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August 27, 2021

SENT VIA CERTIFIED MAIL

HungryPanda US Inc.
c/o Registered Agents Inc. (C3365816)
Agent for Service of process
130W, 42nd St., Suite 405
New York NY, 10036

**SENT VIA ELECTRONIC
SUBMISSION**

Julie A. Su
Acting Secretary
California Labor & Workforce Development
Agency
800 Capital Mall, MIC-55
Sacramento, CA 95814

Re: HungryPanda US Inc.
California Labor Code section 2698, et seq. violations

Dear Ms. Su:

I am writing on behalf of aggrieved employee Ronghui Lee ("Lee"). This notice is being made to the Labor & Workforce Development Agency pursuant to the requirement of Labor Code section 2698 *et al.* that Lee, and other aggrieved employees, who performed delivery and driving services ("Drivers") and dispatch and customer service functions ("Dispatchers") (hereinafter Drivers and Dispatchers are collectively referred to as "Aggrieved Employees") for HungryPanda US Inc. (hereinafter "HungryPanda") were misclassified as independent contractors by Hungry Panda in California for at least the last year. Lee has performed as both a Driver and Dispatcher for HungryPanda.

HungryPanda operates an on-demand courier service that provides food and store delivery in various California cities (and other parts of the country) via an on-demand dispatch system, both computerized and staffed by Dispatchers. HungryPanda offers its customers the ability to request a Driver via a variety of web and smartphone-based applications. Drivers, like Lee, receive a fee for each delivery that they make. HungryPanda classifies the Aggrieved Employees as independent contractors, yet they do not have any discretion to reject orders assigned to them, they are all required to show up for specifically delineated “shifts,” assigned to specific geographic regions during these shifts, use specific branded tools and materials provided by HungryPanda (and only by HungryPanda), required to wear a HungryPanda uniform and place HungryPanda decals on their personal vehicle, required to follow scripts covering all aspects of customer interaction set by HungryPanda, personally provide all services without the ability to assign or delegate duties to anyone else, and are required to abide by strict rules set unilaterally by HungryPanda for which they can be disciplined, docked wages, have their wages clawed back, or terminated if they do not abide by them. These rules, and others imposed by HungryPanda for the Aggrieved Employees, set forth extremely strict guidelines for how work is to be performed, how the Drivers are to interact with customers, how the Drivers will be compensated, when the Drivers will be compensated, what tools and materials the Drivers are to use, and how the Drivers are to behave at all times. Additionally, the Drivers have no control over the pricing of goods or setting of delivery fees or schedule. HungryPanda’s actions show a complete control over the entirety of the services provided by the drivers, and its uniform policies and practices allow HungryPanda to unilaterally change the compensation scheme at any time including retroactively, make any deductions to wages at its sole discretion, and even control who the Drivers may speak to about their work and what they may speak about.

Lee and the other Aggrieved Employees do not meet the requirements to be independent contractors under Labor Code section 2750.3, nor do they meet the requirements to be independent contractors under Proposition 22, as HungryPanda controls the hours of work, provides no discretion to refuse deliveries, and restricts the Aggrieved Employees from pursuing other work. Due to the overwhelming amount of control exercised over every aspect of performing their duties, Lee and the other Aggrieved Employees could also not in any way reasonably be considered independent contractors under AB 5, or Dynamex Operations W. v. Superior Court (2018) 4 Cal.5th 903. Lee believes that he and the other Aggrieved Employees have been misclassified as independent contractors while under the law they are actually employees entitled to all of the benefits of the Labor Code as identified herein.

Lee, and each of the Aggrieved Employees described herein, suffered from the following Labor Code violations by their current or former employer HungryPanda. Pre-litigation and without the benefit of full discovery Lee reserves the right to amend this letter if it is shown that HungryPanda's unlawful policies are revealed to be even more extensive than what is known at this time.

