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similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK

MEHRAN KHARAZI, an individual on his own
behalf and on behalf of all others similarly situated

Plaintiff,

vs

LA DEPOSITIONS, INC., a California
corporation; and DOES 1-25, inclusive,

Defendant

Case No.: **21STCV04012**

COMPLAINT FOR

- 1) Misclassification – Labor Code Section 2775
- 2) Failure to Pay Wages in a Timely Manner in violation of Labor Code §204
- 3) Failure to Maintain Records of Hours Worked in Violation of Labor Code Section 1174(d)
- 4) Failure to Provide Itemized Wage Statements in Violation of Labor Code § 226
- 5) Failure to Provide Meal Periods in violation of Labor Code §§ 226.7 and 512 and applicable IWC Wage Orders
- 6) Failure to Provide Rest Periods in violation of Labor Code § 226 and applicable IWC Wage Orders
- 7) Failure to Pay Overtime Earned in violation of Labor Code §§ 510, 1198 and applicable IWC Wage Orders
- 8) Failure to Reimburse Expenses in violation of Labor Code § 2802
- 9) Failure to Pay All Wages Due Upon Termination in Violation of Labor Code Section 201
- 10) Unfair Competition and Unlawful Business Practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*
- 11) Violation of the Private Attorney Generals Act of 2004, Labor Code §2698 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Mehran Kharazi (“Plaintiff”), on behalf of himself and on behalf of all others
2 similarly situated alleges as follows:

3
4 **I. INTRODUCTION**

5 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, on behalf of
6 Plaintiff, and all similarly situated employees, including but not limited to, all non-exempt
7 employees currently or formerly employed by LA DEPOSITIONS, Inc., a California corporation
8 and any subsidiaries or affiliated companies (hereinafter collectively referred to as “LA
9 Depositions” or “Defendant(s)"). The non-exempt employees currently or formerly employed by
10 Defendant within the State of California within four years from the date of the filing of this
11 complaint (the “Class Period”) are hereinafter referred to individually as “Class Members” and
12 collectively as the “Class” or “Classes.”

13 2. Defendant has violated California law by misclassifying Plaintiff and the Class
14 Members as independent contractors, when they are in fact, regular W-2 nonexempt employees.
15 Due to this misclassification, Defendants have violated numerous provisions of the California
16 Labor Code, including failure to compensate Plaintiff and Class Members for all overtime hours
17 worked despite the fact that Plaintiff and Class Members worked overtime, failure to pay a
18 minimum wage for all hours worked, failure to provide meal and rest periods, failure to pay all
19 earned wages at the conclusion of employment, failure to adequately reimburse Class Members
20 for business expenditures incurred as required by their jobs, and failure to furnish paystubs
21 accurately showing, among other things properly itemized earnings and deductions for the total
22 hours worked during each pay period. Plaintiff also alleges that these acts, which violate the
23 California Labor Code, constitute predicate unlawful and unfair business practices in violation of
24 California’s Unfair Competition Laws.

25 3. Plaintiff, Mehran Kharazi, brings this action as an individual, on his own behalf,
26 and on behalf of all others similarly situated, and seeks compensation for all uncompensated work,
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1 liquidated and/or other damages as permitted by applicable law, as well as attorneys' fees,
2 penalties, interest and costs.

3 **II. JURISDICTION AND VENUE**

4 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
5 Civil Procedure section 395. Plaintiff is a resident of California and worked for Defendants in and
6 around Los Angeles and other counties in California. Defendant conducts business in Los Angeles
7 County and the unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly
8 situated within the State of California and within the County of Los Angeles.

9 5. The Court also has jurisdiction over Plaintiffs and Class Members' claims pursuant to
10 Business and Professions Code sections 17200-17208, who also seek injunctive relief and restitution
11 of ill-gotten benefits arising from Defendants' unlawful business acts and practices under California
12 Business and Professions Code sections 17200-17208.

13 **III. THE PARTIES**

14 6. Plaintiff, Mehran Kharazi, was at all times relevant to this complaint a resident of
15 California and an employee of Defendant, who was employed as a delivery driver by Defendant
16 from on or about April of 2000 until July 30, 2020, picking up and delivering documents and
17 packages for Defendant and Defendant's clients in and around southern California, including Los
18 Angeles County, California.

19 7. The Class Members are or were also employed by Defendants as delivery drivers
20 performing the same or similar duties as the Plaintiff, all of whom worked and lived in the State of
21 California during the relevant Class Period.

22 8. Defendant, LA Depositions, Inc. is a California corporation with its principal place
23 of business located at 1517 Beverly Blvd., Los Angeles, CA 90026 and manages and provides
24 deposition support services to their clients, most of whom are legal practitioners and law firms,
25 including core services that include document and courier delivery services, throughout parts of
26 Southern California, including Los Angeles County.

9. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 25, inclusive, are currently unknown to Plaintiff, who therefore sues such defendants by fictitious names under Code of Civil Procedure section 474.

10. Plaintiff is informed and believes, and based thereon alleges, that each of the defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known.

IV. FACTUAL BACKGROUND

11. Upon information and belief, during the liability period, Defendant employs and/or formerly employed Plaintiff and similarly situated individuals as delivery drivers or couriers. Due to Defendant's unlawful misclassification of such individuals as 1099 independent contractors, the Plaintiff and Class Members have not been paid during the relevant liability period all of their legal wages pursuant to the Labor Code and applicable Industrial Welfare Commission Wage Order No. 4 ("IWC No. 4").

12. During the Class Period, Defendant compensated Plaintiff and the Class Members as they were 1099 independent contractors and not as regular, non-exempt hourly W-2 employees and provided them with no tax forms, tax reporting or tax withholding statements.

13. During the Class Period, Defendant exercised control over the work of Mr. Kharazi and the Class Members he seeks to represent. They established their working schedules, the hours they worked, assigned routes. On a daily and *even hourly basis*, the details associated with the performance of their duties as drivers who picked up and delivered documents for Defendant's clients, were closely monitored and supervised by Defendant's dispatch team, who commanded and controlled all the logistics of Plaintiff and Class Members work duties, including demands

1 that Plaintiff work through rest or meal breaks or that he overtime. On more than one occasion
2 dispatchers threatened to “fire” Plaintiff when he balked when assigned by Defendant’s dispatcher
3 to go and do an additional pick-up and delivery after already having completed a full eight-hour
4 shift. Suffice it to say, Defendant exercised and exercises complete and minute control over every
5 aspect of Plaintiff’s and the Class Members’ job duties.

6 14. During the relevant Class Period, the duties Plaintiff and the Class Members
7 performed (document delivery and courier services) constituted a critical core aspect of the
8 services Defendant provides its clients. The vast majority of Defendant’s clients are attorneys and
9 law firms who routinely require or required Defendant’s drivers to pick up documents to be
10 delivered to the Courts and other client-designated destinations.

11 15. During the Class Period, and the nearly 20 years that Plaintiff Kharazi was
12 employed by Defendant, he never performed his job duties as a driver performing document
13 delivery and courier services for any other clients, entities or employers. He had no other
14 independent client relationships at any other from the year 2000 to July 30, 2020, when he was
15 terminated by Defendant. At all relevant times, Plaintiff was solely employed by Defendant.

16 16. Upon information and belief, and thereupon, Plaintiff alleges that during the Class
17 Period, the Class Members he seeks to represent, never performed job duties as drivers performing
18 same or similar document delivery and courier services for any other clients, entities or employers
19 other than for Defendant, who was at all relevant times, their sole employer.

20 17. During the Class Period, based on verbal agreement, Plaintiff was supposed to be
21 paid thirty-eight (38%) of fees charged to Defendant’s clients per delivery. Trip charges vary
22 depending on location. In fact however, Defendant would first deduct \$20 from the service fees
23 charged to the clients and then paid Plaintiff 38% of the remaining fees after the \$20 deduction.
24 Plaintiff and the Class Members he seeks to represent are/were paid roughly every two weeks.

25 18. Due to the unlawful misclassification of Plaintiff and the Class Members,
26 Defendant never bothered to maintain any accurate records of the hours they worked. Thus,
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1 during the Class Period, when Plaintiffs and the Class Members were paid, they never received an
2 itemized wage statement that reflected all the hours they worked, including overtime hours they
3 worked during or reflecting accurate corresponding rates of pay for each and every pay period
4 they were employed by Defendant during the Class Period.

5 19. Plaintiff and the Class Members he seeks to represent drove all over Southern
6 California from San Diego to Kern County routinely driving 200 to 300 miles a day incurring
7 work related expenses.

8 20. During the Class Period Plaintiff and the Class Members he seeks to represent,
9 incurred out of pocket expenses for gasoline and daily utilization of their personal cell phones,
10 which was necessary to communicate with dispatchers and Defendant's clients. However at no
11 time has Defendant ever reimbursed Plaintiff and the Class Members he seeks to represent for
12 their mileage, gasoline expenses, their automotive related expenses, nor their personal cell phone
13 expenses.

