

JOSEPH R. BECERRA (SBN: 210709)
BECERRA LAW FIRM
4014 Long Beach Blvd., Suite 300
Long Beach, California 90807
Telephone: (213) 542-8501
Facsimile: (213) 542-5556
Email: jbecerra@jrbecerrallaw.com

TORY JOSEPH FAVAROTE (SBN: 198521)
GLEASON & FAVAROTE LLP
4014 Long Beach Blvd., Suite 300
Long Beach, California 90807
Telephone: (213) 542-8501
Facsimile: (213) 542-5556
Email: tfavarote@gleasonfavarote.com

Attorneys for Plaintiff Jing Dong Zhang
on behalf of himself and all others
similarly situated

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 14 2020

BY 
BRIAN GUTIERREZ, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

CIV SB 2026778

JING DONG ZHANG, an individual
California resident on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

CA FAN TUAN INC., a California
corporation; and DOES 1-10, inclusive,

Defendant.

Case No. _____

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
PENALTIES**

1. INTENTIONAL MISCLASSIFICATION OF
EMPLOYEES AS INDEPENDENT
CONTRACTORS (LAB. CODE §226.8)
2. FAILURE TO PAY ALL WAGES DUE
(LAB. CODE §§ 204, 515, 1194, 1198,
CAL. CODE OF REG. § 11010 AND THE
IWC WAGE ORDERS.)
3. FAILURE TO TIMELY PAY ALL WAGES
(LAB. CODE §§ 204, 206, 206.5, 207,
209, 210, AND 215)
4. FAILURE TO PAY MINIMUM WAGE
(LAB. CODE §§ 1194, 1194.2, 1197.1,
1199, CAL. CODE OF REG. § 11090 AND
THE IWC WAGE ORDERS)
5. FAILURE TO PAY OVERTIME WAGES
(LAB. CODE §§ 510, 558, 1194, 1198)
6. FAILURE TO PROVIDE MEAL PERIODS
(LAB. CODE §§ 226.7, 512, CAL. CODE
REG. TITLE 8, §11070)

7. FAILURE TO PROVIDE REST PERIODS (LAB. CODE §§ 226.7, 512, 1198, THE IWC WAGE ORDERS AND CAL. CODE OF REG. TITLE 8 AND §11090(11))
8. UNLAWFUL DEDUCTION OF WAGES, WAGE THEFT AND UNLAWFULLY PASSING ALONG THE COSTS OF DOING BUSINESS TO EMPLOYEES (LAB. CODE §§ 221- 224, 400-410, 450-452, 1198, 2928 AND THE IWC WAGE ORDERS.)
9. FAILURE TO REIMBURSE BUSINESS EXPENSES (LAB. CODE §§ 2802)
10. FAILURE TO PAY WAGES AT TERMINATION (LAB. CODE §§ 201, 202, AND 203)
11. KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LAB. CODE § 226) AND KEEP ACCURATE TIME RECORDS (LAB. CODE § 1174(d))
12. VIOLATIONS OF THE INVESTIGATIVE CONSUMER REPORTING AGENCIES ACT AND LABOR CODE §432.5 (ICRAA CIV. CODE, 1 § 1786 ET SEQ.) AND CAL. LAB. CODE (§432.7)
13. VIOLATION OF THE UNFAIR COMPETITION LAW (BUS. & PROF. CODE §§ 16600, 17200-17208)
14. VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT, LABOR CODE §§ 2699 ET SEQ. ("PAGA")

DEMAND FOR TRIAL BY JURY

Plaintiff JING DONG ZHANG, an individual California resident on behalf of himself and all others similarly situated (herein referred to as "Plaintiff"), has brought this action against Defendant CA FAN TUAN INC., a California corporation and DOES 1-10 (hereafter referred to as "Defendant"). Plaintiff is informed and believes, and on that basis alleges as follows:

I. INTRODUCTION

1. This is a civil action seeking recovery for Plaintiff and all others similarly situated for unpaid overtime (including doubletime) wages, compensation for each meal period not provided, damages and penalties for failure to comply with wage statement provisions, plus attorneys' fees and costs under California Labor Code sections §§ 201, 202, 203, 204, 206, 206.5,

1 207, 209, 210, 215, 218.5, 218.6, 221-224, 226(a), 226(e), 226.7, 226.8, 432.7, 400-410, 450-452,
2 510, 512, 515, 515(d), 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2928, 2699 *et seq.*,
3 section 1021.5 of the California Code of Civil Procedure, IWC Wage Order 9-2001, California
4 Civil Code section §§ 1786 *et seq.*, and California Code of Regulations §§ 11010, 11070, 11090.
5 Plaintiff, on behalf of himself and all others similarly situated, also seeks monetary recovery for
6 Defendant's violations of California Business and Professions Code sections 16600 and 17200, *et*
7 *seq.*, including full restitution and/or disgorgement of all compensation retained by Defendant as a
8 result of their unlawful, fraudulent and/or unfair business acts and practices. Plaintiff also seeks all
9 available remedies and penalties as an aggrieved employee on behalf of the State of California
10 pursuant to PAGA.

11 2. Defendant operates and, at all times during the relevant liability period (four years
12 prior to the filing of the Complaint in this matter), has done business as an on-demand courier
13 service in San Bernardino County and throughout the state of California. In its endeavor,
14 Defendant hires individuals they call couriers or contractors (hereinafter and collectively, including
15 all similarly dutied positions, "Couriers") who monitor Defendant's web and smartphone-based
16 ordering application (hereinafter the "Fan Tuan App") and execute any orders which are placed by
17 Defendant's customers. Defendant misclassifies these Couriers as independent contractors. This
18 lawsuit challenges Defendant's wage and hour practices as they concern these Couriers.

19 3. Couriers who work for Defendant, including Plaintiff, regularly work more than 8
20 hours in a day and/or 40 hours in a work week. Couriers are misclassified by Defendant as
21 independent contractors, and therefore, under Defendant's policies, not eligible for almost any of
22 the protections provided to employees under the Labor Code.

23 4. The Couriers are not independent contractors by law¹, as they do not (1) provide
24 services directly to Defendant rather than to customers of the contracting business; (2) act free

26 ¹ While Assembly Bill 5 (hereinafter "AB 5") set new standards for independent
27 contractors, which unambiguously show that Plaintiff and the putative class have been
28 misclassified as independent contractors, even if AB 5 were to be overturned Plaintiff and the
putative class do not meet the requirements of being classified as independent contractors under
any previous standards in the state of California.

1 from the control and direction of the Defendant in connection with the performance of the work,
2 both under the contract for the performance of the work and in fact; (3) provide services directly to
3 the Defendant rather than to Defendant's customers; (4) contract freely with other businesses to
4 perform the same type of work as provided to Defendant; (5) set their own negotiable rates; and
5 (6) set their own hours and location of work. Instead the opposite of all these elements is true, as
6 the Couriers are assigned shifts within geographic areas, and make deliveries based on Defendant's
7 policies and rates, interact primarily with Defendant's customers according to Defendant's rules,
8 and are prohibited from providing similar services to any other business providing the same
9 services.

10 5. With respect to Plaintiff and the other putative class members, Defendant's
11 compensation program for its Couriers results in at least the following uniform policies and
12 practices that are in violation of California law:

- 13 a. It is the Defendant's uniform policy and procedure to misclassify its Couriers as
14 independent contractors and to not pay them overtime pay for hours over 8 in a day
15 or 40 in a week.
- 16 b. It is the Defendant's uniform policy and procedure to not provide and/or to refuse to
17 allow Couriers to take a first meal period within five hours of their shift beginning,
18 and/or a second meal period for shifts in excess of ten hours a day.
- 19 c. It is the Defendant's uniform policy and practice to not pay Couriers reporting time
20 pay for each shift in which the Couriers are required to report for work and then not
21 put to work for at least half of their scheduled shift.
- 22 d. It is the Defendant's uniform policy and procedure to not provide and/or to refuse to
23 allow Couriers to take paid off-duty rest breaks within the first the first 4 hours of
24 their shift or every major fraction thereof for shifts lasting longer than 3.5 hours.
25 Furthermore, Defendant did not provide paid off-duty rest breaks for any subsequent
26 4 hour periods worked or major fraction thereof.
- 27 e. It is the Defendant's uniform policy and practice to pay Couriers only a small fee
28 and a small portion of their mileage for each delivery made, and not for all the time

1 spent working or otherwise under Defendant's control, which regularly results in the
2 Couriers being paid below minimum wage.

