Drivers must obtain worker's compensation insurance and umbrella insurance at
- 2 their own expense and must have to buy umbrella insurance from Williams-
- 3 Sonoma;
- 4 p. Drivers and Driver Assistants must secure the consent of Williams-Sonoma
- 5 and/or MXD employees before going out for vacation or time off from work;
- 6 q. Drivers and Driver Assistants use a Cheetah table which has GPS tracking that
- 7 allows Williams-Sonoma and MXD employees to monitor the progress of
- 8 delivery and communicate as to the status of deliveries; and
- 9 r. Drivers and Driver Assistants must expend money out of their own pocket to
- 10 purchase a smart phone in order to utilize Defendants' app to perform deliveries.

11 22. Drivers and Driver Assistants are also regulated and controlled through the use of
12 Williams-Sonoma's and MXD's point system. Specifically, each month Drivers and Driver
13 Assistants are given 25 points. If they maintain that score for the month, they are given a \$250
14 bonus. However, our investigation has revealed that Drivers and Driver Assistants are routinely
15 deducted points for the smallest infraction and the bonus is rarely ever earned by the Driver or
16 Helper. Above all, the arbitrary and uniform discretion MXD and Williams-Sonoma's personnel
17 have through this point system demonstrates the unfettered control Defendants have on Drivers
18 and Driver Assistants. For example, Driver and Driver Assistants are deducted 3 points for not
19 showing up at the warehouse on time in the morning. They are deducted points for not greeting a
20 manager, or failing to deliver product to the customer at the scheduled time. Bonuses and the
21 grades Drivers and Driver Assistants receive are routinely discussed in weekly group meetings
22 with MXD's and Williams-Sonoma's managers stressing compliance with on-time delivery and
23 customer service standards. These managers praise Drivers and/or Driver Assistants at meetings
24 for maintaining an acceptable grade or amount of points and likewise, publicly scold Drivers and
25 Driver Assistants who have too many point deductions. Drivers and Driver Assistants are also
26 warned in these meetings that if their scores fall below a certain threshold they will not receive
27 any work at Williams-Sonoma.

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1 23. Plaintiffs, including the putative class of Drivers and Helpers they seek to
2 represent, were all compensated on a flat-rate - \$140-\$150/day for Drivers and \$110-\$120/day for
3 Helpers - regardless of how many hours were actually worked. Plaintiffs received their
4 compensation by personal check issued by the truck owners, and not from Defendants. This "flat
5 rate" also constitutes an unlawful piece-rate compensation system because Drivers and Helpers
6 had no control over how many hours they worked and could do nothing to change the amount of
7 pay through their own efficiencies. This unlawful compensation scheme did not account for all
8 the work performed by Drivers or Helpers, like Plaintiffs, who typically worked 12 to 15 hours a
9 day and performed various non-driving tasks all under the control and direction of Defendants.
10 This compensation scheme is illegal and is in violation of the Employment Laws and
11 Regulations.

12 24. During the time Plaintiffs were employed by Defendants and as part of the four
13 years preceding the filing of this action, Defendants failed to provide Plaintiffs and similarly
14 situated Drivers and Helpers with rest periods during work shifts over four hours. Defendants
15 also routinely failed to provide Plaintiffs and similarly-situated employees a 30-minute meal
16 period in which they were relieved of all duties when they worked over five hours. These
17 practices are in violation of the Employment Laws and Regulations.

18 25. During Plaintiffs' employment with Defendants, Plaintiffs and Drivers and
19 Helpers were regularly required to work more than eight hours per day and more than forty hours
20 per workweek. Drivers and Driver Assistants routinely worked seven days a week and were paid
21 the same "flat rate" for each day of work. Defendants regularly did not compensate Plaintiffs and
22 Drivers and Helpers for the overtime hours they worked, in violation of the Employment Laws
23 and Regulations.

24 26. In addition, Williams-Sonoma and MXD did not compensate Drivers and Driver
25 Assistants for mileage incurred in the delivery of Williams-Sonoma products. Driver and Driver
26 Assistants cover large geographic territories in fulfilling their deliveries - driving to areas as far
27 as Santa Barbara, Paso Robles, or San Diego. This unlawful piece-rate system also did not
28 account for all the work performed by Drivers and driver Assistants, like Plaintiffs, who typically

1 worked 12 to 16 hours a day, seven days a week, and performed various non-driving tasks all
2 under the control and direction of Williams-Sonoma and MXD.