14 21. During the Class Period, Defendant and Plaintiff and the Class Members he seeks
15 to represent, behaved as though they were engaged in a regular employer-employee relationship.
16 Thus, Mr. Kharazi and the similarly situated Class Members believe or believed they were
17 supposed to be classified and compensated as regular, hourly W-2 employees.

18 22. Upon information and belief and thereupon, Plaintiff further alleges that Defendant
19 is fully aware that Plaintiff and those similarly situated are misclassified, as Defendant's newly
20 hired courier/delivery drivers are classified and compensated by Defendant as regular, hourly W-2
21 employees. Prior to his termination, Plaintiff Kharazi even requested that he be correctly
22 classified and paid as a regular W2, hourly employee, yet Defendant refused his request.

23 23. Defendants' denial of legal compensation due to Plaintiff and Class Members was a
24 deliberate and willful disregard for the rights of Plaintiff and Class Members who relied on
25 Defendants to compensate them fairly and legally.

24. On information and belief, Defendants knowingly and willfully failed to pay all wages Plaintiff and similarly situated Class Members who separated from their employment with Defendant during the Class Period, were due when each such employee quit or was discharged in violation of California Labor Code Section 203.

25. Further, during the Class Period, although they never validly waived their right to do so, Mr. Kharazi and Class Members he seeks to represent were not provided with timely or compliant meal break periods. Plaintiff often worked shifts in excess of ten or eleven hours, but was not provided with or impeded in his ability to take first or second rest and meal breaks to which he was lawfully entitled under the law. In addition, Plaintiff and the Class Members were not provided with one hour of premium pay in lieu of such missed meal breaks, in one or more of the following manners:

- a) They were not provided proper meal periods for working shifts in excess of five and/or ten hours and were not compensated one hour's wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512, and applicable wage orders.
- b) They were required to work through their daily first or second meal break period(s), or to work unlawful "on-duty meal break periods" while driving to their assigned destinations; and
- c) They were severely restricted by Defendant in their ability to take a meal period.

26. During the Class Period, Mr. Kharazi and Class Members he seeks to represent, were not provided lawful rest periods, and were not provided with one hour's wages in lieu thereof, in one or more of the following manners:

- a) They were required to work without being provided a minimum ten-minute rest period for every four hours or major fraction thereof worked and not being compensated one hour of pay at their regular rate of compensation for each workday that a rest period was not provided;
- b) They were neither permitted nor authorized to take lawful rest periods.

1 27. On information and belief, Mr. Kharazi alleges that he and the Class Members he
2 seeks to represent did not waive meal or rest periods during the liability period.

3 28. During the Class Period, Mr. Kharazi and Class Members he seeks to represent,
4 routinely worked eleven-hour shifts and longer, but were not paid for all hours worked, including
5 lawful overtime compensation for the shifts they worked in excess of eight hours and in excess of
6 forty hours per week.

7 29. Plaintiff alleges that Defendant engaged in and enforced the following additional
8 unlawful practices and policies against Plaintiff Kharazi and the Class Members he seeks to
9 represent:

10 a.) Failing to pay those, who were discharged, laid off, or resigned in accordance
11 with the requirements of Labor Code §§ 201, 202, and 203.

12 b.) Failing to pay all wages when due twice each calendar month in accordance with
13 Labor Code § 204.

14 c.) Failing to pay overtime for all hours worked in excess of an eight-hour day in
15 violation of Labor Code Section 510, 1194 and IWC Wage Order No. 9-2001.

16 d.) Failing to maintain accurate records of earned wages and work periods in
17 violation of Labor Code §§ 226 and 1174(d) and IWC Wage Order No. 9-2001.

18 e.) Failing to provide compliant meal periods under Labor Code Section 226.7 and
19 IWC Wage Order No. 9-2001.

20 f.) Failing to provide rest periods under Labor Code Section 226.7 and IWC Wage
21 Order No. 9-2001.

22 g.) Failing to reimburse necessarily and reasonably incurred work-related business
23 expenses under Labor Code Section 2802.

24 h.) Failing to furnish timely and accurate itemized wage statements under Labor Code
25 Section 226.
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1 i.) Engaged in unfair business practices under Business and Professions Code Section
2 17200 et seq.

3 j.) Violated the provisions of the Private Attorneys Act (the “PAGA”) under Labor
4 Code Section 2698 et seq.

5 30. Defendant knowingly and willfully misclassified Plaintiff Kharazi and the Class
6 Members he seeks to represent. Consequently, during the relevant Class Period, Defendant failed
7 to timely pay them all wages due pursuant to Labor Code Section 204, including earned overtime
8 wages; nor has Defendant timely compensated Plaintiff and Class Members, upon or after
9 termination of their employment, nor waiting time penalties due them for having failed to properly
10 pay them all wages due and has further failed to pay premium pay to which they are/were entitled
11 for failure to provide rest and meal break periods. In addition Defendant has failed to reimburse
12 and indemnify Plaintiff and the Class Members for work related expenses incurred in the
13 discharge of their duties.

14 31. On information and belief, Plaintiff alleges that Defendant’s actions as described
15 throughout this Complaint were willful.

16 32. Because Defendants failed to comply with Labor Code section 226(a) by failing to
17 provide itemized wage statements showing all deductions from payment of wages and accurately
18 reporting total hours worked, Mr. Kharazi and the Class Members he seeks to represent are also
19 entitled to penalties not to exceed \$4,000 for each such employee pursuant to Labor Code section
20 226(b).

21 33. Mr. Kharazi, both individually and on behalf of all others similarly situated, seeks
22 injunctive relief, compensation for all uncompensated work, and/or all other damages permitted
23 by applicable law, as well as attorneys’ fees, penalties, interest and costs.

24 34. In addition, and pursuant to the Private Attorneys General Act (“PAGA”),
25 Plaintiffs have given notice to the Labor and Workforce Development Agency (“LWDA”) of the
26 Labor Code violations alleged in this complaint. (True and correct copies of Plaintiff’s October
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30, 2020 PAGA notice and the November 23, 2020 First Amended PAGA notice are attached hereto as **Exhibits A-1 and A-2 respectively.)**

V. CLASS ACTION ALLEGATIONS

35. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to California Code of Civil Procedure Section 382. Plaintiff seeks to represent a Class composed of and defined as follows under California Labor Code Section 203 (a):

“All persons who are employed or have been employed by Defendant, Los Angeles Depositions, Inc. in the State of California as though they were 1099 independent contractor employees, and who, within four (4) years of the filing of this Complaint: have failed to have been paid by Defendant all of their lawful wages for all hours worked, during each and every pay period; who failed to receive accurately itemized wage statements reflecting all hours worked and proper corresponding rates of pay; who failed to receive compensation or reimbursement for business expenditures incurred and required by their job duties; who worked and were not compensated for overtime; who were not provided or were actively impeded from taking rest and meal breaks, and who did not receive premium pay for such missed rest and meal breaks, and who did not timely receive all wages due and owed upon their discharge or termination of employment with Defendant.”

Plaintiff reserves the right under Rule 3.764, California Rules of Court, to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

36. This action has been brought and may properly be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class Members is easily ascertainable.

37. Numerosity: Plaintiff is informed and believes and based on such information and belief alleges that the potential members of the Class as defined are so numerous that joinder of all

1 the members of the Class is impracticable. The exact number of the members of the class is
2 presently unknown to Plaintiff, but upon information and belief, Plaintiff alleges that the exact
3 number and specific identities of the members of the Class may be readily ascertained through
4 inspection of Defendants' business records, but it is estimated that there are in excess of 100 class
5 members.

6 38. Commonality: There are questions of law and fact common to the Plaintiff and to
7 the Class that predominate over any questions affecting only individual members of the Class.
8 These common questions of law and fact include, without limitation:

- 9 a.) Whether Defendant's policy and practice of classifying such members of the Class as
10 1099 independent contractors and not as regular nonexempt, hourly employees,
11 violates California law;
- 12 b.) Whether Defendant's policy and practice of failing to timely pay such members of the
13 Class for all hours worked during each and every pay period they were employed
14 violates California labor law;
- 15 c.) Whether Defendant's policy and practice of failing to maintain records of all hours
16 worked by such members of the Class violates California Labor law;
- 17 d.) Whether Defendant's policy and practice of failing to pay such members of the Class all
18 overtime due when they worked in excess of eight hours or in excess of forty hours in a
19 week violates California labor law;
- 20 e.) Whether Defendant's policy and practice of failing to reimburse or compensate such
21 members of the Class for all necessary expenditures or losses incurred by them in the
22 discharge of their duties, violates California labor laws;
- 23 f.) Whether Defendant's policy and practice of failing to provide such Class members
24 with their required meal breaks violates California labor law;
- 25 g.) Whether Defendant's policy and practice of failing to provide such Class members with
26 their required rest breaks violates California labor law;
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- 1 h.) Whether Defendant's policy and practice of failing to timely pay all wages due and
2 owed upon discharge or termination violates California labor law; and
- 3 i.) Whether Defendant's failure to provide wage statements to such Class Members that
4 accurately reflected all hours worked and accurate corresponding rates of pay during
5 each and every pay period they were employed during the Class Period violates
6 California labor law; and
- 7 j.) Whether Defendant's failure to indemnify and reimburse such Class Members for their
8 work related expenses necessarily incurred in the discharge of their work duties
9 violates California labor law; and
- 10 k.) Whether Defendants violated Labor Code sections 201-203, 204, 226(a), 226.7, 510,
11 512, 1194, 2802 and applicable IWC Wage Orders;
- 12 l.) Whether Defendants violated Business and Professions Code Sections 17200 *et. seq.* of
13 and whether such violations constitute a violation of fundamental public policy;
- 14 m.) Whether Plaintiff and Class Members are entitled to equitable relief pursuant to
15 Business and Professions Code sections 17200, *et. seq.*; and
- 16 n.) Whether Plaintiff and Class Members are entitled to recover civil penalties for
17 violations of the Labor Code pursuant to Labor Code Section 2698 *et seq.* (the
18 "PAGA"); and
- 19 o.) The proper formula for calculating restitution, damages, applicable statutory and/or
20 civil penalties owed to Plaintiff and the Class.