3 f. It is Defendant's uniform policy and practice to pass along all the costs of doing
4 business to the Couriers including but not limited to the costs of vehicle insurance,
5 unemployment insurance, workers compensation coverage, gas and wear and tear on
6 the vehicles they used to make deliveries for Defendant, upkeep of Defendant's
7 marketing and delivery materials, the costs of using the Couriers' mobile phones as
8 well as any accompanying voice, SMS, and data plan in order to use the Fan Tuan
9 App, the costs of taxes, tickets, parking, tolls, and for the Couriers to otherwise
10 indemnify Defendant against any and all losses whatsoever.

11 g. It is Defendant's uniform policy and practice to make unlawful deductions to the
12 Couriers' wages, to withhold money payable to the Couriers at Defendant's sole
13 discretion, to require the forfeiture of wages, and to require deposits/bonds of
14 money in order to work for Defendant.

15 h. It is Defendant's uniform policy and practice to deny the Couriers any and all paid
16 time off, including sick days and paid family leave.

17 i. It is Defendant's uniform policy and practice to not regularly pay Couriers for their
18 labor, both while employed and promptly at termination, and instead require the
19 Couriers to prepare and submit summaries of their deliveries which are payable
20 within 30 days of submission to Defendant. At termination if the Couriers do not
21 submit their delivery summaries within 5 business days, Defendant considers all
22 wages forfeit.

23 j. It is Defendant's uniform policy and procedure to not present Couriers with accurate
24 and properly itemized wage statements, instead requiring the Couriers to prepare
25 delivery summaries of their work which are paid without the benefit of a legally
26 sufficient wage statement under California Labor Code §226(a) including but not
27 limited to: a wage statement produced by the employer; listing the correct total
28 number of hours worked; listing the correct rates of pay for all hours worked; listing

1 the number of straight time and overtime hours worked; providing the correct name
2 and address of the employer and all deductions.

3 6. Plaintiff, on behalf of himself and all similarly situated current and former Couriers
4 that were classified as independent contractors of Defendant, seeks payment of unpaid wages,
5 including unpaid overtime wages and unpaid minimum wages, reimbursement for business
6 expenses and costs of doing business passed on to the Couriers, plus damages and penalties for the
7 unpaid wages, business expenses, costs of doing business, inaccurate and improperly itemized
8 wage statements, compensation for unpaid and not provided meal periods, waiting time penalties,
9 statutory damages, punitive damages, liquidated damages, and attorneys' fees, interest, and costs
10 pursuant to statute.

11 7. Plaintiff, on behalf of himself and all putative Class Members, also seeks injunctive
12 relief, restitution, and disgorgement of all benefits Defendant has enjoyed from the above-
13 mentioned unlawful activity, wage theft, and illegal business contracts pursuant to Business and
14 Professions Code sections 16600, and 17200-17208.

15 **II. JURISDICTION AND VENUE**

16 8. The California Superior Court has jurisdiction in this matter due to Defendant's
17 violations of the Labor Code, including but not limited to sections 226, 226.7, 510, 512, 515, 558,
18 1174, 1194, 1198 and Business and Professions Code sections 17203 and 17204, the Industrial
19 Welfare Commission (hereinafter "IWC") Wage Order(s) and related common law principles. The
20 California Superior Court also has jurisdiction in this matter because both the individual and
21 aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits
22 of the Superior Court and will be established at trial, according to proof.

23 9. Venue as to Defendant is proper in San Bernardino County and in this judicial
24 district, pursuant to California Code of Civil Procedure sections 395(a) and 395.5 because
25 Defendant operates throughout the State of California and extensively in San Bernardino County,
26 and many of the breaches occurred and liability for the acts complained of herein arose in San
27 Bernardino County and in this judicial district. Defendant operates their on-demand courier
28 service, and transacts business, including engaging in the conduct giving rise to liability in this

1 action within San Bernardino County.

2 III. PARTIES

3 **A. Plaintiff**

4 10. Plaintiff Jing Dong Zhang is a California resident and an individual over the age of
5 eighteen and is employed by Defendant as a Courier.

6 11. Within the last four years and as recently as July 23, 2020, Plaintiff worked for
7 Defendant as a Courier, and in so doing was required by Defendant to work more than 8 hours per
8 day and in excess of 40 hours per week without being paid overtime compensation. Often Plaintiff
9 would wait during his assigned shift for deliveries to come in but was not paid for this time,
10 including when he worked more than 8 hours in a day.

11 12. Plaintiff is only paid for the deliveries that he made and a small portion of the
12 mileage he drove and not for the time he spent working, this resulted in him being paid less than
13 minimum wage.

14 13. Plaintiff is subject to all of Defendant's uniform policies including but not limited to
15 those which: require him to cover almost all business expenses for Defendant including but not
16 limited to the cost of the vehicle he uses, insurance, workers compensation, taxes, fuel, the cost of
17 his own background check, Fan Tuan branded "warming boxes" and promotional materials; make
18 deductions from his wages if he is late for a shift, does not show up for a shift, or if he leaves a
19 shift early; fail to pay all wages at termination, instead receiving payment for his deliveries within
20 approximately 5 days of submission of a summary of his deliveries and mileage; and fail to provide
21 meal periods and rest breaks.

22 **B. Defendant**

23 14. Defendant is a California corporation operating throughout California, as an on-
24 demand courier and delivery service operated primarily through the Fan Tuan App.

25 15. The true names and capacities, whether individual, corporate, associate, or
26 otherwise, of Defendant sued herein as DOES 1 through 10, inclusive, are currently unknown to
27 Plaintiff, who therefore sues these Defendants by such fictitious names. Plaintiff is informed and
28 believes, and based thereon alleges, that DOES 1 through 10 are now, or at all times mentioned in

1 this Complaint were doing business in the state of California, and that each of the defendants
2 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
3 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
4 capacities of the defendants designated hereinafter as DOES when such identities become known.

5 16. Plaintiff is informed and believes, and based thereon alleges, that each defendant
6 acted in all respects pertinent to this action as the agent of the other defendants, carried out a joint
7 scheme, business plan or policy to perform the unlawful acts and practices described herein, and
8 the acts of each defendant are legally attributable to the other defendants as each defendant has
9 ratified, approved, and authorized the acts of each of the remaining defendants with full knowledge
10 of said acts.

11 IV. CLASS ACTION ALLEGATIONS

12 17. Plaintiff brings this action as a class action on behalf of himself and all other
13 persons similarly situated, pursuant to Code of Civil Procedure section 382. The "Class Period" is
14 four (4) years from the filing of this Complaint up to and including the time of trial for this matter.
15 The class which Plaintiff seeks to represent is composed of and defined as follows:

16 **All individuals employed by Defendant as an independent contractor in**
17 **the job title of "Courier", "Contractor" or other similar titles/duties**
18 **who performed deliveries for Defendant in California at any time within**
19 **the Class Period.**

20 18. Plaintiff is informed and believes that the class consists of a hundred or more
21 persons. The membership of the class is so numerous and dispersed geographically that actual
22 joinder of all of the class members is impracticable.

23 19. During this litigation, Plaintiff may find it appropriate or necessary to amend the
24 definition of the class. Plaintiff reserves his right to continue to refine the class definition prior to
25 class certification. Similarly, although subclasses are not anticipated at this time, Plaintiff reserves
26 the right to move for certification of subclasses divided along any reasonable point of distinction
27 that might exist among class members.

28 ///

1 20. Ascertainable Class: The proposed class is ascertainable in that class members can
2 self-identify their membership status with reference to the class descriptions and class members
3 can also be identified and located using information contained in Defendant's payroll and
4 personnel records.

5 21. Numerosity: The potential quantity of members of the class as defined is so
6 numerous that joinder of all members would be unfeasible and impractical. The disposition of their
7 claims through this class action will benefit both the parties and this Court. Although the number
8 of members of the putative class is unknown to Plaintiff at this time, Plaintiff is informed and
9 believes that putative class members number in excess of 100 individuals.

