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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

YI SONG and XIANGYANG JI,

Plaintiffs,

on behalf of themselves, other similarly-situated
employees, and the State of California,

vs.

WEEE! LOGISTICS, INC. & WEEE! INC.

Defendants.

Case No.: 23CV029846

COMPLAINT

Defendants WEEE! LOGISTICS, INC. and WEEE! INC. (collectively “Weee” or the
“Company”) have engaged in a longstanding, systematic practice of Labor Code violations against
its delivery drivers. As set forth below, these violations include Weee’s (i) failure to provide

1 employees their full compensation by unlawfully deducting from their tips; (ii) failure to provide
2 adequate meal periods; (iii) failure to pay wages for hours worked during unpaid meal periods,
3 including minimum wage for those hours as well as time-and-a-half compensation for any resulting
4 overtime hours; (iv) failure to provide accurate wage statements and to maintain accurate payroll
5 records as a result of the Company's unlawful tip deductions and failure to pay all wages and
6 overtime compensation due; (v) failure to pay wages due upon employees' separation from the
7 Company; (vi) misclassification of delivery drivers as independent contractors; and (vii)
8 infractions of health and safety regulations essential to maintaining a sound working environment.
9 Weee has thus deprived drivers of the pay and regular work breaks to which they are entitled and
10 put their health and safety at risk.

11 Further, in order to perpetuate these unlawful practices, Weee promulgates policies and
12 directives preventing employees from discussing their wages and working conditions, in violation
13 of Labor Code Sections 232 and 232.5. It punishes them for doing so in violation of Sections
14 232(c) and 232.5(c) and retaliates against them for protesting about Labor Code infractions in
15 violation of California law, including Labor Code Sections 1102.5 and 98.6. By engaging in this
16 retaliatory conduct, Weee suppresses employee complaints and discourages workers from coming
17 forward to demand fair and lawful treatment.

18 Accordingly, Plaintiffs YI "SUNNY" SONG and XIANGYANG "JAMES" JI bring this
19 action on behalf themselves and on behalf of all present and former similarly aggrieved hourly
20 employees of Weee (collectively "the Class" or "Class Members"). Plaintiffs further bring claims
21 on behalf of the State of California and the Labor and Workforce Development Agency ("LWDA")
22 to recover civil penalties under the Private Attorneys General Act of 2004 ("PAGA") for Weee's
23 various Labor Code violations. Plaintiffs hereby allege as follows:

24 **NATURE OF THE ACTION**

25 1. Pursuant to PAGA, Plaintiffs bring this action on behalf of the State of California
26 to seek civil penalties for all Labor Code violations committed against aggrieved current and
27 former employees. Weee engaged in violations of the Labor Code in its practices and policies

1 relating to worker classification, tip payments, wages, meal breaks, employee health and safety,
2 and internal and external communications regarding these matters. These violations apply to
3 Plaintiffs and other similarly aggrieved current and former Weee employees. Plaintiffs further
4 allege that such violations are ongoing and continuing.

5 2. Through this action, Plaintiffs seek PAGA penalties on behalf of the State of
6 California and attorneys' fees and costs.

7 3. Plaintiffs also bring their claims for unlawful tip deductions and misappropriation
8 of tip compensation, unpaid wages (including minimum wage and overtime compensation), failure
9 to provide adequate meal breaks, and provision of inaccurate wage statements as a class action on
10 behalf of all delivery drivers in California from March 4, 2018 through final judgment in this
11 action. Plaintiffs and the Class seek lost tips and wages, meal break penalties, restitution, and other
12 appropriate relief.

13 **JURISDICTION AND VENUE**

14 4. The case is properly before this Court as it involves issues of state law, and the
15 Defendants conducted substantial and continuous commercial activities in Alameda County.

16 5. The amount in controversy in this matter exceeds the sum of \$25,000.00.

17 6. Plaintiffs, all Class Members, and parties in interest (the State of California and
18 LWDA) are residents of California and/or worked for Weee in California at all relevant times.
19 Weee is a citizen of California with its headquarters and principal place of business in Fremont,
20 California. All claims in this action are brought under California law. Accordingly, state court is
21 the exclusive jurisdiction for the claims.

