

FILED
Superior Court of California
County of Los Angeles
03/01/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: M. Concepcion Deputy

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
Neil M. Larsen (SBN 276490)
nlarsen@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JACOB CARRILLO, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

BIKEHUB, a California corporation;
BICYCLE TRANSIT SYSTEMS, INC., a
Delaware Corporation; and DOES 1
through 100,

Defendants.

Case No. 20STCV28879

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **FAILURE TO PAY ALL MINIMUM WAGES (LABOR CODE § 1182.12, 1194, 1194.2, AND 1197);**
- (2) **FAILURE TO PAY OVERTIME WAGES (LABOR CODE §§ 204, 510, 551, 552, 558, 1194, AND 1198);**
- (3) **REST PERIOD VIOLATIONS (LABOR CODE § 226.7, 516, 558);**
- (4) **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES (LABOR CODE §§ 2802, 2804);**
- (5) **MEAL PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 512, and 558);**
- (6) **WAGE STATEMENT VIOLATIONS (LABOR CODE § 226, *et seq.*);**
- (7) **WAITING TIME PENALTIES (LABOR CODE §§ 201-203);**
- (8) **UNFAIR COMPETITION (BUS & PROF CODE § 17200, *et seq.*); and**
- (9) **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Jacob Carrillo, also known as Jacob D. Padilla (“Plaintiff”), on behalf of himself
2 and all others similarly situated, hereby brings this Second Amended Class and Representative
3 Action Complaint against Bikehub, a California Corporation; Bicycle Transit Systems, Inc., a
4 Delaware Corporation; and Does 1 through 100, inclusive (collectively “Defendants”), and on
5 information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 class action for recovery of unpaid wages and penalties under California Business and Professions
9 Code § 17200, *et. seq.*, Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 516, 551, 552, 558,
10 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698, *et seq.*; and Industrial Welfare
11 Commission Wage Order No. 4 (“Wage Order 4”), in addition to seeking declaratory relief and
12 restitution. This class action is brought pursuant to California Code of Civil Procedure § 382.
13 This Court has jurisdiction over Defendants’ violations of the California Labor Code because the
14 amount in controversy exceeds this Court’s jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
18 occurred in Los Angeles County. Defendants own, maintain offices, transact business, have an
19 agent or agents within Los Angeles County, and/or otherwise are found within Los Angeles
20 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is a California resident, residing in Los Angeles County. During the
24 four years immediately preceding the filing of this action and within the statute of limitations
25 periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as
26 a non-exempt employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices
27 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
28 by California Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 516, 551, 552, 558, 1182.12,

1 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698, *et seq.*; California Business and Professions
2 Code § 17200, *et seq.* (Unfair Competition), and Wage Order 4, which sets employment standards
3 for professional, technical, clerical, mechanical and similar occupations.

4 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
5 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
6 business by partnering with cities & transit agencies to provide secure bike parking throughout
7 California, and employed Plaintiff and other similarly situated non-exempt employees within Los
8 Angeles County and the state of California and, therefore, were (and are) doing business in Los
9 Angeles County and the State of California.

10 5. Plaintiff does not know the true names or capacities, whether individual, partner,
11 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
12 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
13 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
14 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
15 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
16 and proximately caused Plaintiff and the Classes (as defined in Paragraph 16) to be subject to the
17 unlawful employment practices, wrongs, injuries, and damages complained of herein.

18 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
19 mentioned herein, Defendants were and are the employers of Plaintiff and all members of the
20 Classes.

21 7. At all times herein mentioned, each of said Defendants participated in the doing
22 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
23 Defendants, and each of them, were the agents, servants, and employees of each and every one of
24 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
25 were acting within the course and scope of said agency and employment. Defendants, and each
26 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
27 omissions complained of herein.

28 ///

1 8. At all times mentioned herein, Defendants, and each of them, were members of
2 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
3 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
4 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
5 Members (as defined in Paragraph 16).