3 27. During Plaintiffs' employment with Defendants, Williams-Sonoma and MXD
4 failed to provide Plaintiffs with timely and accurate wage and hour statements showing gross
5 hours earned, total hours worked, all deductions made, net wages earned, accrued vacation, and
6 all applicable hourly rates in effect during each pay period, as well as the corresponding number
7 of hours worked at each hourly rate.

8 28. During Plaintiffs' employment with Defendants, Defendants wrongfully withheld
9 from Plaintiffs and failed to pay their wages and other compensation which was due them for all
10 of their hours worked, for overtime work, for missed meal and rest periods, and as otherwise
11 required pursuant to the Employment Laws and Regulations.

12 29. Plaintiffs seek restitution and disgorgement of all sums wrongfully obtained by
13 Defendants through unfair business practices in violation of California's Business & Professions
14 Code sections 17200, *et seq.*, to prevent the Defendants from benefitting from their violations of
15 law and/or unfair acts. Such sums recovered under the Unfair Competition Act and Unfair
16 Businesses Act are equitable in nature and are not to be considered damages. Plaintiffs are also
17 entitled to costs, attorney's fees, interest and penalties as provided for by the California Labor
18 Code, the California Business & Professions Code, and the Private Attorney General Act,
19 California Code of Civil Procedure section 1021.5.

20 30. To the extent that any Class Member, including Plaintiffs, entered into any
21 arbitration agreement with any Defendant and such agreement purports to require arbitration,
22 such agreement is void and unenforceable. Any such agreement was one of adhesion, executed
23 under duress, lacked consideration and mutuality, and was otherwise void under both California
24 Labor Code section 229 and the California Supreme Court case of *Armendariz v. Foundation*
25 *Health Psychare Services, Inc.* (2000) 24 Cal.4th 83.

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1 **CLASS ACTION ALLEGATIONS**

2 31.. Plaintiffs bring these claims as a class action pursuant to Code of Civil Procedure
3 § 382 and Business and Professions Code §§ 17203 & 17204. Plaintiffs bring this action on their
4 own behalf and on behalf of the following class of individuals (the “Class” or “Class Members”):

5 All individuals who currently provide and formerly provided transportation
6 services to Defendants as Drivers at the warehouse located at 21508 Baker
7 Parkway, City of Industry, California at any time from February 13, 2014, and
continuing while this action is pending.

8 All individuals who currently provide and formerly provided transportation
9 services to Defendants as Helpers at the warehouse located at 21508 Baker
Parkway, City of Industry, California at any time from February 13, 2014, and
continuing while this action is pending.

10 32. All Drivers or Helpers, including Plaintiffs, are putative class members.

11 33. During the Class Period, by virtue of unlawfully classifying Plaintiffs and Class
12 Members as independent contractors and compensating Class Members with a “flat rate”
13 Defendants have routinely failed to compensate Drivers and Helpers all of the wages they are due
14 (“off-the-clock” work).

15 34. During the Class Period, Plaintiffs and Drivers and Helpers were subject to
16 Defendants’ unlawful company practice of classifying them as independent contractors and
17 paying them a daily flat sum of money when in fact they were subjected to the pervasive control
18 of Defendants. All who were subject to this unlawful classification and compensation scheme
19 suffered damages. Defendants applied this illegal wage device uniformly to all Drivers and
20 Helpers who worked out of Williams-Sonoma’s logistic and operations center to the
21 disadvantage of Class Members.

22 35. As a result, during the Class Period, Defendants have failed to provide Drivers
23 and Helpers with accurate wage and hour statements since the daily “flat rate” did not fully
24 compensate Drivers and Helpers for all hours worked. , Defendants have failed to provide
25 Drivers and Helpers with accurate wage and hour statements since the gross hours earned, total
26 hours worked, all deductions made, net wages earned, and all applicable hourly rates in effect
27 during each pay period and the corresponding number of hours worked at each hourly rate.
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1 36. During the Class Period, Plaintiffs and Drivers and Helpers have been required to
2 work more than eight hours per day and more than forty hours per workweek. Defendants have
3 routinely failed to compensate Drivers and Helpers all of the overtime wages they are due.

