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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DISTRICT**

SUNGMIN KIM, an individual,

Plaintiff,

v.

VEYO, LLC, an Arizona Limited Liability
Company, and DOES 1 through 20, inclusive,

Defendants.

Case No. 37-2020-00033184-CU-OE-CTL

FIRST AMENDED COMPLAINT FOR:

**1. CIVIL PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEY GENERAL
ACT (LABOR CODE §§ 2698 ET SEQ.)**

[DEMAND FOR JURY TRIAL]

IN EXCESS OF \$25,000

COMES NOW PLAINTIFF, SUNGMIN KIM, for causes of action against the Defendants and
each of them, allege as follows:

JURISDICTION

1
2 1. This Court is the proper court, and this action is properly filed in San Diego County,
3 because Defendants' obligations and liability arise therein, because Defendants maintains offices and
4 transacts business within San Diego, and because the work that is the subject of this action was
5 performed by Plaintiff in Orange County and San Diego County.

THE PARTIES

6
7 2. Plaintiff, SUNGMIN KIM, (hereinafter referred to as "Plaintiff") is and at all times
8 relevant hereto was a resident of the County of Orange, State of California.

9 3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
10 hereto, Defendant VEYO, LLC (hereinafter referred to as "Defendant") was and is an Arizona Limited
11 Liability Company doing business at 4875 Eastgate Mall, San Diego, CA 92121 in the County of San
12 Diego, State of California.

13 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
14 hereto, Defendants owned and/or operated a non-emergency medical transportation service and availed
15 themselves of the rights and privileges of the State of California.

16 5. Defendants were Plaintiff's employers within the meaning of Government Code
17 §§12926, subdivision (d), 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly
18 employ five (5) or more persons and are therefore subject to the jurisdiction of this Court.

19 6. The true names and capacities, whether individual, corporate, associate, or otherwise, of
20 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and
21 therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
22 complaint to insert the true names and capacities of said Defendants when the same become known to
23 Plaintiff. Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously
24 named Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff
25 as alleged hereinafter.

26 7. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
27 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
28 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the

1 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
2 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
3 successor status and/or joint venture and with the permission and consent of each of the other
4 Defendants.

5 8. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and
6 each of them, including those defendants named as DOES 1-20, acted in concert with one another to
7 commit the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one
8 another in the wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government
9 Code §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants,
10 and each of them, including those defendants named as DOES 1-20, and each of them, formed and
11 executed a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
12 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to
13 cause and actually causing Plaintiff harm.

14 9. Whenever and wherever reference is made in this complaint to any act or failure to act
15 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
16 and/or failures to act by each Defendant acting individually, jointly and severally.

17 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

18 10. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
19 unity of interest and ownership between Defendants and DOES 1-20 that the individuality and
20 separateness of Defendants have ceased to exist.

21 11. Plaintiff is informed and believes, and based thereon allege, that despite the formation
22 of purported corporate existence, Defendants and DOES 1-20 are, in reality, one and the same as
23 Defendants, including, but not limited to because:

24 a. Defendants are completely dominated and controlled by DOES 1-20, who
25 personally committed the frauds and violated the laws as set forth in this complaint, and who have
26 hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or accomplish
27 some other wrongful or inequitable purpose.
28

1 b. DOES 1-20 derive actual and significant monetary benefits by and through
2 Defendants' unlawful conduct, and by using Defendants as the funding source for their own personal
3 expenditures.

4 c. Plaintiff is informed and believes that Defendants and DOES 1-20, while really
5 one and the same, were segregated to appear as though separate and distinct for purposes of perpetrating
6 a fraud, circumventing a statute, or accomplishing some other wrongful or inequitable purpose.

7 d. Plaintiff is informed and believes that Defendants do not comply with all requisite
8 corporate formalities to maintain a legal and separate corporate existence.

9 e. Plaintiff is informed and believes, and based thereon alleges, that the business
10 affairs of Defendants and DOES 1-20 are, and at all times relevant were, so mixed and intermingled that
11 the same cannot reasonably be segregated, and the same are in inextricable confusion. Defendants are,
12 and at all times relevant hereto were, used by DOES 1-20 as a mere shell and conduit for the conduct of
13 certain of Defendants' affairs, and are, and were, the alter ego of DOES 1-20. The recognition of the
14 separate existence of Defendants would not promote justice, in that it would permit Defendants to insulate
15 themselves from liability to Plaintiff for violations of the Government Code and other statutory violations.
16 The corporate existence of Defendants and DOES 1-20 should be disregarded in equity and for the ends
17 of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

18 12. Accordingly, Defendants constitute the alter ego of DOES 1-20, and the fiction of their
19 separate corporate existence must be disregarded.