6 **GENERAL FACTUAL ALLEGATIONS**

7 9. Plaintiff was hired by Defendants as a non-exempt “mechanic” in approximately
8 January 22, 2019 and worked for Defendants until his termination in or around January 2020.
9 Plaintiff’s job duties included, but were not limited to, maintaining and repairing Defendants’
10 fleet of bicycles.

11 10. Defendants failed to pay Plaintiff and other non-exempt employees for all hours
12 worked, including (but not limited to) by requiring and/or permitting employees to work while
13 off-the-clock. This has resulted in Plaintiff and other non-exempt employees not being paid all
14 required wages for all hours worked, including all minimum wages and overtime wages.

15 11. Defendants also failed to compensate Plaintiff and other non-exempt employees
16 overtime wages equal to one and one-half times their regular rate of pay when they worked over
17 8.0 hours per workday and/or more than 40.0 hours per workweek. Specifically, from July 29,
18 2016 until January 1, 2018, Defendants provided Plaintiff and other non-exempt employees with
19 gratuitous ‘paid’ off-duty meal breaks, but did not include these gratuitous payments in their
20 respective regular rate of pay when calculating the regular rate of pay and thereby miscalculated
21 and underpaid overtime wages owed to them.

22 12. Defendants also failed to authorize and permit all required rest periods for Plaintiff
23 and other non-exempt employees. Specifically, Defendants have often failed to authorize and
24 permit a net 10-minute rest period for every four hours worked or major fraction thereof, and
25 Plaintiff and other employees often have had to take short (less than 10 minutes) rest periods, due
26 to their workload. Despite failing to authorize and permit Plaintiff and other non-exempt
27 employees to take all rest periods to which they are entitled, upon information and belief, during
28 at least a portion of the relevant time period, Defendants maintained no mechanism for the

1 payment of rest period premium payments as required by Labor Code section 226.7 and did not
2 pay Plaintiff or other non-exempt employees any rest period premiums.

3 13. Defendants also failed to adequately reimburse Plaintiff and other non-exempt
4 employees for all reasonable and necessary work expenditures, including, but not limited to, the
5 use of personal cellular phones. Specifically, Plaintiff and other non-exempt employees were
6 required to use their personal cell phones to download several applications or “apps” to complete
7 their job duties for Defendant. Plaintiff was required to download an ADP application to clock
8 in and out of his work shift, as well as clock out and in for his meal periods. Plaintiff was also
9 required to download the “OppsMap” application to locate and track bicycles which needed to be
10 serviced and repaired, and was also required to download an additional application to retrieve
11 work orders from Defendants’ dispatch employees. Despite requiring Plaintiff to use his personal
12 cellular phone for work activities, Defendants did not reimburse Plaintiff for a reasonable portion
13 of his cellular phone expenses, as mandated by *Cochran v. Schwan’s Home Service, Inc.*, 228
14 Cal.App.4th 1137 (2014). Plaintiff and other non-exempt employees were not reimbursed for
15 these work-related expenditures as required pursuant to Labor Code § 2802.

16 14. Plaintiff was not provided with all legally compliant meal periods due to
17 Defendants’ meal period policies/practices which failed to provide Plaintiff and other non-exempt
18 employees with a duty-free, uninterrupted 30-minute meal period commencing before the end of
19 the fifth hour of work. Specifically, Plaintiff was often provided with a meal period that began
20 after the fifth hour of work due to Defendants’ requirement that Plaintiff complete his work duties
21 before taking a meal period. In addition, Defendants failed to provide Plaintiff or other non-
22 exempt employees with second meal periods on shifts over 10.0 hours. In the event that a legally
23 compliant meal period was not in fact provided, Plaintiff was not always paid a meal period
24 premium required by Labor Code § 226.7.

25 15. As a result of Defendants’ failure to pay all minimum and overtime wages and all
26 meal and rest period premium wages, Defendants maintained inaccurate payroll records, issued
27 inaccurate wage statements to Plaintiff, and failed to timely pay all final wages to Plaintiff upon
28 his separation of employment from Defendants.

