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

PAOLO MENDOZA, BENJAMIN HANNA,  
and VICTORIA MCALLISTER, on their own  
behalf and on the behalf of all others similarly  
situated,

Plaintiffs,

v.

AMERICAN SERVICE MEDICAR CO., a  
Washington corporation; PARATRANSIT  
SERVICES, a non-profit Washington  
corporation;

Defendants.

NO. 16-2-23249-3 SEA

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

Plaintiffs PAOLO MENDOZA, BENJAMIN HANNA, and VICTORIA  
MCALLISTER (“Plaintiffs”), individually and on behalf of all others similarly situated, by and  
through their attorneys of record, for their complaint against Defendants AMERICAN  
SERVICE MEDICAR CO., PARATRANSIT SERVICES (“Defendants”) hereby states and  
alleges as follows:

1  
2 **I. INTRODUCTION**

3 1.1 Defendants jointly operated transit services for patients receiving public health  
4 healthcare benefits in and around King County, Washington, including in Seattle, Washington  
5 on more than an occasional basis.

6 1.2 Defendants engaged in a common scheme of wage and hour violations against  
7 its driver employees. Defendants employ drivers who operate AMERICAN SERVICE  
8 MEDICAR CO. (“ASM”) owned vehicles to transport patients from their homes to healthcare  
9 facilities throughout King, Pierce, and Kitsap Counties. Instead of compensating delivery  
10 drivers for all hours worked, Defendants implemented a pay scheme that capped employees’  
11 pay at 160 hours a month at amounts between \$2,000 to \$2,400 per month regardless of the  
12 amount of actual regular and overtime hours’ drivers worked per pay period.

13 1.3 Defendants willfully denied Plaintiffs and the Class members meal and rest  
14 breaks. Defendants’ policies prevented drivers from taking meal and rest breaks. Further,  
15 Defendants understaffing caused drivers to work through meal and rest breaks in order to meet  
16 scheduling requirements.

17 1.4 Defendants’ policy requiring that Plaintiffs pay for car washes constitutes an  
18 unlawful deduction from employees’ wages.

19 1.5 Defendants implemented a policy requiring that Plaintiffs and Class members  
20 submit company time cards after their work shifts at a residential address. Employees were not  
21 compensated hours worked in submitting company time records at the required residential  
22 address.



1 **IV. CLASS ACTION ALLEGATIONS**

2 4.1 Plaintiffs bring this case as a class action pursuant to Civil Rule 23(b)(3) on  
3 behalf of a class consisting of:

4 All current and former Non-Emergency Transportation (NEMT) Driver employees  
5 who worked for PARATRANSIT SERVICES and AMERICAN SERVICE  
6 MEDICAR for any period of time in the last three years. Futhermore, the Court has  
7 found it appropriate to create the following sub-classes:

- 8 (a) Employees who were paid on a commission/piece rate basis; and
- 9 (b) Employees who were paid hourly.

10 Excluded from this class are Defendants, any entity in which Defendants have a  
11 controlling interest or which have controlling interest in Defendants, and Defendants' legal  
12 representatives, assignees and successors. Also excluded are any judges to whom this case is  
13 assigned and any member of an assigned judge's immediate family.

14 4.2 Plaintiffs believe there are at least 40 current and former employees in the Class.

15 4.3 Plaintiffs' claims are typical of the claims of the members of the Class because  
16 Plaintiffs are drivers who, like the members of the Class, sustained damages arising out of  
17 Defendants' common course of wage and hour violations.

18 4.4 Plaintiffs will fairly and adequately protect the interests of the Class members.  
19 Plaintiffs have retained counsel competent and experienced in complex class action litigation,  
20 including employment law.

