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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 CLAUDE WOODS and TAIWO OYELEYE,
12 on behalf of themselves and all others similarly
13 aggrieved,

14 Plaintiffs,

15 v.

16
17 VEYO, LLC, an Arizona limited liability
18 Company, MICHAEL COLEMAN, an
19 individual; and DOES 1-50, inclusive,

20 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
06/29/2021 at 11:30:31 AM
Clerk of the Superior Court
By Bernabe Montijo, Deputy Clerk

CASE NO. 37-2021-00027881-CU-OE-CTL

**PRIVATE ATTORNEYS GENERAL
ACT ("PAGA") REPRESENTATIVE
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiffs CLAUDE WOODS and TAIWO OYELEYE ("Plaintiffs"), on behalf of
2 themselves and all other similarly aggrieved employees ("Aggrieved Employees"), hereby file this
3 Complaint against Defendant VEYO, LLC, MICHAEL COLEMAN, and DOES 1-50, inclusive
4 (hereinafter "Defendant"), and based on information and belief allege as follows:

5 **THE PARTIES**

6 1. Plaintiff CLAUDE WOODS ("WOODS") is, and at all relevant times was, an individual
7 domiciled in the State of California and a citizen of the State of California who worked as a non-
8 exempt employee for Defendant in the State of California, from approximately April 2019 until his
9 date of termination, on May 4, 2020.

10 2. Plaintiff TAIWO OYELEYE ("OYELEYE") is, and at relevant times was, an individual
11 domiciled in the State of California and a citizen of the State of California who worked as a non-
12 exempt employee for Defendant in the State of California, from approximately January 2019 until
13 he ended his employment in May 2020.

14 3. Defendant VEYO, LLC is an Arizona limited liability company that, at all relevant times,
15 was authorized to do business within the State of California and is doing business in the State of
16 California. Based on information and belief, VEYO, LLC owns, operates or otherwise manages a
17 company that provides a ride-sharing service for the purpose of transporting Medi-Cal/MediCare
18 patients to and from their doctors' appointments.

19 4. On information and belief, MICHAEL COLEMAN is an individual residing in the State of
20 California and is, and at all relevant times has been, the Chief Executive Officer and or Managing
21 Agent and or Member and or Owner of VEYO, LLC. On information and belief, MICHAEL
22 COLEMAN devised and implemented the policies at issue in this complaint and "caused" these
23 violations as that term is used in Labor Code §§ 558 and 1197.1. Pursuant to Labor Code §§558
24 and 1197.1, MICHAEL COLEMAN is liable as a person who "caused" the violations to occur.

25 5. The true names and capacities of the DOE Defendants sued herein as DOES 1 through
26 50, inclusive, are currently unknown to Plaintiffs, who therefore sue each such Defendant by said
27 fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the
28 unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend this Complaint to reflect

1 the true names and capacities of the Doe Defendants when such identities become known.

2 6. Plaintiffs are further informed and believe that, at all relevant times, each Defendant
3 was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling
4 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
5 interest of some or all of the other Defendants, and was engaged with some or all of the other
6 defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
7 other Defendants so as to be liable for their conduct with respect to the matters alleged in this
8 complaint. Plaintiffs are further informed and believes and thereon alleges that each Defendant
9 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
10 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
11 controlled, aided and abetted the conduct of all other Defendants.

12 7. At all relevant times, Defendant was and is legally responsible for all of the unlawful
13 conduct, policies, practices, acts and omissions complained of herein. Further, Defendant is
14 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
15 respondent superior. The conduct of Defendant's managers and supervisors was at all relevant
16 times undertaken as employees of Defendant, acting within the scope of their employment or
17 authority in all of the unlawful activities described herein.

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

21 **JURISDICTION AND VENUE**

22 9. This court possesses original subject matter jurisdiction over this matter. Venue is proper
23 in San Diego County, California, because Defendant VEYO, LLC, maintains its principal place of
24 business in San Diego County.