10 22. Typicality: The claims of Plaintiff are typical of the claims of all members of the
11 putative class because all members of the class suffered violations of their legal rights and
12 sustained injuries and damages from Defendant's common course of conduct in violation of law, as
13 alleged herein. Specifically, Defendant's employment and payroll policies experienced by Plaintiff
14 are developed and overseen by a centralized administration and applied uniformly throughout its
15 California operations. Similarly, Defendant distributed the same policy materials, job description,
16 and employment contract to Plaintiff and its other California-based Couriers, without distinction as
17 to their geographic location within the state.

18 23. Adequacy: Plaintiff is an appropriate and legally adequate representative of the
19 class and will fairly protect the interests of the members of the class, has no interest antagonistic to
20 the members of the class, and will vigorously pursue this suit via attorneys who are competent,
21 skilled and experienced in litigating large class actions of this type.

22 24. Superiority: The nature of this action and the laws available to Plaintiff make use of
23 the class action format, which is a particularly efficient and appropriate procedure to afford relief to
24 Plaintiff and the putative class for the wrongs alleged herein, as follows:

- 25 a. The case involves a large corporate Defendant and a large number of individual
26 class members with many relatively small claims who share common issues of law
27 and fact;

28 ///

- 1 b. If each individual member of each of the class was required to file an individual
2 lawsuit, the Defendant would necessarily gain an unconscionable advantage because
3 Defendant would be able to exploit and overwhelm the limited resources of each
4 individual member of the class with Defendant's vastly superior financial and legal
5 resources;
- 6 c. Requiring each individual member of the class to pursue an individual remedy
7 would discourage the assertion of lawful claims by the members of the class who
8 would be disinclined to pursue an action against Defendant because of an
9 appreciable and, in the case of putative class members who continue in Defendant's
10 employ, a justifiable fear of retaliation and permanent damages to their lives, careers
11 and well-being;
- 12 d. Proof of the common and unlawful business acts and practices experienced by
13 Plaintiff is representative of the class and will establish the right of each of the
14 members of the class to recover on the causes of action alleged herein;
- 15 e. The prosecution of separate actions by the individual members of the class, even if
16 possible, would create a substantial risk of inconsistent or varying verdicts or
17 adjudications among the individual members of the class and would establish
18 potentially incompatible standards of conduct for Defendant; or legal determinations
19 with respect to individual members of the class which would, as a practical matter,
20 be dispositive of the interest of the other members of the class who are not parties to
21 the adjudications or which would substantially impair or impede the ability of the
22 members of the class to protect their interest;
- 23 f. The cost to the court system of adjudicating a multitude of individual actions would
24 be substantial and unduly burden the Court and the litigants; and
- 25 g. Finally, the alternative of filing a claim with the California Labor Commissioner is
26 not superior, given the lack of discovery in such proceedings, the availability of
27 fewer remedies, and the fact that the losing party has the right to a trial de novo in
28 the Superior Court.

- 1 25. Existence and Predominance of Common Questions of Fact and Law: Common
2 questions of law and fact predominate over questions affecting only individual members of the
3 putative class including, without limitation:
- 4 a. Whether members of the class are, as a matter of law, classified properly as
5 independent contractors;
 - 6 b. Whether Defendant intentionally misclassified the members of the class as
7 independent contractors;
 - 8 c. Whether members of the class worked more than 8 hours in a day and/or 40 hours in
9 a workweek without being paid proper overtime for such overtime hours worked at
10 the proper premium pay rate;
 - 11 d. Whether members of the class were not paid a minimum wage;
 - 12 e. Whether members of the class were not paid reporting time pay for when Defendant
13 required members of the class to report for work and then were not put to work for
14 at least half of their scheduled shift;
 - 15 f. Whether members of the class worked more than five hours without Defendant
16 providing a meal period, or pay in lieu thereof, as required by Labor Code section
17 512;
 - 18 g. Whether members of the class worked more than ten hours without Defendant
19 providing a second meal period, or pay in lieu thereof, as required by Labor Code
20 section 512;
 - 21 h. Whether members of the class worked more than 3.5 hours without being provided
22 with an off-duty paid 10-minute rest break, or pay in lieu thereof, as required by
23 IWC Wage Order 9-2001,
 - 24 i. Whether the members of the class were subject to unlawful wage deductions;
 - 25 j. Whether class members were reimbursed for all business expenses;
 - 26 k. Whether Defendant unlawfully passed along to cost of doing business onto the class
27 members;

28 ///

1. Whether the class received wage statements that failed to include the hourly and overtime rates of pay, or any other item required by Labor Code section 226(a);
- m. Whether the class was injured by Defendant's failure to include the hourly and overtime rates of pay and the corresponding number of hours worked at each rate on their wage statements;
- n. Whether the failure to include the hourly and overtime rates of pay, or any other item required by Labor Code section 226(a) was "knowing and intentional";
- o. Whether the failure to provide wage statements as required by Labor Code section 226(a) to the class was "knowing and intentional";
- p. Whether Defendant maintained an illegal labor contract and non-compete agreement in violation of Business and Professions Code sections 16600 and Labor Code Section 432.5;
- q. Whether Defendant's conduct constitutes unfair competition within the meaning of Business and Professions Code sections 17200 and 17203;
- r. Whether the members of the class are entitled to injunctive relief;
- s. Whether the members of the class are entitled to restitution;
- t. Whether Defendant is liable for pre-judgment interest;
- u. Whether Defendant is liable for statutory penalties; and
- v. Whether Defendant is liable for attorneys' fees and costs.
26. The predominance of these common questions creates a well-defined community of interests among the Plaintiff and the members of the putative class.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

INTENTIONAL MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS

27. Plaintiff incorporates the allegations contained in paragraphs 1 through 26 at this point as though set forth in full.

28. For the four (4) year period preceding the filing of the Complaint, Defendant had a uniform practice and procedure of intentionally misclassifying its Couriers as independent

1 contractors in order to systematically underpay them and evade the labor laws and regulations of
2 the state of California. It was Defendant's uniform policy and practice to have Plaintiff and the
3 putative class sign employment contracts which unlawfully classified them as independent
4 contractors despite requiring the Couriers to personally perform all services under the control of
5 Defendant who would set the Couriers' time of work, place of work, rates, and manner of work.
6 Furthermore, Plaintiff and the putative class clearly do not meet the test for being considered
7 independent contractors under Labor Code section 2750.3.

8 29. Plaintiff and the putative class believe Defendant's conduct in misclassifying them
9 as independent contractors was intentional in violation of Labor Code section 226.8.

10 30. As a result of the unlawful acts of Defendant, Plaintiff and the putative class have
11 been deprived of all benefits of being considered an employee including but not limited to,
12 overtime wages, minimum wages, business expenses reimbursement, and/or other compensation in
13 amounts to be determined at trial, and are entitled to recover such amounts from Defendant, in
14 addition to the statutory penalties provided in Labor Code section 226.8, plus interest thereon,
15 attorneys' fees and costs.

16 31. As a proximate result of the aforementioned violations, Plaintiff and the putative
17 class have been damaged in an amount according to proof at the time of trial, but in an amount that
18 exceeds the minimum jurisdiction of this Court.

19 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANT**

20 **FAILURE TO PAY ALL WAGES DUE**

21 32. Plaintiff incorporates the allegations contained in paragraphs 1 through 30 at this
22 point as though set forth in full.

23 33. California Code of Regulations section 11010 5(A), titled "Reporting Time Pay,"
24 states that: Each workday an employee is required to report for work and does report, but is not put
25 to work or is furnished less than half said employee's usual or scheduled day's work, the employee
26 shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours
27 nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the
28 minimum wage.

1 34. California Code of Regulations section 11010 5(B) states that: If an employee is
2 required to report for work a second time in any one workday and is furnished less than two hours
3 of work on the second reporting, said employee shall be paid for two (2) hours at the employee's
4 regular rate of pay, which shall not be less than the minimum wage.