22 **THE PARTIES**

23 7. Plaintiff Yi "Sunny" Song is a California resident and a natural person.

24 8. Plaintiff Xiangyang "James" Ji is a California resident and a natural person.

25 9. Plaintiffs are informed and believe and on that basis allege that Weee is and at all
26 relevant times was a corporation doing business in the State of California and within the County
27 of Alameda.

10. Weee is, and at all relevant times was, an employer under applicable California Industrial Welfare Commission (“IWC”) Orders, the California Labor Code, and California law.

11. Plaintiff Song has worked as a delivery driver for Weee from April 25, 2021 to the present. Plaintiff Song has worked at Weee’s Union City warehouse in Union City, California. At all relevant times, Plaintiff Song was under the supervision and control of Weee.

12. Plaintiff Ji worked as a delivery driver for Weee from March 23, 2021 to July 19, 2021, when he was fired for engaging in protected activity to report and protest Weee’s Labor Code violations. Plaintiff Ji worked at Weee’s Union City warehouse in Union City, California. At all relevant times, Plaintiff Ji was under the supervision and control of Weee.

13. Effective March 4, 2022, the Plaintiffs entered into a tolling agreement with Defendants that tolled the statute of limitations for all claims asserted in this Complaint.

FACTUAL ALLEGATIONS

Weee Unlawfully Deducts from Employees’ Tips to Pad its Own Profits

14. Labor Code Section 351 makes it unlawful for employers to “collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer.” Weee has illegally deducted amounts from the delivery drivers’ earned tips in violation of Labor Code Section 351.

15. Weee employees receive additional compensation in the form of gratuities from customers who place delivery orders. Drivers receive tips from each delivery order directly from the customer. Customers have the option of designating a specific dollar amount for the tip at the time they place a grocery delivery order, often days before the delivery is scheduled to be made. Customers intend to pay these amounts directly to the drivers in the form of a tip, not to give extra money to Weee.

16. Both Plaintiff Song and Plaintiff Ji noticed substantial irregularities with their tip-related compensation, indicating that the Company had withheld large portions of their earned tips.

1 Plaintiffs raised these concerns to Weee management.

2 17. On or about July 17, 2021, concerned that drivers might not be receiving their full
3 tips, a customer lodged a complaint with Weee regarding the transparency of tip payments. The
4 following day, on July 18, a Weee Human Resources (“HR”) manager named Claire issued a
5 message via WeChat¹ to all delivery drivers, chastising and threatening them for purportedly
6 communicating about their tips. The message stated the following:

7 “Group Announcement

8 We received a customer complaint recently, and hereby explicitly remind everyone that as
9 a delivery driver for Weee, you are representing our company’s image and brand, so we
10 hope that you all do your jobs properly and deliver the products in accordance with the
11 customers’ wants and needs, and to enhance the quality of our service. Furthermore, on the
12 issue of tips provided by customers, the Company has always given the tips directly to our
13 delivery drivers (after deducting taxes). If there are any questions or concerns, please
14 contact our HR or legal department directly. Please do not disseminate any improper
15 statements as we will take disciplinary action against those who do upon confirmation.
16 Thank you everyone for your cooperation.”²

17 18. Despite Weee’s assertion that it has always provided tips directly to drivers (after
18 deducting taxes), Plaintiff Song, Plaintiff Ji, and other similarly aggrieved delivery drivers noticed
19 that Weee regularly decreased their tip compensation by a significant amount—more than could
20 be accounted for by supposed tax deductions.

21 19. Prior to the start of their shifts, Weee informed delivery drivers via its driver
22 interface of the amounts that they would receive in tip compensation for that day. After the drivers
23 completed their deliveries, Weee typically provided substantially lower amounts. For example,
24 Plaintiff Song observed that his end-of-the-day tip compensation was reduced by approximately

25 ¹ WeChat is a popular messaging app that supports video, voice, and text chat with a user base of over one
26 billion monthly users, especially in China. See Vivian McCall, *What is Wechat?*, BUSINESS INSIDER (Feb.
27 22, 2021), <https://www.businessinsider.com/guides/tech/what-is-wechat>.