4 37. During the Class Period, Defendants have failed to pay accrued wages and other
5 compensation due immediately to Drivers and Helpers who were terminated, and Defendants
6 have failed to pay accrued wages and other compensation due within seventy-two hours to
7 Drivers and Helpers who ended their employment.

8 38. The proposed class is ascertainable in that its members can be identified using
9 information contained in Defendants' payroll and personnel records.

10 39. Numerosity. The Drivers and Helpers are so numerous, conservatively estimated
11 to include over 40 Drivers and Helpers, that joinder of each individual Class Member would be
12 impracticable, and the disposition of their claims in a class action, rather than numerous
13 individual actions, will benefit the parties, the Court and the interests of justice.

14 40. Commonality. There is a well-defined community of interest in the questions of
15 law and fact involved in this action, because Defendants' failure to pay Drivers and Helpers their
16 wages or afford them the protections required under the Employment Laws and Regulations
17 affects all Class Members. Common questions of law and fact predominate over questions that
18 affect only individual Driver and Helpers, because all Drivers and Helpers were subject to the
19 uniform, unlawful pay practices and policies. The predominate questions of law and fact include,
20 but are not limited to:

- 21 a. Did Defendants devise a scheme and plan to circumvent California wage and hour
22 laws?;
- 23 b. Was/is Defendants' conduct fraudulent and deceitful?;
- 24 c. Did/does Defendants' conduct violate the Employment Laws and Regulations?;
- 25 and
- 26 (i) failing to compensate Plaintiff and the Class Members for all
27 hours worked;

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- 1 (ii) failing to compensate Plaintiff and the Class Members at the
2 applicable and legally-mandated minimum hourly rate of \$8.00;
3 (iii) failing to provide Plaintiffs and the Class Members with timely and
4 accurate wage and hour statements; and
5 (iv) failing to maintain complete and accurate payroll records for
6 Plaintiffs and the Class Members;

7 d. Do/did Defendants' systematic acts and practices violate, *inter alia*, California
8 Business & Professions Code section 17200, *et seq.*?

9 41. Typicality. Plaintiffs' claims are typical of those of the other Drivers and Helpers
10 because all Drivers and Helpers share the same or similar employment duties and activities, all
11 are automatically classified as independent contractors, and all have been denied the benefits and
12 protections of the Employment Laws and Regulations in the same manner. Since Defendants
13 have uniformly applied the same pay practices and policies to each Driver and Helper, Plaintiffs'
14 claims are typical of the claims of all Drivers and Helpers. Plaintiffs' claims are also typical
15 because they have suffered the same damages as those suffered by all Class Members.

16 42. Adequacy of Representation. Plaintiffs can fairly and adequately represent and
17 protect the interests of all Drivers and Helpers in that neither Plaintiffs have disabling conflicts of
18 interest which are antagonistic to those of all other Drivers and Helpers. Plaintiffs seek no relief
19 which is antagonistic or adverse to the other Class Members, and the infringement of their rights
20 and the damages they have suffered are typical of all other Class Members. Plaintiffs' counsel is
21 competent and experienced in litigating class actions in California based on large employers'
22 violations of the Employment Laws and Regulations.

23 43. As mentioned above, to the extent that any Driver or Helper entered into any
24 arbitration agreement with any Defendant and such agreement purports to require arbitration,
25 such agreement is void and unenforceable. Even if such agreement is deemed enforceable,
26 however, classwide arbitration is appropriate and should be utilized to obtain classwide relief.