5 35. For the four (4) year period preceding the filing of the Complaint, Defendant had a
6 uniform practice and procedure of failing to compensate Plaintiff and the putative class for
7 reporting time pay when they reported to work as directed and were not put to work for at least half
8 of their shift. Furthermore, Plaintiff and the putative class were not paid reporting time pay when
9 required to report for a second, third or fourth time in a workday. Plaintiff and the putative class
10 were often required wait without pay until being requested to perform a delivery via the Fan Tuan
11 App, but could be disciplined or fired if they weren't ready to take a delivery at a moments notice.
12 This policy triggered Defendant's responsibility to pay reporting time pay when Plaintiff and the
13 putative class were not put to work.

14 36. Plaintiff and the putative class regularly worked shifts for Defendant but were never
15 paid reporting time pay, they were only paid a small fee for mileage and each delivery they made.

16 37. As a result of the unlawful acts of Defendant, Plaintiff and the putative class have
17 been deprived of reporting time pay and/or other compensation in amounts to be determined at
18 trial, and are entitled to recover such amounts from Defendant, plus interest thereon, attorneys' fees
19 and costs.

20 38. Defendant's pattern, practice and uniform administration of its corporate policy and
21 practice to not pay Plaintiff and the putative class all reporting time pay as described herein, is
22 unlawful and creates entitlements pursuant to Labor Code sections 1194, 1198, IWC Wage Order
23 9-2001, and California Code of Regulations, section 11010 *et seq.* Plaintiff and the putative class
24 are entitled to recover from Defendant the full amount of the wages due and unpaid, plus interest,
25 reasonable attorneys' fees and costs of suit.

26 ///

27 ///

28 ///

1 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**

2 **FAILURE TO TIMELY PAY ALL WAGES**

3 39. Plaintiff incorporates the allegations contained in paragraphs 1 through 38 at this
4 point as though set forth in full.

5 40. Labor Code section 204 requires that: Labor performed between the 1st and 15th
6 days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the
7 month during which the labor was performed, and labor performed between the 16th and the last
8 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the
9 following month.

10 41. For the four (4) year period preceding the filing of the Complaint, Defendant had a
11 uniform practice and procedure of failing to pay Plaintiff and the putative class twice monthly,
12 instead paying Plaintiff and the putative class within 30 days of the submission of delivery
13 summaries, which Defendant required Plaintiff and the putative class to draft. Labor Code sections
14 204, 206 and 207 require an employer to pay employees all wages it reasonably knows are due
15 twice monthly. Defendant's practice of paying wages 30 days after these delivery summaries have
16 been submitted by the Plaintiff and the putative class violates these Labor Code sections.
17 Defendant also has a policy and practice of withholding wages "at the Company's discretion,"
18 which also violates the above Labor Code provisions.

19 42. As a result of Defendant's practices Plaintiff and the putative class have been
20 deprived of the benefits of a regular paycheck and the value of being promptly paid all wages owed
21 to them.

22 43. Defendant's pattern, practice and uniform administration of its corporate policy and
23 practice to not timely pay Plaintiff and the putative class all wages when due, as described herein,
24 is unlawful and creates entitlements pursuant to Labor Code sections 210, 225.5, 1194, 1198, and
25 IWC Wage Order 9-2001. Plaintiff and the putative class are entitled to recover from Defendant
26 penalties and 25% of all withheld wages, liquidated damages, plus interest, reasonable attorneys'
27 fees and costs of suit.

28 ///

1 **FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

2 **FAILURE TO PAY MINIMUM WAGE**

3 44. Plaintiff incorporates the allegations contained in paragraphs 1 through 44 at this
4 point as though set forth in full.

5 45. California Labor Code section 1197.1 mandates that "Any employer or other person
6 acting either individually or as an officer, agent, or employee of another person, who pays or
7 causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
8 local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages,
9 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
10 Section 203."

11 46. For the four (4) year period preceding the filing of the Complaint, Defendant had a
12 uniform practice and procedure of failing to pay Plaintiff and the putative class minimum wage,
13 instead paying Plaintiff and the putative class a small fee for each delivery and a small fee for the
14 mileage they drove. It was Defendant's uniform practice to not pay Plaintiff and the putative class
15 for all time spent working for Defendant, resulting in Plaintiff and the putative class being
16 chronically and significantly paid less than the minimum wage. Labor Code sections 1194, 1194.2,
17 1197.1, 1199, Cal. Code of Reg. § 11090 and IWC Wage Order 9 make it unlawful to require or
18 suffer any employee to work without at least minimum wage compensation for that time spent
19 working under the employer's control.

20 47. As a result of Defendant's practices Plaintiff and the putative class have been
21 deprived of a minimum wage and all wages unpaid to them.

22 48. Defendant's pattern, practice and uniform administration of its corporate policy and
23 practice to not timely pay Plaintiff and the putative class minimum wage, is unlawful and creates
24 entitlements pursuant to Labor Code sections 1194, 1194.2, 1197.1, 1199, Cal. Code of Reg. §
25 11090 and IWC Wage Order 9-2001. Plaintiff and the putative class are entitled to recover from
26 Defendant, penalties, withheld wages, liquidated damages, interest, reasonable attorneys' fees and
27 costs of suit.

28 ///

1 **FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

2 **FAILURE TO PAY OVERTIME WAGES.**

3 49. Plaintiff incorporates the allegations contained in paragraphs 1 through 48 at this
4 point as though set forth in full.

5 50. IWC Wage Order 9-2001 states: that employees must be paid one half their regular
6 hourly rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in
7 any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work
8 in a workweek. Furthermore employees must be paid two times their regular hourly rate for all
9 hours worked in excess of twelve (12) hours in a workday and for all hours worked in excess of
10 eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

11 51. For the four (4) year period preceding the filing of the Complaint, Defendant had a
12 uniform practice and procedure of misclassifying its Couriers as independent contractors and not
13 paying them for hours worked over 8 hours per day or 40 hours in a week as well as applicable
14 double-time, in violation of Labor Code sections 1194, 1198, 510, 515(d), 558, IWC Wage Order
15 9-2001, and California Code of Regulations, section 11090(3).

16 52. As a result of Defendant's practices, Plaintiff and the putative class have been
17 deprived of all overtime wages owed to them.

18 53. Defendant's pattern, practice and uniform administration of its corporate policy and
19 practice to not timely pay Plaintiff and the putative class minimum wage, is unlawful and creates
20 entitlements pursuant to Labor Code sections 1194, 1194.2, 1197.1, 1199, Cal. Code of Reg. §
21 11090 and IWC Wage Order 9-2001. Plaintiff and the putative class are entitled to recover from
22 Defendant, penalties, withheld wages, liquidated damages, interest, reasonable attorneys' fees and
23 costs of suit.

24 **SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

25 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

26 54. Plaintiff incorporates the allegations contained in paragraphs 1 through 53 at this
27 point as though set forth in full.

28 ///

1 55. During his employment with Defendant, Plaintiff and the putative class members
2 regularly worked in excess of 5 hours without being afforded timely, uninterrupted duty-free thirty
3 (30) minute meal period for every five (5) hours of work and ten (10) hours worked, in which they
4 were relieved of all duties as required by Labor Code sections 226.7, 512, 1198 and IWC Wage
5 Order 9.

6 56. As a direct and proximate result of Defendant's violation of Labor Code section
7 226.7 and IWC Wage Order 9, Plaintiff and the putative class members have suffered irreparable
8 harm and monetary damages. Plaintiff seeks damages and all other relief allowable including
9 premium pay for each workday of at least 5 hours or 10 hours during which Plaintiff and the
10 putative class members were not provided legally adequate meal periods, attorney's fees, and
11 prejudgment interest.

12 57. As a result of the unlawful acts of Defendant, Plaintiff and the putative class have
13 been deprived of wages and/or other compensation in amounts to be determined at trial, and are
14 entitled to recover such amounts from Defendant, plus interest thereon, attorneys' fees, and costs of
15 suit.

16 58. Plaintiff and the putative class members also are entitled to one (1) hour of pay for
17 each day that they were not provided a legally adequate meal period.

18 **SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

19 **FAILURE TO PROVIDE REST PERIODS**

20 59. Plaintiff incorporates the allegations contained in paragraphs 1 through 58 at this
21 point as though set forth in full.