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22 39. Typicality: Plaintiff's claims are typical of the claims of the Class. Defendant's
23 common course of conduct in violation of law as alleged herein has caused Plaintiff and the Class
24 Members to sustain the same or similar injuries and damages. Plaintiff's claims are thereby
25 representative of, and co-extensive with the claims of the Class.

26 40. Adequacy of Representation: Plaintiff is a member of the Class and does not have
27 any conflicts of interest with other Class Members. Plaintiff will prosecute the case vigorously on
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1 behalf of the Class. Counsel representing Plaintiff is competent and experienced in litigating
2 employment class actions. Plaintiff will fairly and adequately protect the interest of Class
3 Members.

4 41. Superiority of Class Action: A class action is superior to other available means for
5 the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is
6 not practicable, and questions of law and fact common to the Class predominate over any
7 questions affecting only individual members of the Class. Each Class Member has been damaged
8 and is entitled to recovery by reason of Defendant's illegal policies and practices. Class action
9 treatment will allow those similarly situated persons to litigate their claims in the manner that is
10 most efficient and economical for the parties and the judicial system.

11 **FIRST CAUSE OF ACTION**

12 **MISCLASSIFICATION**

13 **In Violation of Labor Code Section 2775**

14 **(As to Defendant and Does 1-25, Inclusive)**

15 42. Plaintiff on his own behalf and on behalf of the Class Members realleges and
16 incorporates by reference all of the foregoing paragraphs, as though fully set forth herein.

17 43. The factors that may be considered in determining whether an individual is an
18 independent contract is drawn from the newly enacted Section 2775 of the Labor Code, which
19 provides that a person providing labor or services for remuneration shall be considered an
20 employee rather than an independent contractor unless the hiring entity demonstrates that all of
21 the following conditions (commonly referred to as the "ABC Test") are satisfied:

22 (a) the person be "free from the control and direction of the hiring entity in connection
23 with the performance of the work, both under the contract for the performance of the
24 work and in fact;

25 (b) the person "performs work that is outside the usual course of the hiring entity's
26 business; and
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1 (c) the person “is customarily engaged in an independently established trade,
2 occupation, or business of the same nature as that involved in the work performed.

3 44. As alleged in paragraphs 11 through 22 above, and contrary to Defendant’s
4 representations to the contrary, Plaintiff and Class Members were not independent contractors.
5 Defendants’ actions and their conduct of the employment relationships were not characteristic of a
6 principal and an independent contractor employee but bore all the features of a regular employer-
7 employee relationship.

8 45. Because of Defendant’s knowing and unlawful business practices in
9 misclassifying Plaintiff and the Class Members, Defendants willfully and knowingly violated the
10 law and Plaintiff and the Class Members’ rights under California law. Plaintiff and Class
11 Members therefore seek relief from the court as requested below and further bring the following
12 causes of actions and claims for damages that follow herein.

13 **SECOND CAUSE OF ACTION**
14 **FAILURE TO TIMELY PAY ALL WAGES EARNED WHEN DUE**
15 **In Violation of California Labor Code Section 204**
16 **(As to Defendant and Does 1-25, Inclusive)**

17 46. The Plaintiff on his own behalf, and on behalf of Class Members he seeks to
18 represent, re-alleges and incorporates by reference all of the foregoing paragraphs, as though fully
19 set forth herein.

20 47. The California Labor Code requires employers to pay all wages due within the time
21 specified by law. California Labor Code § 204 was in full force and effect at all relevant times
22 herein.

23 48. Pursuant to Labor Code § 204, for employees entitled to pay twice per month, two
24 periods of pay are required. Labor performed between the 1st and 15th of the month must be paid
25 between the 16th and 26th of the same month and labor performed on the 16th and the end of the
26 month must be paid on pay days between the 1st and 10th of the following month.

1 49. Plaintiff and the Class Members were entitled to be paid twice monthly for labor
2 performed. Although Plaintiff and the class members are and/or were paid twice monthly,
3 Defendant failed and intentionally refused to pay Plaintiff and the Class Members all wages they
4 were entitled to, twice monthly, including overtime pay during each and every pay period of their
5 employment.

6 50. As alleged, Plaintiff and the Class Members were not paid for all of their wages,
7 including during every single pay period during the term(s) of their employment.

8 51. Accordingly, as a result of the unlawful acts of Defendant, Plaintiff and the Class
9 Members have been deprived of wages in amounts to be determined at trial, and are entitled to
10 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs of suit,
11 pursuant to Labor Code sections 218 and 1194.

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13 **THIRD CAUSE OF ACTION**
14 **FAILURE TO MAINTAIN ACCURATE RECORDS**
15 **In Violation of Labor Code Section 1174(d)**
16 **(As to Defendant and Does 1-25, Inclusive)**

17 52. The Plaintiff, on his own behalf and on behalf of the similarly situated Class
18 Members he seeks to represent, re-alleges and incorporate by reference all of the foregoing
19 paragraphs, as though fully set forth herein.

20 53. *California Lab. Cod.* § 1174 (d), which was in force and effect at all relevant times
21 herein, provides in pertinent part, that "Every person employing labor in this state shall keep... "at
22 a central location in the state or at the plants or establishments at which employees are employed,
23 payroll records showing the hours worked daily by and the wages paid to, and the number of
24 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
25 respective plants or establishments. These records shall be kept in accordance with rules
26 established for this purpose by the commission, but in any case shall be kept on file for not less
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1 than three years. An employer shall not prohibit an employee from maintaining a personal record
2 of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

3 54. Defendant failed to maintain records of all hours that the Plaintiff and Class
4 Members worked, including the time they were working through rest and meal breaks (or second
5 meal breaks) and for the time they worked shifts in excess of eight hours or more than forty hours
6 in a week.

7 55. *Lab. Cod.* § 1174.5 provides that an employer who fails to maintain the records
8 pursuant to 1174 (d) shall be subject to a civil penalty of five hundred (\$500) dollars.

9 56. As a result of Defendant’s violation of Section 1174 (d) Plaintiff and the Class
10 Members are entitled to and do hereby seek civil penalties in the amount of \$500.00.

11 57. Wherefore, the Plaintiff on his own behalf and on behalf of the Class Members he
12 seeks to represent, requests relief as described herein and below.

13 **FOURTH CAUSE OF ACTION**
14 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**
15 **In Violation of Labor Code Section 226**
16 **(As to Defendant and Does 1-25, Inclusive)**

17 58. Plaintiff on his own behalf and on behalf of the Class Members he seeks to
18 represent, realleges and incorporates by reference all of the foregoing paragraphs, as though fully
19 set forth herein.

20 59. California Labor Code section 226(a) As alleged supra, during a substantial portion of
21 the Class Period, Defendant knowingly and intentionally misclassified Plaintiff and the Class
22 Members as independent contractors and thus failed and refused to pay them overtime wages they
23 were owed when they worked shifts in excess of eight hours or in excess of forty hours per week.

24 60. Further as alleged, the misclassification and Defendant’s policies and practices caused
25 Plaintiff and the Class Members to miss or skip their rest break and meal break periods. Such
26 missed rest break periods are/were never recorded and lawfully due premium pay for missed and
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1 non-compliant rest and meal breaks have never been included on Plaintiff's and Class Members'
2 wage statements.

3 61. As a result, Defendant knowingly and intentionally failed to provide accurate, fully
4 itemized wage statements to the Plaintiffs and Class Members in accordance with *Lab. Cod.*
5 § 226(a).

6 62. *Lab. Cod.* § 226(a) states, in pertinent part, that “[e]very employer shall,
7 semimonthly or at the time of each payment of wages, furnish each of his or her employees,
8 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
9 separately when wages are paid by personal check or cash, an accurate itemized statement in
10 writing showing (1) gross wages earned, (2) total hours worked by the employee ..., (5) net
11 wages earned, (6) the inclusive dates of the period for which the employee is paid ..., and (9) all
12 applicable hourly rates in effect during the pay period and the corresponding number of hours
13 worked at each hourly rate by the employee ...”

14 63. *Lab. Cod.* § 226 (e)(1) states that “[a]n employee suffering injury as a result of a
15 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
16 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
17 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
18 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to
19 an award of costs and reasonable attorney’s fees.”