21 4.5 Common questions of law and fact exist as to Plaintiffs and all members of the  
22 Class and predominate over any questions solely affecting individual members of the Class.  
23 Among the questions of law and fact common to the Plaintiffs and the Class are:

1 a. Whether Defendants engaged in a common course of failing to pay minimum  
2 wage, under state and city ordinance, for all regular hours worked to Plaintiffs and Class  
3 members;

4 b. Whether Defendants engaged in a common course of failing to pay overtime  
5 wages to Plaintiffs and Class members for all hours worked over 40 per week;

6 c. Whether Defendants engaged in a common course of failing to reimburse  
7 Plaintiffs and Class members for car maintenance expenses and time;

8 d. Whether Defendants engaged in a common course of unlawful deductions of  
9 Plaintiffs and Class members' wages;

10 e. Whether Defendants' conduct, above, was willful;

11 f. Whether Defendants violated RCW 49.46.020 as to Plaintiffs and Class  
12 members;

13 g. Whether Defendants violated RCW 49.46.090 as to Plaintiffs and Class  
14 members;

15 h. Whether Defendants violated RCW 49.48.030 as to Plaintiffs and Class  
16 members;

17 i. Whether Defendants violated RCW 49.52.050 as to Plaintiffs and Class  
18 members;

19 j. Whether Defendants violated RCW 49.52.070 as to Plaintiffs and Class  
20 members;

21 k. Whether Defendants complied with WAC 296.128.010; and

22 l. The nature and extent of class-wide injury and the measure of compensation for  
23 such injury.



1           5.3     Typically, patients place an order for transit services through either Defendants  
2 Paratransit or ASM. Paratransit and ASM work jointly to dispatch drivers to patients who make  
3 orders for transit services.

4           5.4     Drivers have the same primary job duty—to transfer patients to and from their  
5 origin destination to medical care facilities throughout Washington State including King  
6 County and the City of Seattle.

7           5.5     Defendants willfully failed to pay all wages earned to employees by capping  
8 wages for drivers at 40 hours a week or 160 hours a month. This cap occurred despite Plaintiffs  
9 routinely working over 40 hours per week and 160 hours per month.

10          5.6     Defendants required that Plaintiffs get oil changes every 3,000-3,500 miles on  
11 Defendants-owned transport vehicles. Typically, Plaintiffs had too many driving obligations  
12 during their scheduled shifts to get oil changes for Defendants-owned vehicles and therefore  
13 drivers set service appointments before or after shift times. Employee drivers were required to  
14 take the vehicle to get the oil changed.

15          5.7     Defendants had a consistent practice of refusing to pay any regular or overtime  
16 wages for Plaintiffs and Class members who spent time performing car maintenance on  
17 Defendants-owned vehicles while not on their shift.

18          5.8     Once a week, Defendants required Plaintiffs to deliver their timecards to a  
19 designated residential address. Plaintiffs dropped off their timecards after scheduled driving  
20 shifts were completed or on their days off. Defendants did not pay Plaintiffs any wages for the  
21 time Plaintiffs spent delivering their timecards to Defendants.

22          5.9     Defendants had an unwavering policy of not paying overtime wages to  
23 employees for hours worked over 40 per week.

1           5.10 Defendants required that Plaintiffs and Class members pay out of their own  
2 pocket to wash Defendants-owned vehicles for the benefit of Defendants at Plaintiffs and Class  
3 members' own expense.

4           5.11 Plaintiffs and members of the Class have been subject to similar driving  
5 conditions, vehicle expenses, travel distances, and transit frequencies.

6           5.12 Plaintiffs and members of the Class have been subject to the same pay policies  
7 and practices of Defendants.

8           5.13 Upon information and belief, all of Defendants' other drivers have had similar  
9 experiences to those of Plaintiffs. Specifically, they were subject to the same 40-hour week cap  
10 on hourly wage payments regardless of actual hours worked; each Class member did not  
11 receive compensation for performing vehicle maintenance on Defendants' vehicles; each Class  
12 member paid for washing Defendants' vehicles at their own expense; and all Class Members  
13 received inaccurate paystubs that did not reflect all regular and overtime hours worked during  
14 each pay period.

15           5.14 Based on the allegations set forth above, Defendants' systematic willful refusal  
16 to pay employees resulted in company-wide minimum wage violations under both state and  
17 local laws.

18           5.15 Upon information and belief, Defendants have been on notice that its refusal to  
19 compensate non-exempt employees for all hours worked violate Washington State and City of  
20 Seattle Minimum Wage and Overtime Law.