22 60. During his employment with Defendant, Representative Plaintiff and the putative
23 class members regularly worked in excess of 3.5 hours without being afforded a net total ten (10)
24 minute rest period for every four (4) hours of work or major fraction thereof, in which they were
25 relieved of all duties and allowed to leave the premises as required by Labor Code sections 226.7,
26 1198 and IWC Wage Order 9-2001.

27 61. As a direct and proximate result of Defendant's violation of Labor Code section
28 226.7 and IWC Wage Order 9-2001, Representative Plaintiff and the putative class members have

1 suffered irreparable harm and monetary damages. Representative Plaintiff seeks damages and all
2 other relief allowable including premium pay for each work shift of at least 3.5 hours during which
3 Representative Plaintiff and the putative class members were not provided a paid net total ten (10)
4 minute uninterrupted duty-free rest period where they could leave the premises, attorney's fees,
5 and prejudgment interest, pursuant to Labor Code sections 200, *et seq.*

6 62. Representative Plaintiff and the putative class members also are entitled to one (1)
7 hour of pay for each day that they were not provided a legally adequate rest period.

8 **EIGHTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

9 **UNLAWFUL DEDUCTION OF WAGES, WAGE THEFT AND UNLAWFULLY PASSING ALONG THE**
10 **COSTS OF DOING BUSINESS TO EMPLOYEES**

11 63. Plaintiff incorporates the allegations contained in paragraphs 1 through 62 at this
12 point as though set forth in full.

13 64. The California Labor Code prohibits the unlawful deduction or withholding of
14 wages to cover business losses, business costs, and damage that the employer should bear as the
15 cost of doing business. The Labor Code also prohibits the deduction of wages on account of an
16 employee's coming late to work in excess of the proportionate wage which would have been
17 earned during the time actually lost.

18 65. For the four (4) year period preceding the filing of this Complaint, Plaintiff and the
19 putative class have been subject to unlawful deductions and withholding of wages to cover for
20 business losses and damage that the employer should bear as the cost of doing business, all without
21 proper payment from Defendant. Plaintiff and the putative class have also been subject to unlawful
22 deductions and withholding of wages when they arrived late to a shift, did not arrive for a shift,
23 and/or left a shift early.

24 66. Defendant has a policy of regularly and consistently making such deductions and
25 withholdings, in violation of California law.

26 67. Pursuant to Labor Code § 221-223, 225.5, 450-452, 400-410, 1194, 1199 and 2928,
27 Plaintiff and the putative class are entitled to recover from Defendant the full amount of the
28 unlawful deductions and withholding, civil penalties, liquidated damages, plus interest, reasonable

1 attorney's fees and costs of suit.

2 **NINTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

3 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

4 68. Plaintiff incorporates the allegations contained in paragraphs 1 through 67 at this
5 point as though set forth in full.

6 69. California Labor Code § 2802, requires Defendant to "indemnify his or her
7 employees for all necessary expenditures or losses incurred by the employee in direct consequence
8 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
9 even though unlawful, unless the employee, at the time of obeying the directions, believed them to
10 be unlawful." Cal Lab Code § 2802.

11 70. For the four (4) year period preceding the filing of this Complaint, Plaintiff and the
12 putative class have been required by Defendant to bear all costs including but not limited to the
13 costs of vehicle insurance, unemployment insurance, workers compensation coverage, for their
14 own background checks, gas and wear and tear on the vehicles they used to make deliveries for
15 Defendant, upkeep of Defendant's marketing and delivery materials, the costs of using the
16 Couriers' mobile phones as well as an accompanying voice, SMS, and data plan in order to use the
17 Fan Tuan App, the costs of taxes, tickets, parking, tolls, and for the Couriers to otherwise
18 indemnify Defendant against any and all losses whatsoever.

19 71. Defendant has a policy of regularly and consistently refusing to reimburse Plaintiff
20 and the putative class for such expenses, in violation of California law.

21 72. Pursuant to Labor Code § 2802, Plaintiff and the putative class are entitled to
22 recover from Defendant the full amount of the expenses they incurred in the performance of their
23 job duties, plus interest, reasonable attorney's fees and costs of suit.

24 **TENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

25 **FAILURE TO PAY WAGES AT TERMINATION**

26 73. Plaintiff incorporates the allegations contained in paragraphs 1 through 72 at this
27 point as though set forth in full.

28 ///

1 74. California Labor Code section 201 requires an employer who discharges an
2 employee to pay all compensation due and owing to that employee immediately upon discharge.

3 75. California Labor Code section 203 provides that if an employer willfully fails to pay
4 compensation promptly upon separation from employment, as required by either Sections 201 or
5 202, then the employer is liable for waiting time penalties in the form of continued compensation
6 for up to 30 workdays.

7 76. Defendant willfully failed and refused to timely pay all wages to Representative
8 Plaintiff and putative class members whose employment terminated. As a result, Defendant is
9 liable to Plaintiff and the putative class members for waiting time penalties, together with costs,
10 under Labor Code section 203.

11 77. As a result of Defendant's unlawful conduct, Plaintiff and putative class members
12 have suffered damages in an amount, subject to proof, to the extent they were not paid all wages
13 due each pay period. The precise amount of unpaid wages and waiting time penalties are not
14 presently known to Plaintiff but can be determined directly from Defendant's records or indirectly
15 based on information from Defendant's records.

16 **ELEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

17 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE**

18 **STATEMENT PROVISIONS AND KEEP ACCURATE TIME RECORDS**

19 78. Plaintiff incorporates the allegations contained in paragraphs 1 through 77 at this
20 point as though set forth in full.

21 79. Section 226(a) of the California Labor Code requires Defendant to provide itemized
22 wage statements at the time of payment of wages which include but are not limited to the
23 following: the correct gross wages earned; the correct total straight and overtime hours worked by
24 the employee; the correct net wages earned; the inclusive dates of the period for which the
25 employee is paid; and all applicable hourly rates in effect during the pay period and the
26 corresponding correct total number of hours worked at each hourly rate by the employee.

27 80. Pursuant to Labor Code section 226(e), Plaintiff and the putative class are entitled to
28 penalties of (a) Fifty Dollars (\$50.00) per employee for the initial pay period in which a violation

1 occurs; (b) One Hundred Dollars (\$100.00) per employee for each violation in a subsequent pay
2 period, not to exceed \$4,000 per claimant; and (c) an award of costs and reasonable attorneys' fees.
3 Pursuant to Labor Code section 226(g). Plaintiff and the putative class are entitled to injunctive
4 relief to ensure Defendant's compliance with Labor Code section 226.

5 81. Labor Code section 1174(d) requires that employers like Defendant also keep
6 records showing the hours worked daily and wages paid to every employee. Defendant failed to
7 comply with this provision as it did not keep a record of Plaintiff or the putative class members'
8 time that they spent under the control of the Defendant.

9 82. Plaintiff contends that he and the putative class members have been injured by
10 Defendant's failure to provide wage statements and otherwise include all of the requisite
11 information on any statements contended to be itemized wage statements in that such failure, *inter*
12 *alia*, masks possible and actual underpayments and deductions to Defendant's employees; and
13 make it difficult for Defendant's employees to verify that they have in fact been paid the proper
14 amounts owing for all hours worked. Said conduct was done knowingly and intentionally since
15 Defendant is aware of California law, and with the design to harm Plaintiff and the putative class
16 members.

17 **TWELFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

18 **VIOLATIONS OF THE INVESTIGATIVE CONSUMER REPORTING AGENCIES ACT AND LABOR CODE**
19 **SECTIONS 432.5 AND 432.7**

20 83. Plaintiff incorporates the allegations contained in paragraphs 1 through 82 at this
21 point as though set forth in full.

22 84. Labor Code sections 432.5 and 432.7 prohibits an employer, whether a public
23 agency or private individual or corporation, from asking an applicant for employment to disclose,
24 through any written form or verbally, information concerning an arrest or detention that did not
25 result in conviction, or information concerning a referral to, and participation in, any pretrial or
26 posttrial diversion program, or concerning a conviction that has been judicially dismissed or
27 ordered sealed pursuant to law.

28 ///

1 85. The ICRAA prohibits the collection of credit and criminal/arrest history of job
2 applicants older than 7 years and without specific statutorily mandated disclosures meant to protect
3 the rights of applicants and inform them of their rights.