20 64. *Lab. Cod.* § 226(e)(2)(B) states “[a]n employee is deemed to suffer injury for purposes
21 of this subdivision if the employer fails to provide accurate and complete information as required
22 by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot
23 promptly and easily determine from the wage statement alone one or more of the following: (i)
24 The amount of the gross wages or net wages paid to the employee during the pay period or any of
25 the other information required to be provided on the itemized wage statement pursuant to items (2)
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1 to (4), inclusive, (6), and (9) of subdivision (a); and (ii) Which deductions the employer made
2 from gross wages to determine the net wages paid to the employee during the pay period.”

3 65. *Lab. Cod.* § 226(e)(2)(C) defines “promptly and easily determine” to mean “a
4 reasonable person would be able to readily ascertain the information without reference to other
5 documents or information.”

6 66. *Lab. Cod.* § 226(e)(3) states that the phrase “knowing and intentional failure” “does
7 not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake.”

8 67. During the Class Period, Defendant has knowingly and willingly failed to comply
9 with *Lab. Cod.* § 226. As a matter of common policy and practice, Defendant did not include
10 overtime hours worked nor overtime pay, nor, as alleged did wage statements include premium
11 pay equal to one hour of pay at Plaintiff and the Class Members’ regular hourly rate for missed
12 and non-compliant rest and meal break periods. Wage statements distributed to Plaintiff and Class
13 Members were not accurate and did not contain all wages earned, during each and every pay
14 period of their employment. Defendant’s knowing, and intentional omissions caused the Plaintiff
15 and Class Members to suffer “injury” by, among other things, impeding them from knowing the
16 amount of wages to which they are/were lawfully entitled.

17 68. At all times relevant herein, Defendant failed to track, record and maintain accurate
18 records of hours its employees worked, by failing to maintain any records of reporting time, for
19 which such wages were owed its employees, as required under *Lab. Cod.* § 1174(d).

20 69. Thus, Plaintiffs and Class Members seek (i) injunctive relief pursuant to *Lab. Code* §
21 226 (h), requiring Defendant to comply with *Labor Code* §§ 226(a) and 1174(d), (ii) the amounts
22 provided under *Labor Code* §§ 226(e) and 1174.5, including the greater of all actual damages or
23 \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation
24 in a subsequent pay period, and (iii) attorneys’ fees and costs.

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FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE MEAL BREAKS
In Violation of Labor Code Sections 226.7, and 512 and IWC No. 9
(As to Defendant and Does 1-25, Inclusive)

70. Plaintiff on his own behalf and on behalf of the Class Members he seeks to represent, realleges and incorporates by reference all of the foregoing paragraphs, as though fully set forth herein.

71. During the liability period, as alleged, Defendant through its policies and practices, do not and did not permit or impeded the Plaintiff and Class Members' ability to take rest periods.

72. California Labor Code Sections 226.7 and 512(a) and IWC No. 9 provide that all employees who work in excess of five hours must be provided at least a half-hour uninterrupted meal break in which they are relieved of all duty.

73. Plaintiffs and the Class Members work(ed) shifts in excess of five hours and often in excess of ten hours, but are or were not provided with a half-hour uninterrupted first or second meal breaks to which they were entitled.

74. As a result of Defendant's failure to afford proper meal periods they are liable to Plaintiff and the Class Members for one hour of additional pay at the regular rate of compensation for each missed meal period that was not provided, pursuant to California Labor Code section 226.7

75. Defendant has not paid such premiums to Plaintiff and Class Members.

76. Plaintiff and the Class Members did not voluntarily waive their meal breaks.

77. As a result of Defendant's conduct, Plaintiff and the Class Members he seeks to represent are entitled to damages to compensate them for the unpaid premiums, as well as injunctive relief requiring Defendant to comply with the California Labor Code and Wage Order No. 9 with respect to meal and rest periods.

1 such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code §§
2 203, 226, 226.7, and 1194, and the applicable IWC Wage Order.

3 86. WHEREFORE, Plaintiff on his own behalf and on behalf of the
4 Class Members he seeks to represent, requests relief as described herein and below.

5 **SEVENTH CAUSE OF ACTION**
6 **FAILURE TO PAY ALL OVERTIME EARNED**
7 **FOR HOURS WORKED**
8 **In Violation of California Labor Code § 510, 1194, 1198 and IWC No. 9**
9 **(As to Defendant and Does 1-25, Inclusive)**

10 87. Plaintiff, on his own behalf and on behalf of the Class Members realleges and
11 incorporates by reference all of the foregoing paragraphs, as though fully set forth herein.

12 88. California Labor Code § 510 provides that work in excess of eight hours in a day,
13 or 40 hours in a week, must be compensated at a rate of not less than one and one-half times the
14 regular rate of pay for an employee; and for the first eight hours worked on the seventh
15 consecutive day of work in a workweek; and double the employee's regular rate of pay for all
16 hours worked in excess of 12 hours in any workday and double the employee's regular rate of pay
17 for all hours worked in excess of eight on the seventh consecutive day of work in a workweek.

18 89. Pursuant to Labor Code Section 1194, "... any employee receiving less than the
19 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
20 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
21 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

22 90. In addition, IWC No. 9 and Cal. Code Reg., Title 8, Section 11100 also provide that
23 work in excess of eight hours in a day, or 40 hours in a week, must be compensated at not less than one
24 and one-half times the regular rate of pay for an employee.

25 91. Labor Code Section 1198 makes unlawful the employment of any employee under
26 conditions of labor prohibited by the applicable Wage Order.
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1 92. Plaintiff and the Class Members work, or have worked, more than eight hours in a day
2 and were not paid at the overtime rate for all hours worked.

3 93. Pursuant to Labor Code sections 218 and 1194, Plaintiff and Class Members are
4 entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation for
5 all hours worked in excess of eight hours a day.

6 94. Wage Order No 9 provides for civil penalties for violations of the Wage Order.
7 Consequently, as result of Defendant's violation of IWC No. 9, Plaintiff and the Class Members are
8 entitled to and hereby seek civil penalties in the amount of \$50 for the first violation and \$100 for each
9 subsequent violation.

10 95. Labor Code Section 558 provides that any employer who violates any provision
11 regulating hours and days of work in any order of the IWC shall be subject to civil penalties.

12 96. As a result of Defendant's violation of IWC No. 9, Plaintiff and Class Members are
13 entitled to and hereby seek civil penalties in the amount of \$50 for the first violation and \$100 for each
14 subsequent violation.

15 97. Labor Code Section 218.6 provides for interest on all unpaid wages in any action
16 brought for nonpayment of wages.

17 98. Plaintiff and Class Members seek to recover interest on all unpaid wages due.

18 99. Plaintiff and Class Members also seek liquidated damages pursuant to Labor Code
19 section 1194.2.

20 100. Plaintiff and Class Members seek to recover all unpaid overtime wages, penalties and
21 interest and interest due to them.

22 101. As a result of Defendants' conduct, Plaintiff and the Class Members are also entitled to
23 attorneys' fees under Labor Code sections 218.5 and 1194, in addition to interest expenses and costs of
24 suit.
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EIGHTH CAUSE OF ACTION
FAILURE TO INDEMNIFY/REIMBURSE EMPLOYEES
FOR NECESSARY WORK EXPENSES
In Violation of California Labor Code § 2802
(As to Defendant and Does 1-25, Inclusive)

102. Plaintiff, on his own behalf, and on behalf of the Class Members he seeks to represent, realleges and incorporates by reference all of the foregoing paragraphs, as though fully set forth herein.

103. California Labor Code Section 2802 provides that an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

104. Defendant required as a condition of employment that Plaintiff and Class Members incur certain expenses, including, but not limited to use of their own vehicle to perform their courier and delivery duties. As alleged, Plaintiff and the Class Members routinely drove their personal vehicles 200-300 miles per day, traversing Southern California from San Diego to Kern County. Defendant does not and has not reimbursed Plaintiff or Class Members for mileage, gasoline, and for the maintenance expenses incurred in the use of their personal automobiles.

105. Further Plaintiff and the Class Members are/were daily required utilize/utilized their own personal cell phones in order to communicate with Defendant's dispatch team and with Defendant's clients whom they served. Defendant does not and has not reimbursed Plaintiff or the Class Members for the expenses incurred for the use of their personal cell phones.

106. As a result of Defendant's failure to indemnify and reimburse Plaintiff and the Class Members for the expenses they necessarily incurred in the performance and discharge of their work-related duties, Plaintiff and the Class Members have sustained economic damages in an amount to be proven at trial.

107. As a result of Defendants' conduct, Plaintiff and the Class Members he seeks to represent are also entitled to attorneys' fees under Labor Code Section 2802(c), in addition to interest, expenses and costs of suit.

NINTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES DUE UPON TERMINATION
In Violation of Labor Code § 201(a), 202 and 203
(As to Defendant and Does 1-25, Inclusive)

108. Plaintiff individually, on his own behalf and on behalf of the Class Members he seeks to represent, re-alleges and incorporate by reference all of the foregoing paragraphs, as though fully set forth herein.