Lee is an employee of HungryPanda. His employment with HungryPanda began in or around April 2020. Since April of 2020, Lee has worked as both a Driver and Dispatcher for Hungry Panda. Lee and other Aggrieved Employees' employment with HungryPanda was governed by the California Wage Orders, the Cal. Code of Regulations (CCR) §§11040, 11090, and California Labor Code §§ 201- 204, 206, 206.5, 207, 209, 221-224, 226(a), 226.7, 351, 432.5, 432.7, 450, 510, 512, 1194, 1197, 1197.1, 1198, 1199, and 2802. As laid out below, Lee believes that HungryPanda has violated the above Labor Code provisions, as well as the California Code

of Regulations and the IWC Wage Orders. Lee incorporates the above Labor Code and CCR sections and Wage Orders to all of the paragraphs below.

Drivers and Dispatchers working for HungryPanda, including Lee, regularly work more than 8 hours in a day and/or 40 hours in a work week, working specific “shifts” HungryPanda assigns to them, either through their cellular telephone application (“the HungryPanda App”) or via live Dispatchers who will call or message the Drivers. These shifts are assigned to specific geographic areas which the Drivers are not permitted to stray from. During these shifts the Drivers are tracked via the HungryPanda App mobile application and Drivers are expected to diligently monitor their smartphones and the HungryPanda smartphone application during their shifts. Under HungryPanda’s uniform pay policies and practices Drivers and Dispatchers are misclassified by HungryPanda as independent contractors, and therefore, not eligible for overtime pay for hours over 8 in a day, 40 in a week, or for work performed on the 7th consecutive day of work in the workweek. Lee and other highly ranked Drivers can earn bonuses and other non-hourly compensation which is not factored into their regular rate of pay. HungryPanda did not keep accurate time records of the hours Lee and the other Aggrieved Employees worked, in violation of Labor Code sections, 510, 512, 515(d), 558, 1174(d), 1194, 1198, IWC Wage Orders, and California Code of Regulations, section 11090(3).

Additionally, HungryPanda has a policy of not reimbursing any of the business expenses incurred by the Drivers and Dispatchers, including but not limited to parking, tolls, all mileage, parking tickets, all required cellular phone/data usage surcharges, and personal computers used for HungryPanda’s business, all of which are required business expenses incurred in the performance of their jobs, in violation of Labor Code §2802.

Lee and the other Aggrieved Employees were required to work specific shifts, to report for work 10 minutes before the beginning of those shifts, and then were often not put to work for at least half of their scheduled shift due to lack of orders from customers and/or because too many other Drivers were assigned to that same shift/area. It is HungryPanda's policy to not pay Lee and the other Aggrieved Employees reporting time pay, or minimum wage, for when they were instructed to report for work and then not put to work for at least half of their scheduled shift. Lee and the other Aggrieved Employees also were at times called to wait on standby without any pay (not even minimum wage), in the hopes that orders would be assigned to them from the HungryPanda smartphone application or its dispatchers. Lee and the Aggrieved Employees were required to constantly monitor their personal cellphones and the HungryPanda mobile application during these times and were required to immediately respond to any assignment or be subject to discipline, deductions to wages, or termination, but were not paid for this time as HungryPanda did not consider this time to be compensable. When a delivery was cancelled, Lee and the Aggrieved Employees were required to drive to another location to hand the delivery off to someone else or to proceed with the next delivery without being paid for any of the time spent on the cancelled delivery. Using the HungryPanda smartphone application HungryPanda could have tracked and kept records of all of the Drivers' time, every delivery and every mile traveled but it did not do so. HungryPanda also required Lee and the other Aggrieved Employees to make trips to its offices, all without any pay. Furthermore, as many of HungryPanda's restaurant customers only dealt with cash, Lee and the other Aggrieved Employees were required to make special trips without pay to get cash from their own bank accounts, this time was not compensated either. Under these practices Lee and the other Aggrieved Employees were not compensated for all time spent under HungryPanda's control, denied reporting time pay, minimum wages/liquidated damages,

and reimbursement for their expenses, in violation of the Labor Code and applicable Wage Orders cited herein.