4 86. Defendant's uniform policy and practice of requiring Plaintiff and the putative class
5 to obtain their own background check from state and/or federal agencies at their own cost and
6 submit it to Defendant willfully and intentionally violates both the Labor Code and the ICRAA and
7 entitles Plaintiff and the putative class to damages, statutory penalties, and punitive damages.

8 **THIRTEENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

9 **VIOLATION OF THE UNFAIR COMPETITION LAW**

10 **(ON BEHALF OF PLAINTIFF, THE CLASS AND THE GENERAL PUBLIC)**

11 87. Plaintiff incorporates the allegations contained in paragraphs 1 through 86 at this
12 point as though set forth in full.

13 88. Defendant's failure to lawfully compensate Plaintiff and members of the putative
14 class under the California Labor Code and IWC Wage Order 9-2001, as alleged herein, constitute
15 unlawful activity prohibited by Business and Professions Code sections 16600 and 17200.

16 89. The actions of Defendant in uniformly maintaining illegal employment contracts
17 which act as a restraint in trade, containing a so called "non-compete" clause prohibiting Plaintiff
18 and the putative class from engaging in work similar to that provide to Defendant, is unlawful
19 under Business and Professions Code sections 16600.

20 90. The actions of Defendant in failing to pay Plaintiff and the putative class in a lawful
21 manner constitute false, unfair, fraudulent and deceptive business practices, within the meaning of
22 Business and Professions Code sections 17200, *et seq.*

23 91. Plaintiff is entitled to an injunction and other equitable relief against such unlawful
24 practices in order to prevent further damage, for which there is no adequate remedy at law, and to
25 avoid a multiplicity of lawsuits. Plaintiff brings this cause as a Class Action and as a member of
26 the general public as a representative of all others similarly situated who were subject to
27 Defendant's unlawful acts and practices.

28 ///

1 92. Plaintiff and the putative class have lost money and/or property as a result of
2 Defendant's unfair business acts and practices and Defendant is unjustly enriched to the extent of
3 its failure to pay earned wages to Plaintiff and members of the putative class.

4 93. The unlawful acts and conduct alleged herein is continuing and there is no
5 indication that Defendant will stop such activity in the future. Plaintiff alleges that if Defendant is
6 not enjoined from the conduct set forth in this Complaint, they will continue to withhold payment
7 of earned wages and other compensation due Plaintiff and the putative class.

8 94. As a direct and proximate result of the unfair business acts and practices of
9 Defendant, Plaintiff, individually and on behalf of all employees similarly situated, is entitled to
10 equitable and injunctive relief, including full restitution, disgorgement, and/or specific performance
11 of payment of all wages that have been unlawfully withheld from Plaintiff and the putative class,
12 and issuance of an order pursuant to Business and Professions Code section 17200, *et seq.*,
13 enjoining Defendant from engaging in the unlawful acts and practices described herein.

14 95. Plaintiff further requests that the Court issue a preliminary and permanent injunction
15 prohibiting Defendant from continuing the illegal practices described hereinabove.

16 **FOURTEENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

17 **PRIVATE ATTORNEY GENERALS ACT REPRESENTATIVE CLAIM**

18 **FOR VIOLATIONS OF LABOR CODE § 2698 ET. SEQ.**

19 **(BY REPRESENTATIVE PLAINTIFF AND THE AGGRIEVED EMPLOYEES AGAINST DEFENDANTS AND**
20 **DOES 1 THROUGH 10 INCLUSIVE)**

21 96. Plaintiff incorporates the allegations contained in paragraphs 1 through 95 at this
22 point as though set forth in full.

23 97. As set forth in detail in the paragraphs above and in Plaintiff's complaint to the
24 California Labor and Workforce Development Agency ("LWDA"), attached hereto as **Exhibit "A"**
25 and incorporated for all purposes to these allegations, for the one (1) period preceding the filing of
26 the Complaint with the LWDA on July 30, 2020, Defendant had a uniform policy and practice of
27 not paying minimum wage or overtime to its Couriers because it has intentionally misclassified
28 them as independent contractors. However, because the Couriers have no control over their time of

1 work, location of work, rates, manner of work, and delegation of work the Couriers cannot be
2 considered independent contractors under federal or state law. Additionally, Defendant failed to
3 reimburse Plaintiff and the aggrieved employees for incurred and necessary business expenses,
4 failed to pay straight and minimum wages for hours worked by the aggrieved employees, failed to
5 provide the aggrieved employees with lawful itemized wage statements, failed to remit all wages
6 owed to Plaintiff and the aggrieved employees at the time of termination, and failed to provide
7 Plaintiff and the aggrieved employees with lawful, statutory, meal and rest periods all in violation
8 of the California Wage Orders, the Cal. Code of Regulations (CCR) §§11040, 11090, and
9 California Labor Code §§ 201, 202, 203, 204, 206, 206.5, 207, 209, 221-224, 226(a), 226.7, 432.5,
10 432.7, 450, 510, 512, 515, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, and 2802.

11 98. California Labor Code section 2698 *et. seq.* provides employees with a private right
12 of action to remedy an employer's failure to comply with Labor Code sections designated in Labor
13 Code section 2699.5. Labor Code sections 201-203, 204, 223, 226(a), 227.6, 227.3, 510, 512, 515,
14 1174, 1194, 1198 and 1999, all of which Defendant has violated as alleged above and as stated in
15 detail in **Exhibit "A"** which is incorporated by reference. These sections are provided for under
16 Labor Code section 2699.5. Penalties for violations under Labor Code section 2699(f)(2) are one
17 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation, and
18 two hundred dollars (\$200.00) per subsequent violation for each aggrieved employee per pay
19 period.

20 99. Plaintiff has exhausted the administrative prerequisites to file a claim under Labor
21 Code section 2698 *et seq.* by first sending notice to the California Labor Workforce and
22 Development Agency ("LWDA") online filing system on July 30, 2020, along with a certified copy
23 to Defendants. (Attached hereto as **Exhibit "A."**) It has been over 65 days since the exhaustion
24 and Plaintiff has not received confirmation from the LWDA that it will not investigate the
25 complaint within the time limits set forth in Labor Code section 2699.3(a)(2).

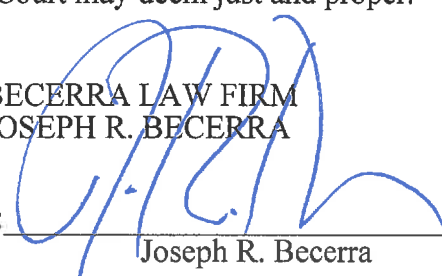
26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff individually and on behalf of all employees similarly situated
28 prays for judgment against Defendant as follows:

1. For compensatory damages and/or penalties available under Labor Code, including for unpaid wages, unlawful wage statements, unprovided meal periods and rest breaks, wage deductions and withheld wages;
2. For restitution of all monies due to Plaintiff and the putative Class for the unlawful business acts and practices of Defendant;
3. For all statutory penalties available under Labor Code, including for unpaid wages, unlawful wage statements, and unprovided meal periods;
4. For all liquidated damages available under the Labor Code, including for unpaid minimum wages and withheld wages;
5. For interest accrued to date;
6. For costs of suit incurred herein and reasonable attorneys' fees pursuant to the referenced statutes;
7. For prejudgment interest pursuant to law, including California Civil Code section 3287 and/or 3288;
8. For injunctive relief; and
9. For such other and further relief as the Court may deem just and proper.