109. Labor Code Section 201(a) requires an employer who discharges an employee to pay all compensation due and owing to the employee immediately upon the employee's discharge from employment.

110. Labor Code Section 202 requires an employer to pay within 72 hours all compensation due and owing to an employee who quits his or her employment.

111. Labor Code Section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

112. As alleged supra, Defendant failed to lawfully classify and compensate Plaintiff and the Class Members as required by law. Therefore, Defendant has willfully failed to make timely payment of the full wages due to Plaintiff and such Class Member employees who have resigned or been discharged during the Class Period.

113. As a result of Defendant's unlawful conduct as alleged herein, Plaintiff and the Class Members have sustained economic damages, including, but not limited to, unpaid wages and lost interest in an amount to be determined at trial.

1 114.As a result of Defendant’s conduct Plaintiffs and the Class Members suffered injuries
2 and are also entitled to attorneys' fees, in addition to interest, expenses and costs of suit, under
3 Labor Code sections 218.5 and 1194.

4 115.Wherefore, Plaintiffs and the Class Members request judgment as is further set forth
5 herein below.

6 **TENTH CAUSE OF ACTION**

7 **UNLAWFUL, UNFAIR AND FRAUDULENT BUSINESS PRACTICES**

8 **Violation of California Business and Professions Code Sections 17200 et seq.**

9 **(As to Defendant and Does 1-25, Inclusive)**

10 116. Plaintiff on his own behalf, and on behalf of the Class Members he seeks to
11 represent, realleges and incorporates by reference all of the foregoing paragraphs, as though fully
12 set forth herein.

13 117. California Business and Professions Code Section 17200, et seq. prohibits unfair
14 competition in the form of any unlawful, unfair or fraudulent business act or practice.

15 118. California Business and Professions Code Section 17202 provides:
16 “Notwithstanding Section 3369 of the Civil Code, specific or preventative relief may be granted to
17 enforce a penalty, forfeiture, or penal law in case of unfair competition.”

18 119. California Business and Professions Code Section 17203 provides in relevant part
19 that the court may “restore to any person in interest any money or property, real or person, which
20 may have been acquired by means of such unfair competition.”

21 120. California Business and Professions Code Section 17203 also provides that any
22 person who meets the standing requirements of Section17204 and complies with California Code
23 of Civil Procedure Section 382 may pursue representative claims for relief on behalf of others.

24 121. California Business and Professions Code Section 17204 allows any “person who
25 has suffered injury in fact and has lost money or property as a result of such unfair competition” to
26 prosecute a civil action for violation of the Unfair Business Practices Act.
27

1 122. Pursuant to Section 17204, Plaintiff and other similarly situated employees are
2 entitled to enforce all applicable provisions of the Labor Code.

3 123. Beginning at an exact date unknown to Plaintiff, but at least since the date four
4 years prior to the filing of this suit, Defendant has committed acts of unfair competition as defined
5 by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent practices
6 and acts described in the Complaint, including, but not limited to violations of Labor Code
7 Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1198, 2802 and IWC No. 9.

8 124. The violations of these laws and regulations, as well as of fundamental California
9 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
10 Business and Professions Code Section 17200 et seq.

11 125. The acts and practices described above constitute unfair, unlawful and fraudulent
12 business practices, and unfair competition, within the meaning of Business and Professions Code
13 Section 17200, et seq. Among other things, Defendants' acts and practices have forced Plaintiff
14 and other similarly situated workers to labor without receiving appropriate compensation.

15 126. The acts and practices described above have allowed Defendants to gain an unfair
16 competitive advantage over law-abiding employers and competitors.

17 127. As a result of the acts and practices described herein, Plaintiff and other similarly
18 situated workers have been denied compensation in an amount to be proven at trial.

19 128. Plaintiff and other similarly situated employees are therefore, entitled to
20 restitution pursuant to Business and Professions Code Section 17203 and 17208 for all wages and
21 other compensation unlawfully withheld from employees during the four-year period prior to the
22 filing of the complaint.

23 129. As a result of the aforementioned acts and practices, Defendants have received
24 and continue to receive ill-gotten gains belonging to Plaintiff and other similarly situated
25 employees.
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130. Injunctive relief is necessary and appropriate to prevent Defendants from repeating their unlawful, unfair and fraudulent business acts and practices described herein.

131. Pursuant to Section 17203 and/or any other applicable law, Plaintiff seeks an order preventing Defendant from engaging in unlawful, unfair and fraudulent conduct and preventing Defendant from profiting and benefiting from illegal and wrongful acts.

132. Plaintiff's success in this action will enforce important rights affecting the public interest. Therefore, Plaintiff sues on behalf of himself and other similarly situated employees.

133. An award of attorneys' fees is appropriate pursuant to California Civil Code Section 1021.5 because 1) this action will confer a significant benefit upon a large class of persons; and 2) there is a financial burden involved in pursuing this action; and 3) it would be against the interest of justice to force Plaintiff to pay attorneys' fees from any amount recovered in this action.

ELEVENTH CAUSE OF ACTION

Violation of the PAGA

(As to Defendant and Does 1-25, Inclusive)

134. Plaintiff Kharazi, on his own behalf and on behalf of the Aggrieved Employees (“PAGA Class Members”) he seeks to represent, re-alleges and incorporates by reference all of the foregoing paragraphs, as though fully set forth herein.

135. Plaintiff Kharazi, by his employment with Defendant and Defendant's violations of the Labor Code as alleged herein, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff Kharazi, by virtue of **Exhibits A-1 and A-2 attached** hereto, has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws including, without limitation, the penalty provisions identified in Labor Code § 2699.5. Since the LWDA took no steps within the time period required to intervene and because Defendant took no corrective action to remedy the allegations set forth above, Plaintiff Kharazi, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being

1 collected by the Labor Commission and/or the DLSE. This includes violation of any of the
2 following provisions of the California Labor Code, as is set forth in Labor Code § 2699.5, which
3 states:

4 “The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation
5 of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201,
6 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,
7 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221,
8 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227,
9 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of
10 Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403,
11 subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511,
12 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921,
13 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153,
14 subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and
15 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293,
16 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309,
17 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section
18 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6,
19 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1),
20 (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4,
21 subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735,
22 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section
23 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of
24 Section 2929, and Sections 3095, 6310, 6311, and 6399.”

17 136. Plaintiff Kharazi is informed and believes that Defendant has violated and
18 continues to violate the provisions of the Labor Code as alleged herein and the applicable Wage
19 Order.

20 137. Pursuant to Labor Code section 2699, any provision of the Labor Code that
21 already provides a civil penalty to be assessed and collected by the Labor and Workforce
22 Development Agency, or any of its departments, divisions, commissions, boards, agencies or
23 employees for violation of the code or does not provide a civil penalty may be recovered through a
24 civil action brought by an aggrieved employee on behalf of himself or herself, and other current or
25 former employees pursuant to the procedures set forth in Labor Code, Section 2699.3.

138. Plaintiff Kharazi, on his own behalf, and on behalf of the PAGA Class Members is an “aggrieved employee” because he was employed by the violator, Defendant, LA Deposition, Inc., during the one-year statutory time period and during such time period, was subjected to one or more violations, including Labor Code sections 201-204, 226(a), 226.7, 510, 512, 1174, 1194(a), 2802 and IWC No. 9, and is therefore properly suited to represent the interests of a PAGA person.

139. On or around October 30, 2020, Plaintiff Kharazi, on his own behalf and on behalf of the Aggrieved Employees served via certified mail, the notice of Plaintiff's PAGA claims to Defendant. **(Exhibit A-1)**

140. On or around November 23, 2020, Plaintiff Kharazi, on his own behalf and on behalf of the Aggrieved Employees, served via certified mail, the notice of Plaintiff's First Amended PAGA claims to Defendant. **(Exhibit A-2)**

141. Plaintiff Kharazi is informed and believes that Defendant has violated and continues to violate provisions of the Labor Code and applicable Wage Order No. 9. Despite mailing of **Exhibits A-1 and A-2**, at least 65-days prior to the filing of the FAC, the LWDA has not notified Plaintiff Kharazi that it intends to investigate the alleged Labor Code violations identified in Exhibits A-1 and A-2, such that, by operation of law Plaintiff Kharazi is entitled to pursue this cause of action under the PAGA. *See Lab. Code 2699.3(a)(2)(A).*

142. Upon information and belief and thereupon Plaintiff Kharazi alleges that pursuant to 2699(f), Defendant at the very least owes penalties for each violation of Labor Code as alleged herein, including sections 201, 204, 226(a), 226.7, 510, 512, 1174, 1194(a), 2802 and Wage Order No. 9.

143. Plaintiff Kharazi, as the personal representative of the Aggrieved Employees, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the PAGA liability period, in an amount according to proof, as to those penalties that are otherwise only available to public agencies. Said penalties recovered will be

distributed in accordance with the PAGA, with at least 75% of said PAGA penalty recovery being reimbursed to the State of California and the LWDA.

144. Further, pursuant to Labor Code, section 2698 *et. seq.* Plaintiff, Kharazi and the similarly situated Aggrieved Employees are entitled to recover their attorney's fees and costs.