25 **FACTUAL ALLEGATIONS**

26 10. During the one-year and sixty-five day period preceding filing of this Complaint,
27 Plaintiffs were employed by Defendant as non-exempt employees in the State of California.
28 Defendant, at all relevant times, exercised control over Plaintiffs and the other Aggrieved

1 Employees (as defined below) and suffered and/or permitted them to work.

2 11. Plaintiff WOODS worked for Defendant as a driver from in or about April 2019 until he
3 was terminated on May 4, 2020. Throughout his employment, Defendant misclassified WOODS
4 as an independent contractor when he should have been classified as a non-exempt employee.
5 WOODS typically worked at least eleven (11) hours per day, five (5) days per week. He was
6 paid an hourly rate for time counted by Defendant as hours worked.

7 12. Plaintiff OYELEYE worked for Defendant as a driver from in or about January 2019 until
8 he ended employment, in May 2020. Throughout his employment, Defendant misclassified
9 OYELEYE as an independent contractor when he should have been classified as a non-exempt
10 employee. OYELEYE typically worked at least twelve (12) hours per day, six (6) days per week.
11 He was paid an hourly rate for time counted by Defendant as hours worked.

12 13. Throughout Plaintiffs' employments, Defendant intentionally misclassified Plaintiffs as
13 independent contractors when actually Plaintiffs were non-exempt employees under California
14 law, in that: (1) Plaintiffs were not free from Defendant's control and direction in the
15 performance of their work, both under the contract for the performance of the work and in fact¹;
16 (2) the work Plaintiffs performed was entirely within the usual course of the Defendant's business
17 of providing non-emergency medical rides to individuals; and (3) at no time were Plaintiffs
18 engaged in an independently established trade, occupation, or business of the same nature as the
19 work they performed for Defendant.

20 14. As a consequence of Defendant's intentional misclassification scheme, Defendant failed
21 to provide paid sick leave in accordance with California law. In fact, Defendant failed to provide
22 paid sick leave at all. Defendant also failed to provide notice of the correct sick leave amount
23 balance owed/available to Plaintiffs.

24 15. Plaintiffs bring this complaint under the Private Attorneys General Act of 2004, Labor
25

26 ¹ For example, Defendant monitored and set Plaintiffs' work schedules, negotiated the rates at which Plaintiffs were
27 paid for providing Defendant's services, dictated the locations where Plaintiffs would pick up and drive customers to
28 and from, required that Plaintiffs be available at all times during their shifts to communicate with Defendant,
maintained the authority to discipline Plaintiffs if they did not show up on time to the designated work location or if a
customer made a complaint about them, dictated if and when Plaintiffs could take time off, and maintained the
authority to discharge or terminate Plaintiffs.

Code sections 2698, *et seq.*, (“PAGA”), as a representative action on behalf of the State of California, regarding violations of the Labor Code as to all similarly aggrieved individuals employed by Defendant in the State of California as a non-exempt employee. This action is brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

16. During the period beginning one year prior to the preceding of the filing of the required PAGA notice with the Labor Workforce and Development Agency, and continuing through the present, as alleged herein, Defendant violated Labor Code sections 226.8, 1174, 1198, 1199, 246, 247, 248.5, 2810.5, and 2699 and all relevant sections of the applicable Wage Orders, as to Plaintiffs and all Aggrieved Employees (as defined below). These violations subject Defendant to civil penalties as set forth in the foregoing statutes as well as other provisions of the Labor Code, including without limitation Labor Code 2699.

THE “AGGRIEVED EMPLOYEES”

17. Plaintiffs bring this action on behalf of themselves and all similarly situated aggrieved employees. The other Aggrieved Employees shall be defined as follows: “All workers who were employed in California directly by Defendant at any time within the one year and sixty-five days prior to the filing of the initial complaint.”

FIRST CAUSE OF ACTION

VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS 2698, ET SEQ.

18. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

19. California Labor Code section 226.8 prohibits employers from engaging in the unlawful activity of willful misclassification of an individual as an independent contractor. In 2018, the California Supreme Court adopted the “ABC Test” for determining whether an individual is an employee or independent contractor under the state Industrial Welfare Commission (IWC) Wage Orders. *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, 4 Cal.5th 903, 416 P.3d 1. In doing so, the Court abandoned the less stringent multi-factor test established in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal.3d 341, 796 P.2d 399 (1989). Then, in 2019, the Legislature passed AB 5 to add Section 2750.3 to the Labor Code, adopting and

1 expanding the ABC Test to define “employee” not just for purposes of the Wage Orders, but also
2 for purposes of the Labor Code and the Unemployment Insurance Code. Under the AB 5 ABC Test,
3 a worker is presumed to be an employee, unless the hiring entity can establish that: (A) The person
4 is free from the control and direction of the hiring entity in connection with the performance of the
5 work, both under the contract for the performance of the work and in fact; (B) The person performs
6 work that is outside the usual course of the hiring entity’s business; and (C) The person is
7 customarily engaged in an independently established trade, occupation, or business of the same
8 nature as that involved in the work performed. A worker cannot be classified as an independent
9 contractor under the ABC Test unless all three factors are met.

10 20. Defendant attempted to evade California wage and hour laws by setting up the independent
11 contractor scheme alleged herein. In reality, Plaintiffs and other Aggrieved Employees were, at all
12 relevant times, non-exempt employees according to California law. Employer exercised control
13 over the wages, hours and working conditions of Plaintiffs and other Aggrieved Employees, by
14 among other things: providing the work schedules for Plaintiffs and other Aggrieved Employees;
15 negotiating the rates at which Plaintiffs and other Aggrieved Employees were paid for performing
16 their job duties; dictating the locations in which Plaintiffs and other Aggrieved Employees
17 performed their job duties on a daily basis; requiring that Plaintiffs and other Aggrieved Employees
18 be available at all times during their shifts to communicate with Defendant; disciplining Plaintiffs
19 and other Aggrieved Employees; dictating if and when Plaintiffs and other Aggrieved Employees
20 could take time off; maintaining the authority and power to discharge or terminate Plaintiffs and
21 other Aggrieved Employees from jobs; and maintaining the authority and power to
22 discipline/terminate Plaintiffs and other Aggrieved Employees for declining jobs. Thus, Defendant
23 exercised substantial control over Plaintiffs and other Aggrieved Employees’ wages, hours, and
24 working conditions. Indeed, almost all aspects of Plaintiffs and other Aggrieved Employees job
25 performance were controlled by Employer, and notably, this was the case throughout the relevant
26 time period, during all shifts worked by all aggrieved employees.

27 21. Moreover, the work that Plaintiffs and other Aggrieved Employees performed was
28 not a distinct occupation or an incidental or tangential part of Employer’s operations but rather was

1 central to Defendant's business. The job duties that Plaintiffs and other Aggrieved Employees
2 performed for Defendant are not those typically done by a specialist and require no special skill.
3 Upon information and belief, the vast majority of Defendant's personnel worked on a full-time,
4 long-term basis, and as stated, the schedules and rates paid to Plaintiffs and other Aggrieved
5 Employees were set by Defendant without any input from or consultation with Plaintiffs and other
6 Aggrieved Employees.

7 22. Based on the work relationship described above, there can be no doubt that Plaintiffs
8 and other Aggrieved Employees were at all relevant times Defendant's employees – not
9 independent contractors. Defendant knew that Plaintiffs and other Aggrieved Employees were
10 non-exempt employees under the law yet still classified them as independent contractors.
11 Defendant's conduct as described herein amounts to a willful pattern and practice, throughout all
12 of the relevant time period, of unlawful misclassification in violation of California Labor Code §
13 226.8.

14 23. California law requires employers to keep "accurate and complete" payroll records
15 showing, among other things, the hours worked daily by all non-exempt employees. Section 7 of
16 all applicable IWC Wage Orders similarly requires employers to keep time records showing, *inter-*
17 *alia*, when the employees begin and end each work period and reflecting the times during which
18 all owed meal periods are provided each day. At all relevant times, Defendant misclassified
19 Plaintiffs and other Aggrieved Employees as independent contractors rather than as exempt
20 employees, and per this intentional misclassification scheme, Defendant has failed, and continues
21 to fail, to keep the required time records, as Defendant did not record the true start and stop times
22 of Plaintiffs and the other Aggrieved Employees' workdays and failed to accurately record
23 employee meal periods. Defendant's failure to keep "accurate and complete" payroll records for
24 Plaintiffs and the other Aggrieved Employees violates Labor Code sections 1174, 1198-99, and
25 Section 7 of all applicable IWC Wage Orders. These violations subject Defendant to civil penalties
26 under the Labor Code, including without limitation sections 1174.5 and 2699. Each violation of
27 each Labor Code section and Wage Order provision, for each aggrieved employee, results in a
28 separate civil penalty.