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1 44. Superiority of Class Action. The nature of this action and the nature of laws
2 available to Plaintiffs and the other Drivers and Helpers in the putative Class make use of the
3 class action a particularly efficient and effective procedure because:
4 a. For many of the Drivers and Helpers, individual actions or other individual
5 remedies would be impracticable and litigating individual actions would be too costly;
6 b. The action involves large corporate employers (Williams-Sonoma, MXD) and a
7 large number of individual employees (Plaintiffs and the other Class Members), many with
8 relatively small claims and all with common issues of law and fact;
9 c. If the Drivers and Helpers are forced to bring individual lawsuits, the corporate
10 defendants would necessarily gain an unfair advantage, the ability to exploit and overwhelm the
11 limited resources of individual Class Members with vastly superior financial and legal resources;
12 d. The costs of individual suits would likely consume the amounts recovered;
13 e. Requiring each Class Member to pursue an individual remedy would also
14 discourage the assertion of lawful claims by current employees of Defendants, who would be
15 disinclined to pursue an action against their present and/or former employer due to an appreciable
16 and justified fear of retaliation and permanent damage to their immediate and/or future
17 employment; and
18 f. Common business practices Plaintiffs experienced are representative of those
19 experienced by all Drivers and Helpers and can establish the right of all Drivers and Helpers to
20 recover on the alleged claims.

21 **FIRST CAUSE OF ACTION**

22 **(Failure to Pay Compensation For All Hours Worked - Labor Code §§ 216 and 1194**
23 **By Plaintiffs Individually and on Behalf of All Drivers and Helpers)**

24 45. As a separate and distinct cause of action, Plaintiffs complain and reallege all the
25 allegations contained in this complaint, and incorporate them by reference into this cause of
26 action as though fully set forth herein, excepting those allegations which are inconsistent with
27 this cause of action.

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1 46. Plaintiffs bring this action to recover their unpaid compensation for all hours
2 worked as defined by the applicable Industrial Welfare Commission wage order as the time
3 during which an employee is subject to the control of an employer, and includes all the time the
4 employee is suffered or permitted to work, whether or not required to do so.

5 47. Drivers and Helpers, including Plaintiffs, were unlawfully classified as
6 independent contractors but were instructed, directed or otherwise controlled by Defendants to
7 perform their work through a series of Defendants' requirements, expectations, and standards for
8 performance. Defendants knew or should have known that Plaintiffs were working these hours
9 because a) Defendants required employees to use and follow Defendants' issued manifests and
10 electronic devices with GPS monitoring, and b) Defendants controlled the daily work activities
11 of the putative class, as Drivers and Helpers, including Plaintiffs, were furnished with and were
12 instructed to the number of daily deliveries, the locations or destinations for such deliveries, and
13 the special instructions associated with such deliveries, i.e., assembling, removal of old furniture,
14 etc. Thus Defendants knew the actual hours worked by putative Class Members, including
15 Plaintiffs.

16 48. Plaintiffs are entitled to recover the unpaid balance of compensation Defendants
17 owe Plaintiffs, plus interest, associated statutory penalties, and reasonable attorney fees and costs
18 pursuant to Labor Code section 1194.

19 **SECOND CAUSE OF ACTION**

20 **(Failure to Pay Minimum Wages - Labor Code § 1194**

21 **By Plaintiffs Individually and on Behalf of All Class Members)**

22 49. As a separate and distinct cause of action, Plaintiffs complain and reallege all of
23 the allegations contained in this complaint, and incorporate them by reference into this cause of
24 action as though fully set forth herein, excepting those allegations which are inconsistent with
25 this cause of action.

26 50. At all relevant times, the IWC Wage Order 9-2001 applied to Plaintiffs in
27 Plaintiffs' capacity as employees of Defendants. The Wage Orders and California law provided,
28 among other things, that Plaintiffs must receive minimum wage earnings for all hours worked.

1 51. During the Class Period, Defendants have routinely failed to pay Drivers and
2 Helpers, including Plaintiffs, the minimum wage required by the Employment Laws and
3 Regulations for all hours worked. Defendants unlawfully classified Drivers and Helpers as
4 independent contractor and compensated Plaintiffs through an unlawful piece rate - a flat rate -
5 for work. Defendants' unlawful scheme of a "flat rate" violates the provisions of Wage Order 9-
6 2001 as it exceeds the maximum allotted amount that can be charged to an employee.