PAGA Damages

145. Defendant's actions constitute continuing and ongoing unlawful activity prohibited by the California Labor Code, as alleged and therefore these acts constitute violations of the PAGA.

146. Pursuant to California Labor Code § 2699, Plaintiff Kharazi requests and is entitled to recover from Defendant civil penalties in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and

147. Attorneys' fees and costs pursuant to Labor Code § 2699(g) and any other applicable statute.

148. As alleged supra, notice of these violations were provided pursuant to Labor Code §2699.3 asking the LWDA if it intends to investigate the alleged violations. More than 65 days have passed since notice was provided and Plaintiff Kharazi has not received any notification from the LWDA that it intends to investigate the alleged violations. Therefore, the representative Plaintiff Kharazi is entitled to prosecute his PAGA claims under Labor Code §2699, et seq.

149. The proper measure of damages and penalties under the PAGA is as to all Aggrieved Employees, whether a part of this action or not.

150. Accordingly, Plaintiff Kharazi respectfully requests that the Court award judgment and relief in his favor including civil penalties under California Labor Code §2699 in the amount of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent violation during the relevant period, according to proof.

151. Plaintiff Kharazi as the personal representative of the Aggrieved Employees, will and do seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the liability period, in an amount according to proof, as to those penalties that are otherwise only available to public agencies. Said fund recovered will be distributed in accordance with the PAGA, with at least 75% of said PAGA penalty recovery being reimbursed to the State of California and the LWDA.

PRAYER FOR RELIEF

Plaintiff Kharazi, individually, on his own behalf, and on behalf of the similarly situated Class Members and the Aggrieved Employee PAGA Class Members he seeks to represent, requests relief as follows:

1. For an order, pursuant to California Code of Civil Procedure Section 382, certifying the First through Tenth causes of action as a class action, on behalf of the Class Members who performed work in the State of California within the Class Period and that notice of the pendency of the class action be provided to members of the class.

2. For an order appointing Plaintiff as Class Representative and Plaintiff's attorney as Class Counsel.

3. For a declaratory judgment that the Plaintiff and Class Members were misclassified pursuant to Labor Code Section 2775.

4. For a declaratory judgment that Defendant's practices complained of herein, violated California Labor Laws and public policy, as alleged herein.

5. Appropriate equitable relief to remedy Defendant's violations of California law, including, but not necessarily limited to, an order enjoining Defendant from continuing its unlawful practices;

6. For an award of unpaid wages for all labor performed and liquidated damages in an amount equal to the amounts unlawfully unpaid according to proof, pursuant to Labor Code §§ 200, 218, 1194 and 1194.2;

- 1 7. For an award of unpaid overtime wages pursuant to Labor Code §§ 510 and 1194;
- 2 8. For an award of compensation at the rate of one hour of regular pay for each instance in
- 3 which Plaintiff and a member of the Class was not provided a first or second meal period;
- 4 9. Compensation at the rate of one hour of regular pay for each instance in which a member
- 5 of the Class worked through a rest break or was not provided a proper rest break for every four hours
- 6 worked or major fraction thereof;
- 7 10. Labor Code Section 203 penalties;
- 8 11. Damages and penalties pursuant to Labor Code Section 226(a) and 226.3;
- 9 12. For a declaratory judgment that Defendant has violated California Business and
- 10 Professions Code sections 17200 et seq. as a result of the aforementioned violations of the Labor
- 11 Code and of California public policy protecting workers by ensuring that workers are paid for all
- 12 hours worked.
- 13 13. For an order that Defendant make restitution to Plaintiff and the Class Members due to
- 14 its unlawful business practices pursuant to Business & Professions Code §§ 17203 and 17204;
- 15 14. For a permanent and mandatory injunction prohibiting Defendant, its officers, agents,
- 16 employees, affiliated companies and all those working in concert with them from committing
- 17 future violations of the laws and public policies described herein.
- 18 15. Pre-judgment and post-judgment interest, as provided by California law;
- 19 16. For award of reasonable attorneys' fees as provided by California Labor Code sections
- 20 218.5, 218.6, 226 (g), 558, 1194.2(a), 1021.5, 2802(c), and 2698 *et. seq.*
- 21 17. An award and administrative priority claim against the Defendant in favor of the
- 22 Plaintiff and the other similarly situated Class Members equal to the sum of their unpaid wages
- 23 and unpaid expenses, pursuant to California Labor Code Sections 201, 202 and 203.
- 24 18. For all costs of suit, and
- 25 19. For such other and further relief as this Court deems just and proper.
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1 **Upon the PAGA Cause of Action**

2 20. For civil penalties and wages pursuant to statute as set forth in Labor Code §2698 et
3 seq., for Defendant's violations of Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512, 1174,
4 1194, 2802 and applicable Wage Order No. 9.

5 21. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code
6 §2699 and any other applicable statute; and

7 22. For such other and further relief the Court may deem just and proper.

8
9 DATED: January 28, 2021

WHITEHEAD EMPLOYMENT LAW

10 By: 

11 Jacob Whitehead

12 Attorneys for Plaintiff

13 And all others similarly situated
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EXHIBIT A-1



October 30, 2020

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

First Class Mail

Mr. Alex Martinez, CEO
First Legal Deposition Services, LLC
1055 Wilshire Blvd., #1800
Los Angeles, CA 90017

Via Certified Mail

Mr. Alex Martinez
Registered Agent for
First Legal Deposition Services, LLC
1055 Wilshire Blvd., #1800
Los Angeles, CA 90017

Re: Notice Pursuant to the Private Attorneys General Act, California Labor
Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that representative plaintiff, Mehran Kharazi ("Plaintiff") has retained Whitehead Employment Law to represent him and other similarly-situated current and former employees (collectively, the "Aggrieved Employees") of First Legal, Inc., a California corporation (hereinafter "Defendant") regarding claims of violation of the California Labor Code.

Plaintiff on his own behalf and on behalf of the Aggrieved Employees alleges that he and the Aggrieved Employees are or were hourly, non-exempt employees employed by Defendant as delivery drivers for legal documents (the "Covered Positions"). This notice formally serves to inform Defendant of Plaintiff's intent to file a PAGA class action complaint against Defendant and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to claims for Defendant's intentional misclassification of Plaintiff and the Aggrieved Employees resulting in Defendant's failure to lawfully compensate Plaintiff and the Aggrieved Employees; failure to provide compliant rest/meal breaks; failure to pay for every hour worked; failure to maintain accurate records of all hours worked; failure to reimburse job-related expenses, and failure to furnish accurately itemized wage statements.

Based upon these violations, as further detailed below, Defendant violated numerous provisions of California's Labor Code including, but not limited to, violations of Labor Codes 201-203, 204, 226(a), 226.7, 512, 558, 1174 (d), 1194(a), 2802, and Industrial Welfare Commission Wage Order No. 04-2001 (IWC No. 4) as further detailed herein below.

During the relevant statutory period Plaintiff and the Aggrieved Employees currently or formerly worked for Defendant as drivers all over the State of California. Plaintiff was hired as a driver on or about April of 2000 to July of 2020.

At all relevant times, Defendant unlawfully classified Plaintiff and the Aggrieved Employees as if they were independent contractors, depriving them of their proper wage and employment benefits. Resultantly, Plaintiff and the Aggrieved Employees were not paid at least a minimum hourly wage for every hour worked; they were not provided with compliant rest breaks or meal breaks; Defendant failed to pay them for overtime wages they were due for shifts during which they worked in excess of eight hours or when they worked more than forty hours in a workweek. Moreover, in order to perform their duty as drivers, Plaintiff and the Aggrieved Employees are or were required to use their personal cell phones to communicate and receive jobs and routes from dispatch.

As evidenced by the Defendant's current practice of classifying all newly hired drivers as hourly, non-exempt employees, it is obvious that Defendant was well aware that it is unlawfully misclassifying Plaintiff and the similarly situated Aggrieved Employees. Even after Plaintiff requested to be properly classified as a regular non-exempt hourly employee, Defendant has failed and refused to do so. Plaintiff was terminated on July 20, 2020, approximately a month after asking Defendant to properly classify him as an hourly non-exempt employee. AB5 codified the ruling of *Dynamex Operations W, Inc. v. Superior Court* (2018) 4 Cal.4th 903 ("Dynamex"). It is a violation of Labor Code §226.8 to willfully misclassify an individual as an independent contractor. Despite the current rule of law in California, Defendant has flagrantly continued to defy the law and properly pay its driver employees.

Under Section 2750.3 of the Labor Code a worker may only be an independent contractor if they meet the "ABC" Test which requires: (1) the person be "free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact"; (2) the person "performs work that is outside the usual course of the hiring entity's business"; and (3) the person "is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. At all relevant times the Plaintiff and the Aggrieved Employees were under the direct control of Defendant, with Defendant requiring Plaintiff and the Aggrieved Employees to follow controlled routes and trips as well as demanding they work long hours. Plaintiff and the Aggrieved Employee's work is also within the usual course of Defendant's business. Defendant is in the business of filing, pick up, and delivery of legal documents. Plaintiff and the Aggrieved Employees provide these core business services offered by Defendant to Defendant's customers. Finally, Plaintiff and the Aggrieved Employees never independently drove for any other client and are/were solely employed by Defendant.