1 **CLASS ACTION ALLEGATIONS**

2 16. Class Definitions: Plaintiff brings this action on behalf of himself and the
3 following Classes pursuant to Section 382 of the Code of Civil Procedure:

4 a. The Minimum Wage Class consists of all of Defendants' current and former
5 non-exempt employees in California who were subject to Defendants' timekeeping and/or
6 payroll policies and/or practices, during the four years immediately preceding the filing of
7 the Complaint through the present.

8 b. The Overtime Class consists of all of Defendants' current and former non-
9 exempt employees in California who worked more than 8.0 hours per day and/or 40.0 hours
10 per week and: (i) received paid off-duty meal periods during a corresponding time period;
11 and/or (ii) were subject to Defendants' timekeeping and/or payroll policies and/or
12 practices, during the four years immediately preceding the filing of the Complaint through
13 January 1, 2018.

14 c. d. The Rest Period Class consists of all of Defendants' current and former
15 non-exempt employees in California who worked at least one shift of 3.5 hours or more
16 during the four years immediately preceding the filing of the Complaint through the
17 present.

18 d. The Expense Reimbursement Class consists of all of Defendants' current and
19 former non-exempt employees in California, during the four years preceding the filing of
20 the Complaint through the present.

21 e. The Meal Period Class consists of all of Defendants' current and former non-
22 exempt employees in California: (i) who worked at least one shift in excess of 5.0 hours
23 without a meal period of at least 30 minutes in duration commencing prior to the conclusion
24 of the fifth hour of work as reflected in their timekeeping records, and who do not have a
25 corresponding meal period premium payment made for such shifts and/or (ii) who worked
26 at least one shift in excess of 10.0 hours without a second meal period of at least 30 minutes
27 in duration commencing prior to the conclusion of the tenth hour of work, and who do not
28

1 have a corresponding meal period premium payment made for such shifts , during the four
2 years immediately preceding the filing of the Complaint through the present.

3 f. The Wage Statement Class consists of all members of the Minimum Wage
4 Class, Overtime Class, Rest Period Class and/or Meal Period Class who received a wage
5 statement during the one year immediately preceding the filing of the Complaint through
6 the present.

7 g. The Waiting Time Class consists of Defendants' formerly employed members
8 of the Minimum Wage Class, Overtime Class, Rest Period Class and/or Meal Period Class,
9 during the three years immediately preceding the filing of the Complaint through the
10 present.

11 17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
12 joinder of all members would be unfeasible and impracticable. The membership of the Classes
13 and subclasses is unknown to Plaintiff at this time; however, it is estimated that the Classes
14 number greater than one hundred (100) individuals in each Class. The identity of such
15 membership is readily ascertainable via Defendants' employment records.

16 18. **Common Questions of Law and Fact Predominate/Well Defined Community**
17 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
18 situated employees, which predominate over questions affecting only individual members
19 including, without limitation to:

20 i. Whether Defendants paid all minimum wages owed to members of the
21 Minimum Wage Class for all hours worked pursuant to Labor Code §§ 1182.12, 1194,
22 1194.2 and 1197;

23 ii. Whether Defendants violated the applicable Labor Code provisions
24 including, but not limited to §§ 510 and 1194, by requiring overtime work and not paying
25 for said work according to the overtime laws of the State of California;

26 iii. Whether Defendants provided all legally compliant rest periods to
27 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
28

iv. Whether Defendants failed to reimburse members of the Expense Reimbursement Class for necessary work expenses;

v. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;

vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and

vii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to Plaintiff and Waiting Time Class members at their separation of employment were lawful.

19. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' meal period policies/practices and expense reimbursement policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was subject to Defendants' expense reimbursement policies/practices, was subject to Defendants' uniform meal and rest period policies/practices, was furnished with inaccurate and incomplete wage statements, and failed to receive all final wages upon the separation of employment with Defendants.

21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously

1 prosecuting this action on behalf of the members of the Classes.