7 52. Drivers and Helpers, including Plaintiffs, have been deprived of their rightfully
8 earned minimum wages as a direct and proximate result of Defendants' policies and practices
9 and Defendants' failure and refusal to pay said wages for all hours worked. Drivers and Helpers,
10 including Plaintiffs, are entitled to recover the past wages owed to them, under the minimum
11 wage laws, plus an additional equal amount as liquidated damages as permitted under the Wage
12 Orders and California law, plus interest thereon and attorneys' fees and costs, pursuant to Labor
13 Code § 1194, in an amount according to proof at the time of trial.

14 **THIRD CAUSE OF ACTION**

15 **(Failure to Pay Overtime Compensation - By Plaintiffs Individually and on Behalf of All**
16 **Drivers and Helpers: California Labor Code §§ 510 and 1194)**

17 53. As a separate and distinct cause of action, Plaintiffs complain and reallege all the
18 allegations contained in this complaint, and incorporate them by reference into this cause of
19 action as though fully set forth herein, excepting those allegations which are inconsistent with
20 this cause of action.

21 54. During the Class Period, Defendants have routinely required Drivers and Helpers,
22 including Plaintiffs, to work over eight hours in a day and over forty hours in a workweek.
23 Drivers and Driver Assistants were also routinely scheduled and worked seven days a week and
24 were paid the same "flat rate" for each day of work. However, Defendants have failed and
25 refused to pay the Drivers and Helpers, including Plaintiffs, the overtime compensation required
26 by the Employment Laws and Regulations.

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1 55. The Drivers and Helpers, including Plaintiffs, have been deprived of their
2 rightfully earned overtime compensation as a direct and proximate result of Defendants' policies
3 and practices and Defendants' failure and refusal to pay that compensation. Drivers and Helpers,
4 including Plaintiffs, are entitled to recover such amounts, plus interest, attorney's fees and costs.

5 **FOURTH CAUSE OF ACTION**

6 **(Failure to Provide Meal and Rest Periods - By Plaintiffs Individually and on Behalf of All**
7 **Drivers and Helpers: California Labor Code §§ 226.7 and 512)**

8 56. As a separate and distinct cause of action, Plaintiffs complain and reallege all the
9 allegations contained in this complaint, and incorporate them by reference into this cause of
10 action as though fully set forth herein, excepting those allegations which are inconsistent with
11 this cause of action.

12 57. During the Class Period, Defendants have routinely failed to provide employees in
13 the position of Drivers and Helpers, including Plaintiffs, with meal and rest periods during their
14 work shifts, and have failed to compensate these Drivers and Helpers, including Plaintiffs, for
15 those meal and rest periods, as required by California Labor Code section 226.7 and the other
16 applicable sections of the Employment Laws and Regulations.

17 58. Drivers and Helpers, including Plaintiffs, have been deprived of their rightfully
18 earned compensation for meal and rest periods as a direct and proximate result of Defendants'
19 policies and practices and Defendants' failure and refusal to pay that compensation. These
20 Drivers and Helpers, including Plaintiffs, are entitled to recover such amounts pursuant to
21 California Labor Code section 226.7(b), plus interest, attorney's fees and costs.

22 **FIFTH CAUSE OF ACTION**

23 **(Failure to Accurate Furnish Wage and Hour Statements - By Plaintiffs Individually and**
24 **on Behalf of All Drivers and Helpers: California Labor Code § 226)**

25 59. As a separate and distinct cause of action, Plaintiffs complain and reallege all the
26 allegations contained in this complaint, and incorporate them by reference into this cause of
27 action as though fully set forth herein, excepting those allegations which are inconsistent with
28 this cause of action.

1 60. During the Class Period, Defendants have routinely failed to provide Drivers and
2 Helpers, including Plaintiffs, with timely and accurate wage and hour statements showing gross
3 hours earned, total hours worked, all deductions made, net wages earned, the name and address
4 of the legal entity employing the Drivers and Helpers, and all applicable hours rates in effect
5 during each pay period and the corresponding number of hours worked at each hourly rate.

6 61. As a consequence of Defendants' actions, Drivers and Helpers are entitled to all
7 available statutory penalties, costs and reasonable attorney's fees, including those provided in
8 California Labor Code section 226(e), as well as all other available remedies.