Dated: December 11, 2020

BECERRA LAW FIRM
JOSEPH R. BECERRA

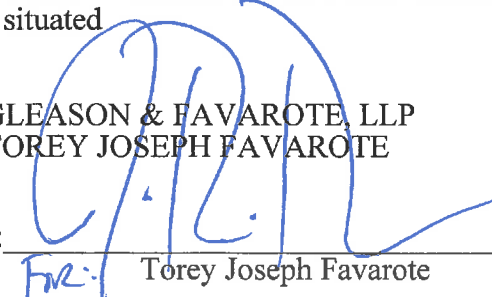
By: 

Joseph R. Becerra

Attorneys for Plaintiff Jing Dong Zhang, on behalf of himself and all others similarly situated

Dated: December 11, 2020

GLEASON & FAVAROTE, LLP
TOREY JOSEPH FAVAROTE

By: 

Torey Joseph Favarote

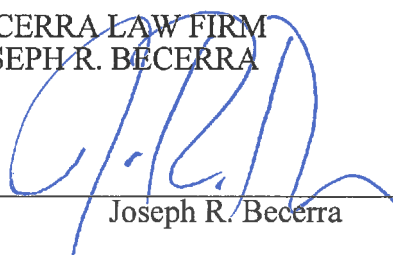
Attorneys for Plaintiff Jing Dong Zhang, on behalf of himself and all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: December 11, 2020

BECERRA LAW FIRM
JOSEPH R. BECERRA

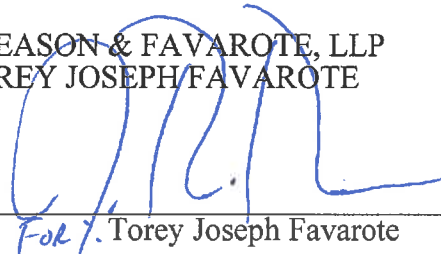
By: 

Joseph R. Becerra

Attorneys for Plaintiff Jing Dong Zhang, on
behalf of himself and all others similarly
situated

Dated: December 11, 2020

GLEASON & FAVAROTE, LLP
TOREY JOSEPH FAVAROTE

By: 

Torey Joseph Favarote

Attorneys for Plaintiff Jing Dong Zhang, on
behalf of himself and all others similarly
situated

EXHIBIT A



DIRECT DIAL: (213) 542-8501
DIRECT FACSIMILE: (213) 542-5556
JBECERRA@JRBECERRALAW.COM

July 30, 2020

SENT VIA CERTIFIED MAIL

CA Fan Tuan Inc.
c/o Jiawei Chen
Agent for Service of process
4000 Barrance PKWY, Suite 250
Irvine, CA 92604

**SENT VIA ELECTRONIC
SUBMISSION**

David M. Lanier
Acting Secretary
California Labor & Workforce Development
Agency
800 Capital Mall, MIC-55
Sacramento, CA 95814

Re: **CA Fan Tuan Inc.**
California Labor Code section 2698, et seq. violations

Dear Mr. Lanier:

I am writing on behalf of aggrieved employee Jing Dong Zhang ("Zhang"). This notice is being made to the Labor & Workforce Development Agency pursuant to the requirement of Labor Code section 2698 *et al.* that Zhang, and other Aggrieved Employees, who were employed by CA Fan Tuan Inc. (hereinafter "Fan Tuan") in the job title of "Courier," "Contractor" or other similarly titled or dutied position (hereinafter and collectively "Aggrieved Employees" or "Couriers") and were misclassified as independent contractors by Fan Tuan in California for at least the last year.

Fan Tuan operates an on-demand courier service that provides food and store delivery in various California cities (and other parts of the country) via an on-demand dispatch system. Fan Tuan offers its customers the ability to request a Courier via a variety of web and smartphone-based applications. Couriers, like Zhang, receive a fee for each delivery that they make. Fan Tuan classifies these Aggrieved Employees as independent contractors, yet they are all required to show up for specifically delineated “shifts,” use specific branded tools and materials provided by Fan Tuan (and only by Fan Tuan), personally provide all services without the ability to assign or delegate duties to anyone else, and are required to abide by strict rules set unilaterally by Fan Tuan for which they can be disciplined, docked wages, or terminated if they do not abide by them. These rules, and others imposed by Fan Tuan for the Aggrieved Employees, set forth extremely strict guidelines for how work is to be performed, how the Couriers are to interact with customers, how the Couriers will be compensated, when the Couriers will be compensated, what tools and materials the Couriers are to use, and how the Couriers are to behave at all times. Additionally, the Couriers have no control over the pricing of goods or setting of delivery fees or schedule. Zhang and the other Aggrieved Employees do not meet the requirements to be independent contractors under Labor Code section 2750.3. Zhang believes that he and the other Aggrieved Employees have been misclassified as independent contractors while under the law they are actually employees entitled to all of the benefits of the Labor Code as identified herein.

Zhang, and each of the Aggrieved Employees described herein, suffered from the following Labor Code violations by their current or former employer Fan Tuan.

Zhang is a current employee of Fan Tuan. His employment with Fan Tuan began in or around July 2020. Zhang and other Aggrieved Employees’ employment with Fan Tuan was

governed by the California Wage Orders, the Cal. Code of Regulations (CCR) §§11040, 11090, and California Labor Code §§ 201, 202, 203, 204, 206, 206.5, 207, 209, 221-224, 226(a), 226.7, 432.7, 450, 510, 512, 1194, 1197, 1197.1, 1198, 1199, and 2802. As laid out below, Zhang believes that Fan Tuan has violated the above Labor Code provisions, as well as the California Code of Regulations and the IWC Wage Orders. Zhang incorporates the above Labor Code and CCR sections and Wage Orders to all of the paragraphs below.

Couriers working for Fan Tuan, including Zhang, regularly work more than 8 hours in a day and/or 40 hours in a work week, working specific “shifts” Fan Tuan assigns to them. During these shifts the Couriers are tracked via the Fan Tuan mobile application and Couriers are expected to diligently monitor their smartphones and the Fan Tuan smartphone application during their shifts. Under Fan Tuan’s uniform pay policies and practices Couriers are misclassified by Fan Tuan as independent contractors, and therefore, not eligible for overtime pay for hours over 8 in a day, 40 in a week, or for work performed on the 7th consecutive day of work in the workweek. Fan Tuan did not keep accurate time records of the hours Zhang and the other Aggrieved Employees worked, in violation of Labor Code sections 1194, 1198, 510, 512, 515(d), 558, IWC Wage Orders, and California Code of Regulations, section 11090(3). Additionally, Fan Tuan has a policy which requires Zhang and the other Aggrieved Employees to track all of their own deliveries and mileage which they then submit to Fan Tuan for which they are not reimbursed in violation of Labor Code §2802. Fan Tuan does not compensate the time Couriers spend creating and submitting these summaries in violation of the law as noted above, nor for parking, tolls, all mileage, tickets, all required cellular phone/data usage surcharges, which are required business expenses incurred in the performance of their jobs.

Zhang and the other Aggrieved Employees were required to work specific shifts, to report for work at the beginning of those shifts, and then were often not put to work for at least half of their scheduled shift due to lack of orders from customers and/or because too many other Couriers were assigned to that same shift/area. It is Fan Tuan's policy to not pay Zhang and the other Aggrieved Employees reporting time pay, or minimum wage, for when they were instructed to report for work and then not put to work for at least half of their scheduled shift. Zhang and the other Aggrieved Employees also were at times called to wait on standby without any pay (not even minimum wage), in the hopes that orders would be assigned to them from the Fan Tuan smartphone application. Zhang and the Aggrieved Employees were required to constantly monitor their cellphones and the Fan Tuan mobile application during these times and were required to immediately respond to any assignment or be subject to discipline or termination, but were not paid for this time as Fan Tuan did not consider this time to be compensable. Zhang and the Aggrieved Employees were required to create and submit summaries of their deliveries in order to be paid but were also not compensated for that time, and were subject to have their wages forfeited if they did not show all of their deliveries and mileage in accordance with Fan Tuan's rules. Using the Fan Tuan smartphone application Fan Tuan could have tracked and kept records of all of the Couriers' time, every delivery and every mile traveled but it did not do so. Under these practices Zhang and the other Aggrieved Employees were not compensated for all time spent under Fan Tuan's control, denied reporting time pay, minimum wages/liquidated damages, and reimbursement for their expenses, in violation of the Labor Code and applicable Wage Orders cited herein.