2 22. **Superiority:** The California Labor Code is broadly remedial in nature and serves
3 an important public interest in establishing minimum working conditions and standards in
4 California. These laws and labor standards protect the average working employee from
5 exploitation by employers who have the responsibility to follow the laws and who may seek to
6 take advantage of superior economic and bargaining power in setting onerous terms and
7 conditions of employment. The nature of this action and the format of laws available to Plaintiff
8 and members of the Classes make the class action format a particularly efficient and appropriate
9 procedure to redress the violations alleged herein. If each employee were required to file an
10 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
11 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
12 their vastly superior financial and legal resources. Moreover, requiring each member of the
13 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
14 employees who would be disinclined to file an action against their former and/or current employer
15 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
16 employment. Further, the prosecution of separate actions by the individual class members, even
17 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
18 with respect to the individual class members against Defendants herein; and which would
19 establish potentially incompatible standards of conduct for Defendants; and/or legal
20 determinations with respect to individual class members which would, as a practical matter, be
21 dispositive of the interest of the other class members not parties to adjudications or which would
22 substantially impair or impede the ability of the class members to protect their interests. Further,
23 the claims of the individual members of the classes are not sufficiently large to warrant vigorous
24 individual prosecution considering all of the concomitant costs and expenses attending thereto.
25 As such, the Classes identified in Paragraph 16 are maintainable under Section 382 of the Code
26 of Civil Procedure.

27 **FIRST CAUSE OF ACTION**

28 **MINIMUM WAGE VIOLATIONS**

(AGAINST ALL DEFENDANTS)

23. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24. Wage Order 4, § 4 and Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194 and 1194.2 provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance plus attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages, and interest accrued thereon.

25. At all relevant times, Defendants failed to conform their pay practices to the requirements of the law, including, but not limited to, by failing to pay for all hours actually worked. Thus, Plaintiff and members of the Minimum Wage Class were not compensated for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 4.

26. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due, and interest thereon.

27. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 4.

28. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of

suit according to California Labor Code §§ 204, 558, 1194 et seq., 1197, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(AGAINST ALL DEFENDANTS)

29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

30. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and 1198, which provide that non-exempt employees are entitled to all overtime wages and compensation for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

31. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 4. Wage Order 4, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of 8 hours per work day and/or in excess of 40 hours of work in the workweek. Defendants caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the Overtime Class with one and one-half times their regular rate of pay for such hours.

32. The foregoing policies and practices are unlawful and create an entitlement to recovery by Plaintiff and members of the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 1194, and 1198; and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 34. Wage Order 4, § 12 and Labor Code §§ 226.7 and 516 establish the right of
2 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
3 period worked, or major fraction thereof.

4 35. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
5 of the Rest Period Class to take all required rest periods.

6 36. The foregoing violations create an entitlement to recovery by Plaintiff and
7 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
8 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
9 to Labor Code §§ 226.7, 516, and Civil Code §§ 3287(b) and 3289.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

12 **(AGAINST ALL DEFENDANTS)**

13 37. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 38. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
15 states that “an employer shall indemnify his or her employees for all necessary expenditures or
16 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
17 his or her obedience to the directions of the employer.”

18 39. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
19 states that “any contract or agreement, express or implied, made by any employee to waive the
20 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
21 employee or his personal representative of any right or remedy to which he is entitled under the
22 laws of this State.”

23 40. Due to Defendants’ unlawful policy and practice of requiring employees to use
24 their personal cellular phones for work-related purposes, and failing to pay reimbursements to
25 Plaintiff and members of the Expense Reimbursement Class, Defendants have violated Labor
26 Code §2802.

27 41. As a proximate result of Defendants’ policies and/or practices in violation of Labor
28 Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class suffered

1 damages in sums, which will be shown according to proof.

2 42. Plaintiff and members of the Expense Reimbursement Class are entitled to
3 attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

4 43. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
5 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
6 Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall
7 accrue from the date on which they incurred the initial necessary expenditure.