9 **SIXTH CAUSE OF ACTION**

10 **(For Waiting Time Penalties - By Plaintiffs Individually and on Behalf of All Drivers and**
11 **Helpers: California Labor Code §§ 201-203)**

12 62. As a separate and distinct cause of action, Plaintiffs complain and reallege all the
13 allegations contained in this complaint, and incorporate them by reference into this cause of
14 action as though fully set forth herein, excepting those allegations which are inconsistent with
15 this cause of action.

16 63. During the Class Period, Defendants failed to pay accrued wages and other
17 compensation due immediately to each Driver and Helper who was terminated and failed to pay
18 accrued wages, including meal and rest period wages and other compensation due within
19 seventy-two hours to each Driver and Helper who ended his or her employment.

20 64. As a consequence of Defendants' actions, Drivers and Helpers are entitled to all
21 available statutory penalties, including those provided in California Labor Code section 203, as
22 well as all other available remedies.

23 **SEVENTH CAUSE OF ACTION**

24 **(For Indemnification - By Plaintiffs Individually and on Behalf of All Drivers and Helpers-**
25 **Labor Code § 2802)**

26 65. As a separate and distinct cause of action, Plaintiffs complain and reallege all of
27 the allegations contained in this complaint, and incorporate them by reference into this cause of
28 action as though fully set forth herein, excepting those allegations which are inconsistent with

1 this cause of action.

2 66. Pursuant to Labor Code § 2802(a), an employer shall indemnify its employees for
3 all necessary expenditures or losses incurred by the employees in direct consequence of the
4 discharge of their duties, or of their obedience to the directions of the employer, even though
5 unlawful, unless the employee, at the time of obeying the directions, believed them to be
6 unlawful.

7 67. During the Class Period, the Class Members, including Plaintiffs, were wrongfully
8 classified as independent contractors and incurred necessary business-related expenses and costs
9 that were not fully reimbursed by Defendants, including and without limitations, Defendants'
10 uniforms, phone, phone app purchases, transportation equipment such as plastic, felt.

11 68. During the Class Period, Defendants failed to reimburse the Class Members,
12 including Plaintiffs, for necessary business-related expenses and costs.

13 69. The Class Members, including Plaintiffs, are entitled to recover from Defendants
14 their business-related expenses and costs incurred during the course and scope of their activities
15 for Defendants' benefit, plus attorneys' fees, costs and interest accrued from the date on which
16 the employee incurred the necessary expenditures.

17 **EIGHTH CAUSE OF ACTION**

18 **(For Common Law Conversion - By Plaintiffs Individually and on Behalf of All Drivers**
19 **and Helpers: California Civil Code §§ 3336 and 3294)**

20 70. As a separate and distinct cause of action, Plaintiffs complain and reallege all the
21 allegations contained in this complaint, and incorporate them by reference into this cause of
22 action as though fully set forth herein, excepting those allegations which are inconsistent with
23 this cause of action.

24 71. During the Class Period, Defendants have wrongfully withheld and failed to pay
25 Drivers and Helpers, including Plaintiffs, wages and other compensation due them for overtime
26 work, for meal and rest periods, and as otherwise required pursuant to the Employment Laws and
27 Regulations.

28 ///

1 72. At all relevant times, Defendants have had a legal obligation imposed by statute to
2 pay Drivers and Helpers, including Plaintiffs, all overtime wages and compensation due. Such
3 wages and compensation belong to Drivers and Helpers, including Plaintiffs, at the time the labor
4 and services are provided to Defendants and, accordingly, such wages and compensation are the
5 property of Drivers and Helpers, including Plaintiffs.

6 73. Defendants have knowingly and intentionally failed to pay Drivers and Helpers,
7 including Plaintiffs, the legal minimum wage, overtime wages for hours worked over eight hours
8 in a day and forty hours in a workweek, failed to compensate them for meal and rest periods, and
9 failed to provide them with other compensation due. Defendants have intentionally converted
10 the wages and compensation of Drivers and Helpers, including Plaintiffs, by

11 a. Withholding earned overtime wages and other compensation which the
12 Drivers and Helpers, including Plaintiffs, owned or had the right to own and had the legal right to
13 hold, possess and dispose of, and then,

14 b. Taking the overtime wages and other compensation due to the Drivers and
15 Helpers, including Plaintiffs, and utilizing such wages and compensation for Defendants' own
16 use and benefit.