20 13. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
21 thereon alleges that Defendants and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
22 enterprise, and that Plaintiff was an employee of Defendants, and DOES 1-20. Plaintiff performed
23 services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all
24 Defendants shared control of Plaintiff as an employee, either directly or indirectly, and the manner in
25 which Defendants' business was and is conducted.

26 14. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
27 between DOES 1-20 and Defendants, (1) there is an express or implied agreement of assumption
28 pursuant to which DOES 1-20 agreed to be liable for the debts of Defendants, (2) the transaction

1 between DOES 1-20 and Defendants amounts to a consolidation or merger of the two corporations, (3)
2 DOES 1-20 is a mere continuation of Defendants, or (4) the transfer of assets to DOES 1-20 is for the
3 fraudulent purpose of escaping liability for Defendants' debts. Accordingly, DOES 1-20 are the
4 successors of Defendants, and are liable on that basis.

5 **FACTUAL ALLEGATIONS**

6 15. Plaintiff began working at Defendant on or about October 2019 as a driver. At all times
7 relevant hereto, Plaintiff worked for Defendant as an independent contractor.

8 16. Plaintiff's job duties involved picking up and dropping off Medicare patients to transport
9 them to and from their medical appointments. Plaintiff's rate of pay was based upon the individual he
10 picked up and however many miles he drove them.

11 17. For every sixth ride Plaintiff completed, he was to receive a bonus, though bonuses were
12 only effective between the hours of 6:00 a.m. and 6:00 p.m.

13 18. Plaintiff typically completed 15 rides per day throughout his employment with
14 Defendants, for approximately 10 to 12 hours of work per day.

15 19. Throughout the entirety of his employment with Defendant, having been misclassified
16 as an independent contractor, Plaintiff was unable to take his due meal breaks or rest periods.

17 20. Moreover, Defendants failed to pay Plaintiff overtime compensation for those rides he
18 performed in excess of eight and even 12 hours in a single day. Nevertheless, those rides Plaintiff
19 completed during his overtime hours accounted for anywhere between 7,000 to 8,000 hours per month.

20 21. In addition, Plaintiff experienced a number of instances where a customer would call for
21 transportation only to fail to appear when Plaintiff arrived to pick them up. When this occurred, which
22 happened on average roughly five times per day, Defendant did not pay Plaintiff. Indeed, Defendant
23 refused to pay Plaintiff for any transportations for which Plaintiff was called that did not result in rides,
24 due to no fault of Plaintiff's own.

25 22. At times, when customers continuously failed to appear for rides they had called,
26 Plaintiff's bonus became impacted, as those cancelled rides did not count toward Plaintiff's sixth ride
27 under which he would qualify for a bonus. These cancellations impacted Plaintiff's bonus on a regular
28 basis.

1 23. Furthermore, Defendant failed to provide Plaintiff with a paystub with each paycheck
2 received. Thus, Plaintiff had no wage statement reflecting his hours worked or rate of pay, much less
3 any of the other requirements for wage and hour statements.

4 24. Plaintiff was terminated from his employment with Defendant on or about April 2, 2020.

5 25. For the entirety of Plaintiff's employment with Defendants, Defendants have failed and
6 refused to pay Plaintiff the total amount of wages that Plaintiff, through his employment and labor had
7 earned working for Defendants.

8 26. For the entirety of Plaintiff's employment with Defendants, Defendants have
9 consistently failed to provide Plaintiff with timely, accurate, and itemized wage and hour statements, in
10 writing, showing gross wages earned, total hours worked, all deductions made, net wages earned, the
11 name and address of the legal entity employing her, all applicable hourly rates in effect during each pay
12 period, and the corresponding number of hours worked by him at each hourly rate in and among other
13 information, as required by California wage-and-hour laws.

14 27. For the entirety of Plaintiff's employment with Defendants, Defendants routinely failed
15 to provide Plaintiff with rest breaks after working the requisite number of hours, and routinely required
16 Plaintiff to work more than the requisite number of hours without being given at least a 30-minute meal
17 break. Further, Defendants routinely failed to compensate Plaintiff for these missed rest breaks and meal
18 periods.