Lee and the other Aggrieved Employees were sometimes compensated with a delivery fee, a small fee for some of the mileage traveled, and discretionary tips from customers. Almost any infraction of HungryPanda's rules would result in HungryPanda refusing to pay this small delivery fee, sometimes for days or even a week or more. Often, their compensation did not meet the minimum wage for the hours they were waiting on controlled standby and making actual deliveries for HungryPanda. This situation was aggravated by HungryPanda's policy of deducting delivery fees, or other arbitrary penalty amounts from the Aggrieved Employees' wages if they were late for a shift or if they left a shift early. If for any reason a customer did not pay for a meal or delivery, all costs associated with it were deducted from Lee and the other Aggrieved Employee's wages. In addition, because Lee and the other Aggrieved Employees had to bear the cost of vehicle insurance, unemployment insurance, workers' compensation coverage, gas and wear and tear on the vehicles they used to make deliveries for HungryPanda and the costs of their mobile telephone as well as an accompanying voice, SMS, and data plan in order to use HungryPanda's smartphone application (and to download the HungryPanda mobile application with all the accompanying costs of additional data being utilized and obtaining and paying for a data plan that would facilitate excessive use of the HungryPanda mobile application), HungryPanda illegally passed on these costs of doing business to the Aggrieved Employees.

Lee and the Aggrieved Employees were entitled under California law to at least a thirty-minute uninterrupted work-free meal period within 5 hours of the start of work for every shift lasting at least five (5) hours, and a second uninterrupted work-free meal period of thirty minutes

for any shift longer than ten (10) hours. By misclassifying Lee and the Aggrieved Employees as independent contractors, HungryPanda failed to provide lawful meal periods and premium payments to Lee and the Aggrieved Employees. HungryPanda controlled the schedules of Lee and the Aggrieved Employees, and many times did not allow them to stop or rest at all during a shift, without penalty, deductions from wages, or discipline. Lee and the other Aggrieved Employees were required to always monitor their smartphones and the HungryPanda smartphone application while working a shift and were subject to discipline or termination if they did not respond to every request quickly. Due to this, HungryPanda never provided Lee and the other Aggrieved Employees off duty meal periods. In the extremely unlikely event that HungryPanda did provide anything which could be considered a meal period premium, that premium was not paid at the regular rate of pay including all bonuses earned. By their failure to provide minimum statutory meal periods and failing to provide compensation for meal periods not provided, HungryPanda willfully violated the provisions of Labor Code sections 226.7, 512, and 1198 and IWC Wage Orders and California Code of Regulations, section 11090(11).

Lee and the other Aggrieved Employees were entitled under California law to at least a paid ten-minute work-free rest break for each workday worked in excess of 3.5 hours. During these work-free rest breaks the employer must relinquish all control over the employee. Lee and the other Aggrieved Employees were always required to monitor their smartphones for incoming orders while working a shift and could be disciplined or terminated if they did not respond quickly enough. Like with their meal periods, HungryPanda did not allow Lee and the other Aggrieved Employees to take rest breaks. Due to these policies Lee and the Aggrieved Employees were never provided off-duty paid rest breaks and instead were expected to be on-duty through their entire

shift. As such HungryPanda failed to provide lawful and paid rest breaks to Lee and the Aggrieved Employees as they were only paid for deliveries. In the extremely unlikely event that HungryPanda did provide anything which could be considered a rest break premium, that premium was not paid at the regular rate of pay including all bonuses earned. By HungryPanda's failure to provide minimum statutory rest breaks and failing to provide compensation for rest breaks not provided, HungryPanda willfully violated the provisions of Labor Code sections 226.7, 1198, and the applicable Wage Orders.

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

- HungryPanda required and directed Lee and the other Aggrieved Employees to buy fuel and maintain a vehicle used to make deliveries for HungryPanda.
- HungryPanda required Lee and the other Aggrieved Employees to use their personal computers and personal smartphones in the service of HungryPanda and pay for both a data plan and phone plan (voice + SMS) in order to receive deliveries and call customers, most of which was done through HungryPanda's smartphone application which used data.
- HungryPanda required Lee and the Aggrieved Employees to pay a deposit for branded delivery boxes, stickers and decals for their vehicles, uniforms/apparel,

and other promotional materials, and pay for upkeep for all of these things. If any of these materials were damaged HungryPanda unlawfully kept the deposit and still required the return of the aforementioned branded materials.