17 74. Among other thing, by employing an unlawful company practice as demonstrated
18 by Defendants' compensation scheme of paying "flat rate", Defendants have converted such
19 wages and compensation as part of an intentional and deliberate scheme to maximize profits at
20 the expense of Drivers and Helpers, including Plaintiffs. Defendants' conversion has been done
21 with the advance knowledge, express or implied authorization, and/or ratification of Defendants'
22 respective corporate officers, directors and managing agents.

23 75. In refusing to pay all of the wages, overtime wages, expense reimbursements and
24 other compensation due to the Drivers and Helpers, including Plaintiffs, Defendants have
25 knowingly, unlawfully and intentionally taken, appropriated and converted such wages and
26 compensation for Defendants' own use, purpose and benefit. At the time the conversion took
27 place, Drivers and Helpers, including Plaintiffs, were entitled to immediate possession of the
28 wages earned.

1 76. The Drivers and Helpers, including Plaintiffs, have been injured by Defendants'
2 intentional conversion of such wages and compensation. The Drivers and Helpers, including
3 Plaintiffs, are entitled to all monies converted by Defendants, with interest, as well as any and all
4 profits, whether direct or indirect, which Defendants' acquired by their unlawful conversion.

5 77. Furthermore, Defendants' conversion was oppressive, malicious and/or in
6 conscious disregard of the rights of Drivers and Helpers, including Plaintiffs, who are thus
7 entitled to punitive damages.

8 **NINTH CAUSE OF ACTION**

9 **(For Unfair Competition - By Plaintiffs Individually and on Behalf of All Drivers and**
10 **Helpers: California Business & Professions Code §§ 17200, *et seq.*)**

11 78. As a separate and distinct cause of action, Plaintiffs complain and reallege all the
12 allegations contained in this complaint, and incorporate them by reference into this cause of
13 action as though fully set forth herein, excepting those allegations which are inconsistent with
14 this cause of action.

15 79. Defendants' violations of the Employment Laws and Regulations as alleged in
16 this Complaint, including Defendants'

- 17 a. Failure and refusal to pay Drivers and Helpers, including Plaintiffs, wages
18 for all hours worked;
19 b. Failure and refusal to pay Drivers and Helpers, including Plaintiffs, the
20 legal minimum wage of \$8.00;
21 c. Failure and refusal to pay Drivers and Helpers, including Plaintiffs,
22 overtime wages;
23 d. Failure and refusal to provide Drivers and Helpers, including Plaintiffs,
24 with meal and rest periods;
25 e. Failure and refusal to provide Drivers and Helpers, including Plaintiffs,
26 with timely and accurate wage and hour statements;
27 f. Failure to pay Drivers and Helpers, including Plaintiffs, compensation in a
28 timely manner upon their termination or resignation;

1 9. For cost of suit incurred herein;

2 10. For disgorgement of profits garnered as a result of Defendants' unlawful failure to
3 pay overtime premium compensation and meal and rest period compensation; and

4 11. For such further relief as the Court may deem appropriate.

5 DATED: February 13, 2018

THE LAW OFFICES OF THOMAS W. FALVEY
MARLIN & SALTZMAN, LLP

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8 By: 

MICHAEL H. BOYAMIAN

9 Attorneys for Plaintiffs Pedro Espinoza, Robert
10 Alfaro, and Mario Navarro, Individually and on
11 Behalf of All Similarly Situated Individuals

12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs Pedro Espinoza, Robert Alfaro, and Mario Navarro, individually and on behalf
14 of all similarly situated individuals, demand jury trial of this matter.

15 DATED: February 13, 2018

THE LAW OFFICES OF THOMAS W. FALVEY
MARLIN & SALTZMAN, LLP

17 By: 

18 MICHAEL H. BOYAMIAN

19 Attorneys for Plaintiffs Pedro Espinoza, Robert
20 Alfaro, and Mario Navarro, Individually and on
21 Behalf of All Similarly Situated Individuals
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