19 28. For the entirety of Plaintiff's employment with Defendants, Defendants had consistently
20 failed to pay Plaintiff's wages on a timely semi-monthly basis, as required by the Labor Code.

21 29. For the entirety of Plaintiff's employment with Defendants, Defendants routinely
22 required Plaintiff to work more than eight hours per day and 40 hours per week. Plaintiff did not receive
23 accurate compensation for straight, regular time pay, and overtime pay.

24 30. Defendants failed to pay all wages due and owed to Plaintiff at the time of his termination
25 or within seventy-two (72) hours of his resignation, as required by California wage-and-hour laws.

26 31. As set forth above, and throughout this complaint, Defendants engaged in various acts
27 of unfair competition and unlawful and unfair business practices as defined in the *Unfair Competition*
28 *Law*, Business and Professions Code § 17200, et seq.

1 32. Pursuant to the Labor Code, California law and applicable Wage Orders, Plaintiff is
2 entitled to all damages, unpaid wages, statutory penalties, waiting time penalties, interest and attorney's
3 fees and costs for the illegal and wrongful acts and omissions of Defendants, all as alleged throughout
4 this complaint.

5 **FIRST CAUSE OF ACTION**
6 **RECOVERY FOR CIVIL PENALTIES UNDER THE LABOR CODE**
7 **PRIVATE ATTORNEY GENERAL ACT**
8 **(LABOR CODE §§ 2698 ET SEQ.)**
9 **AGAINST ALL DEFENDANTS AND ALL DOE DEFENDANTS**

10 33. Plaintiff incorporates by reference and re-allege paragraphs 1 through 32, inclusive, as
11 though set forth fully herein.

12 34. As alleged herein, Defendants have repeatedly committed several types of Labor Code
13 violations against Plaintiff.

14 35. Plaintiff, an "aggrieved employee" within the meaning of California Labor Code Section
15 2699(c), acting on behalf of himself, other aggrieved employees, and the State of California's Labor
16 and Workforce Development Agency, brings this action to recover the civil penalties provided for under
17 the California Labor Code Private Attorney General Act of 2004 ("PAGA"), including, but not limited
18 to, the penalties provided under California Labor Code Sections 210, 225.5, 226.3, 558, 1197.1 and
19 2699, subdivisions (a) and (f), for the following knowing and intentional Labor Code violations:

20 A. Failing and/or refusing to pay Plaintiff and the Aggrieved Employees all earned
21 overtime compensation for work beyond 8 hours in a day and/or 40 hours in a week, in
22 violation of California Labor Code Section 1197 and IWC Wage Order 15 (*see Cal. Lab.*
23 *Code §§ 558 & 2699(a)*);

24 B. Failing and/or refusing to pay Plaintiff and the Aggrieved Employees the legally-
25 mandated minimum wage for each hour worked beyond 8 hours in a day and/or 40 hours
26 in a week, in violation of California Labor Code section 1197 and Wage Order 15, (*see*
27 *Cal. Lab. Code §§ 1197.1 & 2699(a)*);

28 C. Failing and/or refusing to provide legally compliant meal and rest breaks or pay
premium wages to Plaintiff and the Aggrieved Employees, in violation of California
Labor Code sections 226.7 and 512 and Wage Order 15;

1 D. Failing and/or refusing to pay all wages earned by Plaintiff and the Aggrieved
2 Employees within the time limits prescribed by California Labor Code section 204, (*see*
3 *Cal. Lab. Code §§ 210 & 2699(a)*);

4 E. Failing and/or refusing to pay all wages earned by Plaintiff and the Aggrieved
5 Employees within the time limits prescribed by California Labor Code section 204, (*see*
6 *Cal. Lab. Code §§ 558 & 2699(a)*);

7 F. Unlawfully withholding accrued wages owed to Plaintiff and the Aggrieved
8 Employees, in violation of California Labor Code section 216, (*see Cal. Lab. Code §§*
9 *225.5 & 2699(a)*);

10 G. Failing and/or refusing to properly maintain records of, and furnish to Plaintiff
11 and the Aggrieved Employees, accurate, itemized wage statements, in violation of
12 California Labor Code sections 226 and 1174, (*see Cal. Lab. Code §§ 226.3 & 2699(a)*);

13 H. Failing and/or refusing to Pay/Indemnify/Reimburse necessary expenditures
14 incurred by Plaintiff and the Aggrieved Employees during discharge of work duties in
15 violation of California Labor Code § 2802;