1 24. Defendant failed to provide Plaintiffs and the other Aggrieved Employees paid sick days
2 in accordance with Labor Code sections 245 through 248.5, further failing to put them on notice
3 of their paid sick leave rights, and further failed to put their entitlement to sick leave in a Labor
4 Code section 2810.5 notice. Defendant failed to maintain accurate records documenting the hours
5 worked and paid sick days accrued and used by employees in violation of Labor Code section
6 247.5, permitting the presumption that Plaintiffs and the other Aggrieved Employees were
7 entitled to the maximum number of hours accruable under this article at the time of their
8 respective separations of employment. By failing to pay sick leave at all and or by failing to
9 account for/incorporate into the sick pay calculation the true hours Plaintiffs and the Aggrieved
10 Employees worked, Defendant unlawfully retained and continue to retain paid sick leave that
11 should have been paid and was not. Accordingly, Defendant has violated California's paid sick
12 leave laws as to Plaintiffs and the other Aggrieved Employees. These violations subject
13 Defendant to civil penalties under the Labor Code, including without limitation Labor Code
14 sections 246, 247, 248.5, and 2699. Each violation of each Labor Code section and Wage Order
15 provision, for each aggrieved employee, results in a separate civil penalty.

16 25. Under the provisions of PAGA and the Labor Code sections cited herein, including,
17 sections 226.8, 1174, 1198, 1199, 246, 247, 248.5, and 2810.5, 2699, and all relevant sections of
18 the applicable Wage Orders, as well as all interpretations of these laws by California Courts and
19 administrative bodies, as well as any other law that is enforceable through PAGA, Defendant is
20 liable for all statutorily-specified penalties recoverable under PAGA as enumerated in the
21 relevant California Labor Code provisions listed herein, or for default PAGA penalties under
22 Labor Code Section 2699(f) for any violation of a Labor Code section without a specified civil
23 penalty.

24 26. Plaintiffs complied with the procedures for bringing suit specified in Labor Code sections
25 2699.3 and 2699.5. On December 2, 2020, Plaintiffs gave written notice to the California Labor
26 and Workforce Development Agency ("LWDA") via electronic mail at PAGAfilings@dir.ca.gov
27 and to Defendant via certified mail 65 days prior to this Complaint of the specific provisions of
28 the Labor Code and Wage Orders allegedly violated, including the facts and theories to support

1 the alleged violations.

2 27. Under Labor Code section 2699.3, the LWDA must give written notice by certified mail
3 to the parties it intends to investigate the alleged violations within 65 days of the date of
4 Plaintiffs' written notice. As of the expiration of the statutory exhaustion period, the LWDA has
5 not provided the parties any notice of its intention to investigate Plaintiffs' claims on behalf of the
6 State of California and the Aggrieved Employees. As of the filing of this Complaint, Defendant
7 has not responded to Plaintiffs' PAGA notice in an attempt to cure. Accordingly, Plaintiffs have
8 exhausted all administrative remedies required by law.

9 28. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
10 Plaintiffs are entitled to recover civil penalties, costs, plus reasonable attorney's fees and costs, all
11 in an amount to be proved.

12 **PRAYER**

13 WHEREFORE, Plaintiffs, pray for judgment against each Defendant, jointly and severally,
14 as follows:

- 15 1. For civil penalties according to proof;
16 2. For statutory penalties;
17 2 For reasonable attorney's fees and costs of suit; and
18 3. For such other and further relief as the Court deems just and proper.

19
20 Dated: June 28, 2021

CROSNER LEGAL, P.C.

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22 Michael R. Crosner
23 Zachary M. Crosner
24 Blake R. Jones
Attorneys for Plaintiffs CLAUDE WOODS and
TAIWO OYELEYE

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26 **DEMAND FOR JURY TRIAL**

27 Plaintiffs CLAUDE WOODS and TAIWO OYELEYE demand a trial by jury on all claims
28 so triable.

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2 Dated: June 28, 2021

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