- HungryPanda also required Lee and the other Aggrieved Employees, upon hiring, pay a money deposit as a requirement to working for HungryPanda. Through numerous policies, including any breach of the employment agreement at HungryPanda's discretion, all or some of this deposit could be forfeited.
- HungryPanda's written employment policies and employment agreements provide that HungryPanda may in its sole discretion withhold any money payable to the Drivers and/or deduct that money from the Driver's deposit.
- HungryPanda required Lee and the other Aggrieved Employees to pay for background checks associated with their employment, pay for workers compensation, pay for unemployment insurance, vehicle insurance, pay for rejected or unpaid deliveries, indemnify HungryPanda for any and all losses, liabilities, damages, costs and expenses of any kind, and pay any and all taxes associated with their employment and compensation.
- HungryPanda made unlawful deductions from wages for nearly any infraction of HungryPanda's rules. These deductions included penalties for being late or missing a shift, for not being in a percentage of top performers, or for taking too long to make a delivery. Many times, HungryPanda's rules called for Drivers to forfeit all delivery fees earned for days or weeks, and anytime a meal or delivery was

cancelled for almost any reason HungryPanda would force the full loss onto the Drivers.

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

Furthermore, HungryPanda failed to timely pay all wages due. The California Labor Code requires that all wages be paid weekly or every two weeks. However, HungryPanda's uniform policy and practice was to withhold all wages during times of unprofitability, and although their policy states a weekly pay period, they would often not pay wages for weeks or even longer than a month. This uniform policy and practice constitutes a failure to pay minimum wage, pay for all time worked, and failure to pay wages timely in violation of Labor Code sections 204, 206, 206.5, 207, and 209.

Labor Code section 226 requires an employer to furnish its employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned, net wages earned, all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual. As a pattern and practice, in violation of Labor Code section 226(a), HungryPanda did not furnish Aggrieved Employees with accurate itemized wage statements. There is no indication that HungryPanda ever provided *any* wage statements to Lee and the other Aggrieved Employees. This practice, which HungryPanda has admitted committing toward Aggrieved Employees, evidences that HungryPanda's violation of Labor Code 226(a), is both intentional and willful. Even if the

documents prepared by Lee and the other Aggrieved Employees could be considered wage statements, which they could not be under Labor Code 226(a) because wage statements must be furnished by the employer, these employee produced summaries do not accurately reflect the number of straight time hours worked, the number of overtime hours worked, the rate of pay for any hours worked, any meal or rest premiums owed, or the legal name and address of the employer. As such HungryPanda did not provide accurate wage statements to Lee and the Aggrieved Employees as required by California law.

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

Additionally, Labor Code § 1174(d) requires that employers also keep accurate records showing the hours worked daily and wages paid to every employee. HungryPanda failed to comply with this provision as it did not keep a record of Lee or the Aggrieved Employees' time that they spent under the control of HungryPanda.

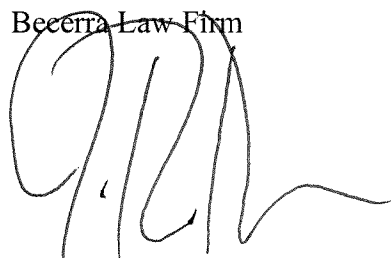
Because Lee and the Aggrieved Employees were misclassified, not paid proper minimum, straight, overtime or double time pursuant to California law, and not provided statutory meal

periods and rest breaks or compensation in lieu thereof, HungryPanda failed to remit all wages earned by some of the Aggrieved Employees at the time of termination. Furthermore, it is HungryPanda's written policy to not pay any wages due at termination unless the terminated employee first create and submit a delivery summary and submit it within 5 business days of termination, if the employee does not prepare and submit this summary they forfeit any and all wages still due.

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

Very truly yours,

~~Becerra Law Firm~~

A handwritten signature in black ink, appearing to read 'J. Becerra', with a long horizontal flourish extending to the right.

Joseph R. Becerra