21           5.16 Based on the effect of Defendants' flawed compensation policies and practices,  
22 Plaintiffs and members of the Class have been paid an hourly wage below the applicable state  
23 and Seattle minimum wage; they have thereby been systematically deprived of reasonably-

1 approximate hours worked and reimbursements, resulting in their wages falling below the state  
2 and city minimum wage in some or all workweeks.

3 5.17 Plaintiffs and members of the Class have experienced under-reimbursements for  
4 vehicle expenses, which have reduced their wages below the minimum wage rate of the State of  
5 Washington and the City of Seattle.

6 **VI. FIRST CLAIM FOR RELIEF**  
7 **(Payment of Wages Less Than Entitled: RCW 49.46, *et seq.*, Seattle Municipal Code**  
8 **(SMC) 14.19 *et seq.*, & SMC 14.20 *et seq.*)**

8 6.1 Plaintiffs reallege and incorporate by reference each and every allegation set  
9 forth in the preceding paragraphs.

10 6.2 RCW 49.46.120 establishes Washington State's minimum wage and provides  
11 for enforcement of more favorable minimum wages that may be established by federal, state, or  
12 local law or ordinance.

13 6.3 By the actions alleged above, Defendants failed to pay Plaintiffs and Class  
14 members minimum wage pursuant to RCW 49.46 *et seq.*, SMC 14.19 *et seq.*, and SMC 14.20  
15 *et seq.*

16 6.4 By the actions alleged above, Defendants have violated the provisions of RCW  
17 49.46.020, RCW 49.46.090, RCW 49.46.120, RCW 49.46.130, SMC 14.19 *et seq.*, and SMC  
18 14.20 *et seq.*

19 6.5 As a result of the unlawful acts of Defendants, Plaintiffs and Class members  
20 have been deprived of compensation in amounts to be determined at trial, and pursuant to RCW  
21 49.46.090, SMC 14.19.110, and SMC 14.20.090, are entitled to recover such amounts,  
22 including interest thereon, and attorneys' fees and costs (and further including liquidated  
23 damages under SMC 14.19.110 and SMC 14.20.090).

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**VII. SECOND CLAIM FOR RELIEF  
(Willful Refusal to Pay Wages: RCW 49.52.050)**

7.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

7.2 RCW 49.52.050(2) provides that any employer who “willfully and with intent to deprive the employee of any part of his wages, pays any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract” is guilty of a misdemeanor.

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

7.4 The alleged unlawful actions by Defendants against Plaintiffs and Class members, as set forth above, were committed willfully and with intent to deprive Plaintiffs and Class members of part of their wages.

7.5 As such, based on the above allegations, Defendants violated the provisions of RCW 49.52.050.

7.6 As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been deprived of compensation in amounts to be determined at trial, and pursuant to RCW 49.52.070 are entitled to recovery of twice such amounts, including interest thereon, and attorneys’ fees and costs.

**VIII. PRAYER FOR RELIEF**

Wherefore, Plaintiffs, on their own behalf and on behalf of the members of the Class, prays for judgment against Defendants as follows:

A. Certify the proposed Class;

- 1 B. Appoint Plaintiffs PAOLO MENDOZA, BENJAMIN HANNA, and  
2 VICTORIA MCALLISTER as Class representatives;
- 3 C. Appoint the undersigned attorneys as Class counsel;
- 4 D. Declare that the actions complained of herein violate Washington's statutes,  
5 Seattle's ordinances, and administrative codes;
- 6 E. Award Plaintiffs and Class members compensatory, liquidated, and exemplary  
7 damages;
- 8 F. Award attorneys' fees and costs to Plaintiffs' attorneys, as allowed by law;
- 9 G. Award pre-judgment and post-judgment interest to Plaintiffs and Class  
10 members, as provided by law;
- 11 H. Grant and injunction against Defendants from engaging in the unlawful and  
12 wrongful conduct set forth herein; and,
- 13 I. Grant such other and further relief as this Court deems necessary.

14 DATED this 4<sup>th</sup> day of January, 2019.

15  
16 **REKHI & WOLK, P.S.**

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