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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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DAVID KIRSCH, on behalf of himself and all
others similarly situated,

Index No.: 24671/2016E

Plaintiff,

**FIRST AMENDED CIVIL
CLASS ACTION COMPLAINT**

-against-

JURY TRIAL DEMANDED

THE PADDED WAGON, INC.

Defendant.

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Plaintiff DAVID KIRSCH (herein “MR. KIRSCH” or “Plaintiff”), on behalf of himself and a class of all others similarly situated (herein “the Class”), by and through the undersigned counsel, as and for the Complaint in this class action against Defendants THE PADDED WAGON, INC., (herein “Defendant”) hereby alleges upon personal knowledge as to some, and information and belief as to the rest, as follows:

NATURE OF THE ACTION

1. Defendant has a policy and/or practice of (i) deceiving its customers into believing it can charge a higher hourly rate for shipping household goods than is permitted; (ii) misrepresenting

to its customers the true cost of parking tickets it incurs and passing on those costs to its customers; and (iii) failing to notify its customers in advance that they are responsible for the cost of parking tickets it incurs during their move.

2. Defendant is a leader in an industry rife with consumer deception. According to U.S. General Accountability Office analysis, there were 22,880 customer complaints against household goods moving companies between 2001 and 2008.¹

3. Examples of the customer complaints against Defendant include the following:

- a. “David K.” writes on Yelp.com that the Padded Wagon “Gave me a written estimate. Once everything is packed, they call me and tell me the price is going to be 50% higher. I have to pay or they will keep my boxes hostage until I pay. Unethical thieves.”
- b. “Cynthia K.” writes on Yelp.com of the Padded Wagon, “SCAM EXPERTS!! Absolutely the most dishonest business I have ever dealt with in my entire life. At this moment (2/3/11) they still have outstanding at least 5 or 6 complaints filed at the Better Business of Metropolitan New York City which they are stonewalling, mine included, and are on the verge of losing their BBB prior rating. These are sleazy lying people who hold your goods hostage after they pick up your goods and before they deliver them unless you pay them more than DOUBLE the "GUARANTEED PRICE" written on their contract! Their threat is that they will "put the belongings in storage" and YOU will have to pay for the storage on top of everything else....THE BOTTOM OF THE BARREL IN MOVING COMPANIES!! BEWARE!!!”
- c. “Jessica S.” writes on Yelp.com of the Padded Wagon, “SCOUNDRELS, THIEVES, LIARS!!! DO NOT USE PADDED WAGON FOR YOUR MOVES!! Three words I would use to describe them!! They gave me an estimate for my move and finally on the day of the move, they muscled me into signing on a much larger amount....”
- d. “Bree S.” writes on Yelp.com of the Padded Wagon, “Hmmm, where should I start? With the moving guying telling me he could pull over and unload my

¹ *HOUSEHOLD GOODS MOVING INDUSTRY: Progress Has Been Made in Enforcement, but Increased Focus on Consumer Protection Is Needed*, U.S. General Accountability Office, October 2009.

furniture on the side of the road or...the additional fees I wasn't told about until after all of my furniture was loaded onto the truck....”

- e. “Alex” writes on Ripoffreport.com, “The Padded Wagon is a slick corrupt organization that masquerades as a moving company. We were scammed and coerced by Padded Wagon, Inc. into paying a charge that more than DOUBLED the amount of the price GUARANTEED to us in our contract with this moving company. To add injury to injury, the company failed to complete the move....The company representative warned us that our belongings would be placed in storage, for which we would be charged, until we met their demands in full.”

4. Plaintiff, on behalf of himself, and the Class, brings this action against Defendant, seeking damages for violations of N.Y. G.B.L. §349 and other New York common laws.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over Defendant THE PADDED WAGON, INC., pursuant to C.P.L.R. §301 because Defendant is a domestic business corporation authorized to conduct business in New York State and does conduct business throughout the State of New York.

6. Venue is proper in the Supreme Court of the State of New York, Bronx County, pursuant to CPLR §503 because Defendant is a resident of the Bronx County.

7. At all relevant times, Defendant committed the acts, caused, or directed others to commit the acts, or permitted others to commit the acts alleged in this Complaint. Any allegations about acts of the corporate Defendant means that those acts were committed through their officers, directors, employees, agents, and/or representatives while those individuals were acting within the actual or implied scope of their authority.

THE PARTIES

8. At all relevant times, Plaintiff DAVID KIRSCH is and has been a citizen of the State of New York, and resides within the County of New York, and, along with the Class, was a customer of Defendant.