8 **FIFTH CAUSE OF ACTION**

9 **MEAL PERIOD VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

11 44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 failed in their affirmative obligation to provide all of their hourly non-exempt employees,
14 including Plaintiff and members of the Meal Period Class, with all required meal periods in
15 accordance with the mandates of the California Labor Code and Wage Order 4, for the reasons
16 set forth in the factual allegations and class definitions sections of this Complaint.

17 46. As a result, Defendants are responsible for paying premium compensation for meal
18 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to
19 Wage Order 4, Labor Code §§ 226.7 and 512, and Civil Code §§ 3287(b) and 3289.

20 **SIXTH CAUSE OF ACTION**

21 **WAGE STATEMENT VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

23 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
26 and the Wage Statement Class with accurate and complete itemized wage statements that
27 included, among other requirements, all meal period premium wages earned in violation of Labor
28 Code § 226.

1 49. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
2 with complete and accurate itemized wage statements resulted in injury, as said failures led to,
3 among other things, the non-payment of all their minimum and overtime wages and all meal and
4 rest period premium wages, and deprived them of the information necessary to identify the
5 discrepancies in Defendants' reported data.

6 50. Defendants' failures create an entitlement to recovery by Plaintiff and members of
7 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
8 Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs
9 of suit according to California Labor Code §§ 226 and 226.3.

10 **SEVENTH CAUSE OF ACTION**

11 **WAITING TIME PENALTIES**

12 **(AGAINST ALL DEFENDANTS)**

13 51. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 52. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
15 an employer to pay all wages immediately at the time of separation of employment in the event
16 the employer discharges the employee or the employee provides at least 72 hours of notice of
17 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
18 to quit, said employee's wages become due and payable not later than 72 hours upon said
19 employee's last date of employment.

20 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
22 at their separation from employment, including all minimum and overtime wages and all meal
23 and rest period premium wages.

24 54. Furthermore, Plaintiff is informed and believes, and based thereon alleges, that as
25 a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
26 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
27 to the requirements of Labor Code §§ 201-203.

28 55. Defendants' failure to pay all final wages was willful within the meaning of Labor

Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of wages up to thirty days from the time the wages were due.

56. Therefore, Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

57. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

58. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, et seq., by failing to pay all minimum and overtime wages, failing to reimburse necessary business expenses, failing to authorize and permit all rest periods, failing to provide meal periods or pay meal period premium wages, failing to furnish accurate and complete itemized wage statements in violation of Labor Code § 226, and failing to timely pay all wages owed upon separation of employment.

59. Defendants' utilization of these unfair and/or unlawful business practices has deprived Plaintiff and members of the Classes of compensation and/or reimbursements to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

60. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself, and on behalf of the members of the Classes, seeks full restitution of monies as necessary and according to proof, to restore any and all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

61. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

62. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf

1 of Defendants' current non-exempt employees, and to enforce important rights affecting the
2 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
3 which he is entitled to recover under Code of Civil Procedure § 1021.5.

4 ///

5 ///

6 ///

7 **NINTH CAUSE OF ACTION**
8 **PRIVATE ATTORNEYS GENERAL ACT**
9 **(AGAINST ALL DEFENDANTS)**

10 63. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

11 64. Defendants have committed several Labor Code violations against Plaintiff,
12 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
13 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
14 employees, brings this representative action against Defendants to recover the civil penalties due
15 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
16 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
17 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
18 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
19 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
20 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
21 employee per pay period; (3) \$250.00 for each initial violation and \$1,000.00 for each subsequent
22 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (4) \$100.00 for
23 each initial violation and \$200 for each subsequent violation per employee per pay period for
24 those violations of the Labor Code for which no civil penalty is specifically provided, based on
the following Labor Code violations:

- 25 a. Failing to reimburse Plaintiff, the Expense Reimbursement Class, and other aggrieved
26 employees for all necessary work expenses incurred in violation of Labor Code §§
27 2802 and 2804;
- 28 b. Failing to provide all legally required meal periods, and failure to pay meal period

premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;

- c. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- d. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- e. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- f. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174;
- g. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- h. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198; and
- i. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198.