During the relevant statutory period, because Plaintiff and the Aggrieved Employees were misclassified, they were not provided their lawfully entitled rest or meal break periods and routinely worked overtime without being paid proper overtime wages at 1.5 times their regular hourly rates of pay. Defendant has not ever paid Plaintiff and the Aggrieved Employees premium pay to which they were entitled for the missed and non-compliant rest and meal breaks.

At no time did Plaintiff or the Aggrieved Employees agree to waive their rest and meal break periods. Plaintiff and the Aggrieved Employees regularly worked in excess of 12 hours a day. Whenever Plaintiff and the Aggrieved Employees tried to work fewer hours they would be harassed by dispatch to keep them working longer and later hours and purposefully assigned even more jobs at the end of the day to keep them working longer and later hours.

Plaintiff and the Aggrieved Employees are/were only compensated 38% of each booking, a booking price that Defendant first deducts \$20 from before calculating their pay. From that amount, Plaintiff and the Aggrieved Employees then must deduct all gas, mileage, and cell phone expenses from that fee. Plaintiff and the Aggrieved Employees make approximately \$11 per hour before deducting all gas, mileage, and cell phone costs from their pay. During the relevant statutory period, Plaintiff and the Aggrieved Employees had to utilize their personal cell phones for work related duties and communications. They daily had to use their cell phones to stay in contact with Dispatch, who provided them with deliveries and routes. Use of a cell phone is essential in performing the job duties as a driver. At no time has Defendant reimbursed Plaintiff or the Aggrieved Employees for the expenses they incurred in the mandatory utilization of their personal cell phones in performing their work-related duties.

Plaintiff is informed and believes that said violations are ongoing, systematic and uniform. If Defendant fails to cure these alleged violations, as stated above, Plaintiff will bring an action against Defendant under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

Due to the foregoing-described actions, Defendant has unlawfully failed to timely pay all wages due pursuant to Labor Code § 204 and has unlawfully failed to pay all wages due upon termination to those Plaintiff and the Aggrieved Employees who ceased their employment relationship with Defendant during the statutory period.

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of § 232, subdivision (c) of § 232.5, § s 233, 234, 351, 353, and 403, subdivision (b) of § 404, § s 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of § 1174, § s 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of § 1198.3, § s 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of § 1695.5, § s 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, § s 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of § 2673.1, § s 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of § 2929, and § s 3073.4, 6310, 6311, and 6399.7.

Rest/Meal Break Violations

Under Labor Code § 226.7 “(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Further, under Labor Code § 512 (a) “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Per the IWC Wage Orders, “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided. See, IWC No. 4, Section 12 (A) & (B).

As stated, during the relevant statutory period, the Plaintiff and the Aggrieved Employees, were rarely able to take rest or meal breaks, and any meal breaks literally on duty and therefore non-complaint with the law. Defendant actively failed to relinquish control to permit Plaintiff and the Aggrieved Employees opportunities for lawful breaks. Defendant has not ever paid premium pay penalties for the missed and non-compliant rest and meal breaks.

This is a clear violation of the provisions of the Labor Code and the IWC No. 4 which set forth California employers’ affirmative obligation to provide timely, duty-free rest and meal break periods.

Pursuant to §512 of the Labor Code and Section 12 (B) of IWC No. 4, Plaintiff and the Aggrieved Employees are owed premium pay penalties for each missed rest and meal break for which they were not paid during the statutory period.

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states “All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

Labor Code §1194 (a) provides in pertinent part: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the

unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Defendant has violated the provisions of Labor Code §§ 204 and 1194 (a) and Plaintiff and the Aggrieved Employees are entitled to recover payment for all hours worked, including time worked off the clock, with penalties and interest thereon, as well as their attorney's fees and costs.

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, *"Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."*

As indicated above, during the statutory period the Plaintiff and the Aggrieved Employees routinely worked overtime. Plaintiff and the Aggrieved Employees were working more than eight hours in a day and more than forty hours in a week throughout the relevant statutory period.

Defendant has violated Labor Code § 510 (a). Therefore, Plaintiff and the Aggrieved Employees are entitled to recover unpaid overtime for all hours worked, plus penalties and interest thereon, as well as attorney's fees.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *"Every person employing labor in this state shall:... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."*

Defendant had intentionally and knowingly misclassified Plaintiff and the Aggrieved Employees and failed to provide them with their lawfully entitled, Labor Code compliant, rest and meal break periods. Moreover, Defendant failed and refused to properly classify them in order to avoid paying them overtime wages. These additional hours worked at a premium rate are/were not tracked or recorded by the Defendant in violation of Lab. Cod. § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendant's unlawful business and compensation practices under the Labor Code, Plaintiff and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires Defendant to *"furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee's*

wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

As indicated above, Plaintiff and the Aggrieved Employees were not provided meal breaks and were not paid overtime. Thus, the pay stubs never accurately itemized all hours worked with accurate corresponding rates of pay, during each and every pay period during the relevant statutory period.

In failing to account and compensate with accuracy, all of the hours worked by the Plaintiff and the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Defendant has violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Plaintiff and the Aggrieved Employees' respective (1) gross wages earned, (2) net wages earned, and (3) all applicable hourly rates and the corresponding number of hour worked at each applicable hourly rate.

Based on the foregoing, Defendant has violated Labor Code § 226.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

Plaintiff's employment with Defendant terminated on July 30, 2020. During the statutory period Plaintiff and such Aggrieved Employees who separated from their employment relationship with Defendant were not paid all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. Therefore, Plaintiffs are entitled to and seek to recover waiting time penalties to which they are lawfully entitled under Labor Code Section §203.

To date, Defendant has failed to pay the Plaintiff and the Aggrieved Employees all of their earned wages that were due upon termination or discharge. Consequently, Plaintiff and the Aggrieved Employees seek to recover their unearned wages, all applicable waiting time penalties and accrued interest thereon.

Failure To Reimburse Work Related Expenses

Labor Code § 2802(a) provides, “*An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.*”

As described above, the Plaintiff and the Aggrieved Employees daily utilize or utilized their personal cell phones/data/text in the course of performing their work-related duties with no reimbursement from Defendant. Defendant has failed to reimburse them for the cell phone expenses they incurred in violation of Labor Code § 2802. Therefore, the Plaintiff and the Aggrieved Employees seek reimbursement of these work-related expenses incurred, as well as their attorney’s fees, penalties and interest thereon as permitted by § 2802.

Conclusion

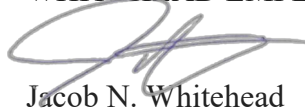
In sum, as has been factually alleged, Defendant violated among other statutes and regulations Labor Code §§ 201-203, 204, 226, 226.7, 512, 510, 1174(d), 1194 (a) and 2802, and IWC No. 4. Plaintiff on his own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory penalties, interest, and attorneys’ fees and civil penalties as provided under Labor Code 2699.

Plaintiff requests the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA’s provisions. Alternatively, Plaintiff requests the agency inform him if it does not intend to investigate these violations so that he may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW



Jacob N. Whitehead

JNW/mnh



November 23, 2020

Via Online Filing

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Re: First Amended Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that representative plaintiff, Mehran Kharazi ("Plaintiff") has retained Whitehead Employment Law to represent him and other similarly-situated current and former employees (collectively, the "Aggrieved Employees") against their joint employers in fact, First Legal Deposition Services, LLC, a Nevada limited liability company, and LA Depositions, Inc., a California corporation, dba First Legal Support Services (hereinafter "Defendants") regarding claims of violation of the California Labor Code.

Plaintiff on his own behalf and on behalf of the Aggrieved Employees alleges that he and the Aggrieved Employees are or were hourly, non-exempt employees employed by Defendants as delivery drivers for legal documents (the "Covered Positions"). This notice formally serves to inform Defendants of Plaintiff's intent to file a PAGA class action complaint against Defendants and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to claims for Defendants' intentional misclassification of Plaintiff and the Aggrieved Employees resulting in Defendants' failure to lawfully compensate Plaintiff and the Aggrieved

Employees; failure to provide compliant rest/meal breaks; failure to pay for every hour worked; failure to maintain accurate records of all hours worked; failure to reimburse job-related expenses, and failure to furnish accurately itemized wage statements.

Based upon these violations, as further detailed below, Defendants violated numerous provisions of California's Labor Code including, but not limited to, violations of Labor Codes 201-203, 204, 226(a), 226.7, 512, 558, 1174 (d), 1194(a), 2802, and Industrial Welfare Commission Wage Order No. 04-2001 (IWC No. 4) as further detailed herein below.

During the relevant statutory period Plaintiff and the Aggrieved Employees currently or formerly worked for Defendants as drivers all over the State of California. Plaintiff was hired as a driver on or about April of 2000 to July of 2020.