16 I. Willfully misclassifying Plaintiff and the Aggrieved Employees as independent
17 contractors because they blatantly perform work that is part of the usual course of
18 Defendants' business and, despite being advised by skilled attorneys, Defendants
19 classified them—and continues to classify them—as independent contractors, in
20 violation of California Labor Code section 226.8 and the applicable IWC Wage order
21 and;

22 J. Other violations of the Labor Code as may be disclosed in discovery.

23 36. On July 16, 2020, a letter was sent by certified mail to Defendants, and to the California
24 Labor and Workforce Development Agency, (hereafter, "LWDA"), giving notice of Defendants'
25 violations of the California Labor Code, and of Plaintiff's intent to bring a civil claim for civil penalties
26 under PAGA.

27 37. On May 12, 2021, Plaintiff provided a supplemental written notice by online filing to the
28 LWDA and by certified mail to Defendants.

38. The LWDA has declined to investigate Defendants' violations of the California Labor Code. Plaintiff will prosecute this PAGA cause of action against Defendants, pursuant to California Labor Code section 2699.3 subdivision (a)(2)(A).

39. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interest, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under Labor Code § 2699.

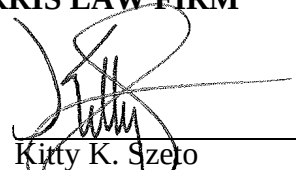
PRAYER FOR RELIEF

WHEREFORE, Plaintiff hereby prays that the Court enter judgment in his favor and against Defendants, and each of them, as follows:

1. For payment of civil penalties (defined below) related earned wages, meal and rest period compensation, waiting time compensation, and other damages according to proof in an amount to be ascertained at trial, and in excess of the jurisdictional limit of this court; for other special damages;
2. For payment of all statutory obligations and penalties as required by law;
3. For "civil penalties" to the extent permitted by law and Labor Code §§ 2698 and Section 2699 et seq.;
4. A declaration of the rights and interests of the parties;
5. For prejudgment interest on each of the foregoing at the legal rate from the date the obligation became due through the date of judgment in this matter;
6. For costs of suit, attorneys' fees, and expert witness fees;
7. For post-judgment interest; and
8. For any other relief that is just and proper.

DATED: August 30, 2021

PARRIS LAW FIRM

By: 

Kitty K. Szeto
Attorneys for Plaintiff
SUNGMIN KIM

JURY TRIAL DEMANDED

Plaintiff demands trial of all issues by jury.

DATED: August 30, 2021

PARRIS LAW FIRM

By: 

Kitty K. Szeto
Attorneys for Plaintiff
SUNGMIN KIM

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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 43364 10th Street West, Lancaster, California 93534.

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[X] **BY MAIL as follows:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. postal service on that same day with postage thereon fully prepaid at Lancaster, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[] **BY PERSONAL SERVICE as follows:**

[] I delivered such envelope by hand to the addressees at _____

[] I caused the foregoing document described hereinabove to be personally delivered by hand by placing it in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and provided it to a professional messenger service whose name and business address is **Team Legal, Inc., 963 West Avenue J, Lancaster, CA 93534.**

[] I caused the foregoing document described hereinabove to be personally delivered by hand by placing it in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and provided it to a professional messenger service whose name and business address is **First Legal Support Services, 1511 West Beverly Blvd., Los Angeles, CA 90026.**

[] I caused the foregoing document described hereinabove to be personally delivered by hand by placing it in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and provided it to a

professional messenger service whose name and business address is **Nighthawk Processing, 13009 Providence Place, Bakersfield, CA 93314.**

☐ **BY FACSIMILE as follows:** I served such document(s) by fax at See Service List to the fax number provided by each of the parties in this litigation at Lancaster, California. I received a confirmation sheet indicating said fax was transmitted completely.

☐ **BY FEDERAL EXPRESS/OVERNIGHT MAIL as follows:** I placed such envelope in a Federal Express Mailer addressed to the above party or parties at the above address(es), with delivery fees fully pre-paid for next-business-day delivery, and delivered it to a Federal Express pick-up driver before 4:00 p.m. on the stated date.

☐ **BY ELECTRONIC SERVICE as follows:** Based on a court order, or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addressed listed on the attached Service List.

Executed on August 30, 2021, at Lancaster, California.

☒ I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Monica Alvarez