65. On July 30, 2020, Plaintiff notified Defendants Bikehub and Bicycle Transit Systems, Inc., via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 64 (a)-(f). On February [REDACTED], 2022, Plaintiff notified Defendants Bikehub and Bicycle Transit Systems, Inc., via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”)

1 via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to
2 bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the
3 violations of the California Labor Code identified in Paragraph 64 (g)-(i). Now that sixty-five
4 days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the
5 LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted
6 his administrative requirements for bringing a claim under the Private Attorneys General Act with
7 respect to these violations.

8 66. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved
9 Employees, as defined by Labor Code § 2699(c), which includes all current and former non-
10 exempt employees who worked for Defendants in California between July 30, 2019, and the
11 present.

12 67. Plaintiff was compelled to retain the services of counsel to file this court action to
13 protect his interests and the interests of other aggrieved employees, and to assess and collect the
14 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
15 he is entitled to receive under California Labor Code § 2699(g).

16 **PRAYER**

17 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
18 this suit is brought against Defendants, as follows:

- 19 1. For an order certifying the proposed Classes;
- 20 2. For an order appointing Plaintiff as representative of the Classes;
- 21 3. For an order appointing counsel for Plaintiff as counsel for the Classes;
- 22 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
23 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
24 1197;
- 25 5. Upon the Second Cause of Action, for compensatory, consequential, general and
26 special damages according to proof pursuant to Labor Code §§ 204, 510, 1194, and 1198;
- 27 6. Upon the Third Cause of Action, for compensatory, consequential, general and
28 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

1 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

3 8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and
4 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

5 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
6 226, *et seq.*;

7 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to
8 Labor Code § 203;

9 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
10 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
11 practices declared by this Court to be in violation of Business and Professions Code § 17200, *et*
12 *seq.*;

13 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
14 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
15 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
16 to pay each employee and \$200 for each subsequent violation or willful or intentional violation
17 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
18 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
19 pursuant to Labor Code § 558 per employee per pay period; (3) \$250.00 for each initial violation
20 and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per
21 pay period; and/or (4) \$100.00 for each initial violation and \$200 for each subsequent violation
22 per employee per pay period for those violations of the Labor Code for which no civil penalty is
23 specifically provided, based on the Labor Code violations identified in Paragraph 64 (a)-(i);

24 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
25 §§ 218.6, and 2802(b) and Civil Code §§ 3287 and 3289;

26 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
27 226(e), 1194, 2802(c), 2699(g), and Code of Civil Procedure § 1021.5; and

28 15. For such other and further relief the Court may deem just and proper.

1
2 Date: March 1, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

3
4 By:



Paul K. Haines
Attorneys for Plaintiff

5
6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

8
9 Dated: March 1, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

10
11 By:



Paul K. Haines
Attorneys for Plaintiff

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Los Angeles County Superior Court Case No. 20STCV28879

[illegible]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is [X] 2155 Campus Drive, Suite 180, El Segundo, California 90245.

On March 1, 2022, I served the foregoing document(s) described as:

SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested party(ies) in this action as follows:

Katherine C. Den Bleyker, Esq. Email: Katherine.DenBleyker@lewisbrisbois.com Heather E. Horn, Esq. Email: Heather.Horn@lewisbrisbois.com LEWIS BRISBOIS BISGAARD & SMITH LLP 633 West 5th Street, Suite 4000 Los Angeles, CA 90071 <i>Attorneys for Defendant BICYCLE TRANSIT SYSTEMS, INC.</i>	David D. Sohn, Esq. Email: david@sohnlegal.com SOHN LEGAL GROUP, P.C. 20 Haight Street, Suite 101 San Francisco, CA 94102 <i>Attorneys for Defendant BIKEHUB</i>
---	---

[X] (VIA ELECTRONIC MAIL) I caused a true and correct copy of the document(s) described above to be electronically served on counsel of record at the electronic service addresses listed above by transmission to CASE ANYWHERE.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 1, 2022, at El Segundo, California.

Alma Hernandez