9. At all relevant times, Defendant THE PADDED WAGON, INC., has been a duly registered domestic business corporation incorporated in New York, with its principal office at 163 Exterior Street, Bronx, New York.

FACTUAL ALLEGATIONS

10. Defendant is a moving company that averages \$25 million dollars in revenue each year, and has operated for over 60 years, according to its website.

11. A portion of Defendant's revenue is unlawfully obtained through the following deceptive practices.

Defendant's Parking Ticket Misrepresentations

12. As part of a policy and/or practice, Defendant charges its customers for parking tickets it incurs during the shipment of household goods within New York.

13. Upon information and belief, and as part of a policy and/or practice, Defendant charges its customers in excess of the true cost of the parking tickets Defendant incurs, thereby profiting off each parking ticket it charges to its customers.

14. For example, on June 8, 2015, Defendant's agent misrepresented to Plaintiff that the total cost for parking tickets incurred during his move within New York City was \$130.00 on a form bearing the caption "Uniform Household Goods Bill of Lading and Freight Bill".

15. Plaintiff paid the \$130.00 for parking tickets.

16. Upon information and belief, the true cost of the parking tickets, if any, was less than \$130.00 because Defendant was reimbursed and is always reimbursed for its parking tickets through its enrollment in the Stipulated Fine and/or Commercial Abatement Programs offered by the New York Department of Finance.

17. As a result, Defendant profited from incurring the parking tickets by billing Plaintiff in excess of the true cost of the parking tickets.

18. Further, Defendant has a policy and/or practice of failing to notify its customers, including Plaintiff, in advance, that they are responsible for the cost of the parking tickets incurred by Defendant during their move.

Defendant Misrepresents The Rate it Can Lawfully Charge

19. Defendant is required to charge at a rate of no more or less than \$35.00 per hour, per employee, to ship household goods within New York.

20. As part of a policy and/or practice, Defendant deceives its customers into believing that it can charge a rate higher than \$35.00 per hour, per employee to ship household goods within New York.

21. As a result of Defendant's deception, its customers pay at a higher rate than Defendant is required to charge to ship household goods in New York.

22. As part of a policy and/or practice, Defendant deceives its customers into believing that the New York Department of Transportation ("NYDOT") has approved the rates Defendant charges in excess of \$35 per hour, per employee for the shipment of household goods in New York, when in fact, the NYDOT has not.

23. As part of a policy and/or practice, Defendant achieves this deception by affixing the NYDOT insignia and registration number to each bill that it sends to each and every one of its customers vis-a-vis a standardized form.

24. As a result of Defendant affixing the NYDOT insignia and registration number to each bill it sends to customers, Defendant's customers reasonably believe that the rates for the shipment of household goods in excess of \$35 per hour, per employee contained in the bill are approved by the NYDOT, when in fact, they are not.

25. For example, on June 8, 2015, Defendant billed Plaintiff at \$49.00 per hour, per employee (or \$6,860.00 for 14 hours of labor using ten employees) to ship Plaintiff's household goods within New York.

26. Defendant billed Plaintiff using a form it printed with the NYDOT insignia and registration number prominently displayed at the top of the form.

27. Defendant's use of NYDOT insignia and registration number led Plaintiff to reasonably believe that the rates contained therein had been approved by the NYDOT, when in fact, they had not.

28. Plaintiff thereafter paid the bill in full.

29. As a result of Defendant's deception, Plaintiff was over-charged \$1,780 in labor costs.

CLASS ALLEGATIONS

30. Plaintiffs bring this action as a Class action pursuant to C.P.L.R. §901 on behalf of themselves and all others similarly situated as follows:

All customers who entered into contracts with Defendants to ship goods during the period of three (3) years from the filing of this action to present, whom were charged a higher cost for parking tickets issued within New York City than what they cost Defendant, and were not reimbursed, and/or were not notified in advance that they were responsible for the cost of parking tickets incurred by Defendant, and/or whom were billed at higher

rates for shipping services than the rate Defendant is required to charge to ship household goods within New York on bills that utilized the NYDOT insignia and registration number.

31. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or complaint.

32. Excluded from the Class is any person or entity in which Defendant has a controlling interest, and the officers, directors, employees, affiliates, subsidiaries, legal representatives, heirs, successors, and their assigns of any such person or entity, together with any immediate family member of any officer, director, or employee of said companies. Also excluded from membership in the Class is any Judge or Magistrate presiding over this action and members of their families.

33. This action is properly maintainable as a class action.

34. Given the nature of the business involved, as provided in C.P.L.R. §901(a)(1), members of the Class are so numerous that joinder of all members is impracticable. The exact number of Class members and their addresses can be determined through appropriate discovery.