Zhang and the other Aggrieved Employees were compensated with a delivery fee, a small fee for some of the mileage traveled, and discretionary tips from customers. Often their compensation did not meet the minimum wage for the hours they were waiting on controlled standby and making actual deliveries for Fan Tuan. This situation was aggravated by Fan Tuan's policy of deducting \$10.00-\$20.00 dollars from the Aggrieved Employees' wages if they were late for a shift or if they left a shift early. In addition, because Zhang and the other Aggrieved Employees had to bear the cost of vehicle insurance, unemployment insurance, workers' compensation coverage, gas and wear and tear on the vehicles they used to make deliveries for Fan Tuan and the costs of their mobile telephone as well as an accompanying voice, SMS, and data plan in order to use Fan Tuan's smartphone application. Fan Tuan illegally passed on these costs of doing business to the Aggrieved Employees.

Zhang and the Aggrieved Employees were entitled under California law to at least a thirty-minute uninterrupted work-free meal period within 5 hours of the start of work for every shift lasting at least five (5) hours, and a second uninterrupted work-free meal period of thirty minutes for any shift longer than ten (10) hours. By misclassifying Zhang and the Aggrieved Employees as independent contractors, Fan Tuan failed to provide lawful meal periods and premium payments to Zhang and the Aggrieved Employees. Zhang and the other Aggrieved Employees were required to always monitor their smartphones and the Fan Tuan smartphone application while working a shift and were subject to discipline or termination if they did not respond to every request quickly. Due to this, Fan Tuan never provided Zhang and the other Aggrieved Employees off duty meal periods. By their failure to provide minimum statutory meal periods and failing to provide compensation for meal periods not provided, Fan Tuan

willfully violated the provisions of Labor Code sections 226.7, 512, and 1198 and IWC Wage Orders and California Code of Regulations, section 11090(11).

Zhang and the other Aggrieved Employees were entitled under California law to at least a paid ten-minute work-free rest break for each workday worked in excess of 3.5 hours. During these work-free rest breaks the employer must relinquish all control over the employee. Zhang and the other Aggrieved Employees were always required to monitor their smartphones for incoming orders while working a shift and could be disciplined or terminated if they did not respond quickly enough. Due to this Zhang and the Aggrieved Employees were never provided off-duty paid rest breaks and instead were expected to be on-duty through their entire shift. As such Fan Tuan failed to provide lawful and paid rest breaks to Zhang and the Aggrieved Employees as they were only paid for deliveries. By Fan Tuan's failure to provide minimum statutory rest breaks and failing to provide compensation for rest breaks not provided, Fan Tuan willfully violated the provisions of Labor Code sections 226.7, 1198, and the applicable Wage Orders.

Additionally, California Labor Code § 2802 requires that employers reimburse the business expenses reasonably incurred by employees in the course of their employment. Fan Tuan failed to reimburse Zhang and the other Aggrieved Employees for numerous expenses, made unlawful deductions to wages, and unlawfully passed on the costs of doing business to their employees in the following ways:

- Fan Tuan required and directed Zhang and the other Aggrieved Employees to buy fuel and maintain a vehicle used to make deliveries for Fan Tuan.

- Fan Tuan required Zhang and the other Aggrieved Employees to use their personal smartphone in the service of Fan Tuan and pay for both a data plan and phone plan (voice + SMS) in order to receive deliveries and call customers, most of which was done through Fan Tuan's smartphone application which used data.
- Fan Tuan required Zhang and the Aggrieved Employees to pay a deposit for branded delivery boxes, stickers and decals for their vehicles, uniforms/apparel, and other promotional materials, and pay for upkeep for all of these things. If any of these materials were damaged Fan Tuan unlawfully kept the deposit and still required the return of the aforementioned branded materials.
- Fan Tuan also required Zhang and the other Aggrieved Employees, upon hiring, pay a \$200.00 "performance deposit" as a requirement to working for Fan Tuan. Through numerous policies, including any breach of the employment agreement at Fan Tuan's discretion, all or some of this deposit could be forfeited.
- Fan Tuan's written employment policies and employment agreements provide that Fan Tuan may in its sole discretion withhold any money payable to the Couriers and/or deduct that money from the Courier's "Performance Deposit."
- Fan Tuan required Zhang and the other Aggrieved Employees to pay for background checks associated with their employment, pay for workers compensation, pay for unemployment insurance, vehicle insurance, pay for rejected or unpaid deliveries, indemnify Fan Tuan for "any and all loses,

liabilities, damages, costs and expenses of any kind..”, and pay any and all taxes associated with their employment and compensation.

- Fan Tuan made unlawful deductions from wages ranging from \$10.00 to \$20.00 for every shift in which Zhang and the other Aggrieved Employees failed to report on time for a shift, left before a shift was over, and/or failed to report at all for a shift.

As a result of the above practices, Fan Tuan has violated numerous provisions of the California Labor Code including but not limited to Labor Code sections 221- 224, 1198, 2802, and the IWC Wage Orders. Under California law all of the above actions constitute wage theft.

Furthermore, Fan Tuan failed to timely pay all wages due. The California Labor Code requires that all wages be paid weekly or every two weeks. However, Fan Tuan’s uniform policy and practice was to require Zhang and the Aggrieved Employees to prepare and submit summaries of their deliveries to Fan Tuan which would be paid 30 days after submission. Zhang and the other Aggrieved Employees were also not paid for the time spent creating and submitting these delivery summaries. This uniform policy and practice constitutes a failure to pay minimum wage, pay for all time worked, and failure to pay wages timely in violation of Labor Code sections 204, 206, 206.5, 207, and 209.

Labor Code section 226 requires an employer to furnish its employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned, net wages earned, all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual. As a

pattern and practice, in violation of Labor Code section 226(a), Fan Tuan did not furnish accurate itemized wage statements. There is no indication that Fan Tuan ever provided any wage statements to Zhang and the other Aggrieved Employees. Additionally, Fan Tuan required Zhang and the other Aggrieved Employees to prepare their own summaries of work and submit them to Fan Tuan. This practice, which is a part of Fan Tuan's standard written employment agreement, evidences that Fan Tuan's violation of Labor Code 226(a), is both intentional and willful. Even if the documents prepared by Zhang and the other Aggrieved Employees could be considered wage statements, which they could not be under Labor Code 226(a) because wage statements must be furnished by the employer, these employee produced summaries do not accurately reflect the number of straight time hours worked, the number of overtime hours worked, the rate of pay for any hours worked, any meal or rest premiums owed, or the legal name and address of the employer. As such Fan Tuan did not provide accurate wage statements to Zhang and the Aggrieved Employees as required by California law.

Fan Tuan also violates Labor Code 226(a) due to its above described practice of making unlawful deductions to wages, passing along the cost of doing business to employees, and failing to reimburse business expenses. All of these Labor Code violations are part of Fan Tuan's written employment agreements and result in an inaccurate amount of wages to be listed on any document that could be considered a wage statement. As noted above, because these practices are part of Fan Tuan's written employment agreements, and because the wage deductions require action on behalf of Fan Tuan, Fan Tuan's actions are both willful and intentional.

Additionally, Labor Code § 1174(d) requires that employers also keep accurate records showing the hours worked daily and wages paid to every employee. Fan Tuan failed to comply

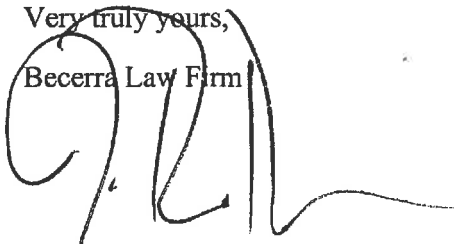
with this provision as it did not keep a record of Zhang or the Aggrieved Employees' time that they spent under the control of Fan Tuan.

Because Zhang and the Aggrieved Employees were misclassified, not paid proper minimum, straight, overtime or double time pursuant to California law, and not provided statutory meal periods and rest breaks or compensation in lieu thereof, Fan Tuan failed to remit all wages earned by some of the Aggrieved Employees at the time of termination. Furthermore, it is Fan Tuan's written policy to not pay any wages due at termination unless the terminated employee first create and submit a delivery summary and submit it within 5 business days of termination, if the employee does not prepare and submit this summary they forfeit any and all wages still due.

Fan Tuan has violated and continues to violate California law as described above. This letter sets forth the specific provisions of the California Labor Code and IWC Wage Orders that have been violated by Fan Tuan and the facts and theories supporting those violations pursuant to California Labor Code section 2699.3.

Very truly yours,

Becerra Law Firm



Joseph R. Becerra