At all relevant times, Defendants unlawfully classified Plaintiff and the Aggrieved Employees as if they were independent contractors, depriving them of their proper wage and employment benefits. Resultantly, Plaintiff and the Aggrieved Employees were not paid at least a minimum hourly wage for every hour worked; they were not provided with compliant rest breaks or meal breaks; Defendants failed to pay them for overtime wages they were due for shifts during which they worked in excess of eight hours or when they worked more than forty hours in a workweek. Moreover, in order to perform their duty as drivers, Plaintiff and the Aggrieved Employees are or were required to use their personal cell phones to communicate and receive jobs and routes from dispatch.

As evidenced by the Defendants' current practice of classifying all newly hired drivers as hourly, non-exempt employees, it is obvious that Defendants was well aware that it is unlawfully misclassifying Plaintiff and the similarly situated Aggrieved Employees. Even after Plaintiff requested to be properly classified as a regular non-exempt hourly employee, Defendants have failed and refused to do so. Plaintiff was terminated on July 20, 2020, approximately a month after asking Defendants to properly classify him as an hourly non-exempt employee. AB5 codified the ruling of *Dynamex Operations W, Inc. v. Superior Court* (2018) 4 Cal.4th 903 ("Dynamex"). It is a violation of Labor Code §226.8 to willfully misclassify an individual as an independent contractor. Despite the current rule of law in California, Defendants have flagrantly continued to defy the law and properly pay its driver employees.

Under Section 2750.3 of the Labor Code a worker may only be an independent contractor if they meet the "ABC" Test which requires: (1) the person be "free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact"; (2) the person "performs work that is outside the usual course of the hiring entity's business"; and (3) the person "is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. At all relevant times the Plaintiff and the Aggrieved Employees were under the direct control of Defendants, with Defendants requiring Plaintiff and the Aggrieved Employees to follow controlled routes and trips as well as demanding they work long hours. Plaintiff and the Aggrieved Employee's work is also within the usual course of Defendants' business. Defendants are in the business of filing, pick up, and delivery of legal

documents. Plaintiff and the Aggrieved Employees provide these core business services offered by Defendants to Defendants' customers. Finally, Plaintiff and the Aggrieved Employees never independently drove for any other client and are/were solely employed by Defendants.

During the relevant statutory period, because Plaintiff and the Aggrieved Employees were misclassified, they were not provided their lawfully entitled rest or meal break periods and routinely worked overtime without being paid proper overtime wages at 1.5 times their regular hourly rates of pay. Defendants have not ever paid Plaintiff and the Aggrieved Employees premium pay to which they were entitled for the missed and non-compliant rest and meal breaks. At no time did Plaintiff or the Aggrieved Employees agree to waive their rest and meal break periods. Plaintiff and the Aggrieved Employees regularly worked in excess of 12 hours a day. Whenever Plaintiff and the Aggrieved Employees tried to work fewer hours they would be harassed by dispatch to keep them working longer and later hours and purposefully assigned even more jobs at the end of the day to keep them working longer and later hours.

Plaintiff and the Aggrieved Employees are/were only compensated 38% of each booking, a booking price that Defendants first deducts \$20 from before calculating their pay. From that amount, Plaintiff and the Aggrieved Employees then must deduct all gas, mileage, and cell phone expenses from that fee. Plaintiff and the Aggrieved Employees make approximately \$11 per hour before deducting all gas, mileage, and cell phone costs from their pay. During the relevant statutory period, Plaintiff and the Aggrieved Employees had to utilize their personal cell phones for work related duties and communications. They daily had to use their cell phones to stay in contact with Dispatch, who provided them with deliveries and routes. Use of a cell phone is essential in performing the job duties as a driver. At no time have Defendants reimbursed Plaintiff or the Aggrieved Employees for the expenses they incurred in the mandatory utilization of their personal cell phones in performing their work-related duties.

Plaintiff is informed and believes that said violations are ongoing, systematic and uniform. If Defendants fail to cure these alleged violations, as stated above, Plaintiff will bring an action against Defendants under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of § 232, subdivision (c) of § 232.5, § s 233, 234, 351, 353, and 403, subdivision (b) of § 404, § s 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of § 1174, § s 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of § 1198.3, § s 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of § 1695.5, § s 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, § s 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision

Due to the foregoing-described actions, Defendants have unlawfully failed to timely pay all wages due pursuant to Labor Code § 204 and has unlawfully failed to pay all wages due upon termination to those Plaintiff and the Aggrieved Employees who ceased their employment relationship with Defendants during the statutory period.

Rest/Meal Break Violations

Under Labor Code § 226.7 “(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Further, under Labor Code § 512 (a) “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Per the IWC Wage Orders, “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided. See, IWC No. 4, Section 12 (A) & (B).

As stated, during the relevant statutory period, the Plaintiff and the Aggrieved Employees, were rarely able to take rest or meal breaks, and any meal breaks literally on duty and therefore non-complaint with the law. Defendants actively failed to relinquish control to permit Plaintiff and the Aggrieved Employees opportunities for lawful breaks. Defendants have not ever paid premium pay penalties for the missed and non-compliant rest and meal breaks.

This is a clear violation of the provisions of the Labor Code and the IWC No. 4 which set forth California employers’ affirmative obligation to provide timely, duty-free rest and meal break periods.

Pursuant to §512 of the Labor Code and Section 12 (B) of IWC No. 4, Plaintiff and the Aggrieved Employees are owed premium pay penalties for each missed rest and meal break for which they were not paid during the statutory period.

(a) of § 2673.1 , § s 2695.2 , 2800 , 2801 , 2802 , 2806 , and 2810, subdivision (b) of § 2929 , and § s 3073.4, 6310, 6311, and 6399.7.

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states *“All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”*

Labor Code § 1194 (a) provides in pertinent part: *“Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”*

Defendants have violated the provisions of Labor Code §§ 204 and 1194 (a) and Plaintiff and the Aggrieved Employees are entitled to recover payment for all hours worked, including time worked off the clock, with penalties and interest thereon, as well as their attorney’s fees and costs.

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, *“Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”*

As indicated above, during the statutory period the Plaintiff and the Aggrieved Employees routinely worked overtime. Plaintiff and the Aggrieved Employees were working more than eight hours in a day and more than forty hours in a week throughout the relevant statutory period.

Defendants have violated Labor Code § 510 (a). Therefore, Plaintiff and the Aggrieved Employees are entitled to recover unpaid overtime for all hours worked, plus penalties and interest thereon, as well as attorney’s fees.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *“Every person employing labor in this state shall:... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”*

Defendants had intentionally and knowingly misclassified Plaintiff and the Aggrieved Employees and failed to provide them with their lawfully entitled, Labor Code compliant, rest and meal break periods. Moreover, Defendants failed and refused to properly classify them in

order to avoid paying them overtime wages. These additional hours worked at a premium rate are/were not tracked or recorded by the Defendants in violation of Lab. Cod. § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendants' unlawful business and compensation practices under the Labor Code, Plaintiff and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires Defendants to *"furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."*

As indicated above, Plaintiff and the Aggrieved Employees were not provided meal breaks and were not paid overtime. Thus, the pay stubs never accurately itemized all hours worked with accurate corresponding rates of pay, during each and every pay period during the relevant statutory period.

In failing to account and compensate with accuracy, all of the hours worked by the Plaintiff and the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Defendants have violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Plaintiff and the Aggrieved Employees' respective (1) gross wages earned, (2) net wages earned, and (3) all applicable hourly rates and the corresponding number of hour worked at each applicable hourly rate.

Based on the foregoing, Defendants have violated Labor Code § 226.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

Plaintiff's employment with Defendants terminated on July 30, 2020. During the statutory period Plaintiff and such Aggrieved Employees who separated from their employment relationship with Defendants were not paid all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. Therefore, Plaintiffs are entitled

to and seek to recover waiting time penalties to which they are lawfully entitled under Labor Code Section §203.

To date, Defendants have failed to pay the Plaintiff and the Aggrieved Employees all of their earned wages that were due upon termination or discharge. Consequently, Plaintiff and the Aggrieved Employees seek to recover their unearned wages, all applicable waiting time penalties and accrued interest thereon.

Failure To Reimburse Work Related Expenses

Labor Code § 2802(a) provides, “*An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.*”

As described above, the Plaintiff and the Aggrieved Employees daily utilize or utilized their personal cell phones/data/text in the course of performing their work-related duties with no reimbursement from Defendants. Defendants have failed to reimburse them for the cell phone expenses they incurred in violation of Labor Code § 2802. Therefore, the Plaintiff and the Aggrieved Employees seek reimbursement of these work-related expenses incurred, as well as their attorney’s fees, penalties and interest thereon as permitted by § 2802.

Conclusion

In sum, as has been factually alleged, Defendants violated among other statutes and regulations Labor Code §§ 201-203, 204, 226, 226.7, 512, 510, 1174(d), 1194 (a) and 2802, and IWC No. 4. Plaintiff on his own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory penalties, interest, and attorneys’ fees and civil penalties as provided under Labor Code 2699.

Plaintiff requests the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA’s provisions. Alternatively, Plaintiff requests the agency inform him if it does not intend to investigate these violations so that he may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW



Jacob N. Whitehead