35. As provided in C.P.L.R. §901(a)(2), there are questions of law or fact common to the Class that predominate over any questions affecting only individual members, including:

- a. whether Defendant's conduct violated New York General Business Law §349;
- b. whether Defendant's conduct constituted a breach of contract;
- c. whether Defendant's conduct constituted unjust enrichment;
- d. whether Plaintiff and the members of the Class are entitled to damages; and
- e. whether Defendant profited from the unlawful practices described herein.

36. As provided in C.P.L.R. §901(a)(3), the proposed lead Plaintiff's claims are typical of the proposed Class because the proposed lead Plaintiff's claims are based upon the same legal theories as that of the members of the proposed Class. The proposed representative party's grievances, like the proposed Class's grievances, all arise out of the same deceptive business practices and course of conduct of Defendant. Further, the Plaintiff's damages arise out of a patterns of nearly identical and repetitive business practices conducted by Defendant.

37. As provided by C.P.L.R. §901(a)(4), the representative Plaintiff can adequately represent the Class. No conflict of interest exists between the representative and the Class members or with respect to the claims for relief requested.

38. The representative and its chosen attorneys are familiar with the subject matter of the lawsuit and have full knowledge of the allegations contained in this complaint so as to be able to assist in its prosecution. In addition, the representative's attorneys are competent in the areas of law relevant to this Complaint and have extensive experience in breach of contract, consumer fraud and class action litigation.

39. Furthermore, the resources available to said counsel ensure that litigation will not be hampered by lack of financial capacity. Plaintiff's attorneys have sufficient financial resources and are willing to finance the costs of litigation.

40. As provided by C.P.L.R. §901(a)(5), a class action is superior to any other available methods for adjudicating this controversy. The proposed class action is the surest way (i) fairly and expeditiously compensate so large a number of injured persons that constitute the Class; (ii) to keep the courts from becoming inundated by hundreds, perhaps thousands of repetitive cases,

and (iii) to reduce transaction costs so that the injured Class can obtain the most compensation possible.

41. Accordingly, class treatment presents a superior mechanism for fairly resolving similar issues and claims with repetitive and wasteful litigation relevant to this action.

COUNT ONE
VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW §349

42. The allegations contained in each paragraph set forth above in this Complaint are incorporated by reference as if fully set forth herein.

43. N.Y. GBL § 349(a) provides that “Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.”

44. Plaintiff and the members of the Class are customers of Defendant.

45. Defendant has engaged in a pattern and practice of materially deceptive and/or misleading practices that are consumer-orientated.

46. Such actions and failures to act have caused direct, foreseeable, and proximate damages to Plaintiff and other members of the Class.

COUNT TWO
BREACH OF CONTRACT

47. The allegations contained in each paragraph set forth above in this Complaint are incorporated by reference as if fully set forth herein.

48. Defendant’s misconduct constitutes a material breach of contract, and a breach of the implied covenant of good faith and fair dealing.

49. As such, Plaintiff and the Class have been injured.

COUNT THREE

UNJUST ENRICHMENT

50. The allegations contained in each paragraph set forth above in this Complaint are incorporated by reference as if fully set forth herein.

51. Defendant, through their wrongful conduct described above, have reaped substantial financial benefits at the expense of Plaintiff and the Class.

52. Defendant's profits would have been reduced, but for their wrongful and unlawful conduct.

53. Accordingly, Defendant has been unjustly enriched by their unlawful and wrongful conduct. Defendant should not be allowed to retain the proceeds and benefits conferred upon them by Plaintiff and the Class.

54. In equity and good conscience, it would be unjust and inequitable to permit Defendant to enrich themselves at Plaintiff and the Class' expense.

55. Therefore, Defendant must disgorge their unjustly acquired profits and other monetary benefits resulting from their unlawful conduct and provide restitution to Plaintiff and the Class.

WHEREFORE, Plaintiff, individually, and on behalf of the Class, prays for judgment, as follows:

a. declare this action to be a proper Class action and certify Plaintiff as representative and Counsel as Class Counsel of the Class, and enter an order requiring Defendants to bear the costs of the notice under C.P.L.R. 904(d);

b. order Defendant to reimburse Plaintiff and members of the Class due to Defendant's deceptive practices;

- c. order Defendant to disgorge all profits made as a result of its deceptive practices;
- d. award Plaintiff and Class members their cost and disbursements incurred in connection with this action, including reasonable attorneys' fees, and experts' fees, and other expenses incurred in prosecuting this action;
- e. award pre-judgment and post-judgment interest; and
- f. other such relief as the Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: New York, NY
September 19, 2016

Respectfully submitted,

MAYER LAW GROUP, LLC

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