28 ² The message was originally posted in Chinese and has been translated to English for this Complaint.

two-thirds, amounting to a deficit of nearly \$250 each day. The disparities were not accounted for by customer cancellations, as he made all of the scheduled deliveries.

20. The following chart presents a sample illustrating the amount by which Defendants reduced Plaintiff Song's tips during particular days in June and July 2021.

Date	'Pre-Delivery' Amount	"Post-Delivery" Amount	Amount Deducted
June 5, 2021	\$355.44	\$105.00	\$250.44
June 8, 2021	\$355.86	\$115.00	\$240.86
June 16, 2021	\$366.74	\$114.00	\$252.74
June 21, 2021	\$376.86	\$112.00	\$264.86
June 24, 2021	\$342.98	\$100.00	\$242.98
June 27, 2021	\$371.94	\$120.00	\$251.94
June 29, 2021	\$340.85	\$93.00	\$247.85
July 4, 2021	\$372.00	\$116.00	\$256.00
July 27, 2021	\$320.63	\$91.00	\$229.63
Average Tips Deducted:			\$248.59

21. As a result of these practices, policies, and conduct, Weee failed to pay earned tip compensation to Plaintiffs and other Weee employees as required by Labor Code Section 351.

Weee Misclassifies Many of its Drivers as Independent Contractors

22. Labor Code Section 226.8(a) prohibits employers from willfully misclassifying any individual as an independent contractor. Weee willfully misclassified a large portion of its drivers as independent contractors in violation of California Labor Code Section 226.8.

23. Upon information and belief, Weee employs over one hundred (100) drivers who it classifies as independent contractors compensated pursuant to an IRS Form 1099. Upon information and belief, Weee also employs over one hundred (100) drivers who it classifies as employees compensated pursuant to an IRS Form W2.

24. Despite the differing classifications, Weee treats the two groups of employees identically—W-2 and 1099 drivers are Weee employees who perform the same duties and responsibilities under the same conditions: Weee controls the delivery routes and schedules for all

1 drivers, enforces the same rules for all drivers, and requires all drivers to report to the same set of
2 managers. During the period of time relevant to this action, Weee also used the same
3 communication channel and interface for all drivers.

4 25. Upon information and belief, the drivers classified by the Company as independent
5 contractors are not free from Weee's control and direction; as delivery drivers for an online grocer,
6 they do not perform work that is outside the usual course of Weee's business; and none of the
7 drivers customarily engage in an independently established trade, occupation, or business of the
8 same nature as Weee. They were hired by Weee to work as delivery drivers.

9 26. For those drivers classified as independent contractors, Weee does not provide the
10 litany of protections that come with employment, including minimum wage, overtime pay
11 protections, health benefits, and a company car for deliveries. Such misclassification is a clear
12 violation of California Labor Code § 226.8, which prohibits willful misclassification of employees
13 as independent contractors.

14 **Weee Fails to Provide Duty-Free Meal Periods to its Delivery Drivers and Requires Them to**
15 **Work Through Unpaid Meal Breaks Without Paying for Their Time, Including Time-and-**
16 **a-Half Compensation for Overtime Hours**

17 27. Labor Code Section 226.7 prohibits employers from requiring "an employee to
18 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
19 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
20 Safety and Health Standards Board, or the Division of Occupational Safety and Health."

21 28. At all times relevant to this action, Weee deliberately deprived drivers of legally-
22 required meal breaks by requiring them to make deliveries during their meal periods rather than
23 working extra overtime hours to complete their routes.

24 29. Plaintiff Song, Plaintiff Ji, and other drivers are instructed that they must clock out
25 for a full meal period, regardless of whether they actually have the opportunity to take the allotted
26 time as a break. Weee stresses to delivery drivers throughout their employment that they should
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1 avoid working overtime if possible, and demands that employees use their meal periods to make
2 deliveries so that the Company can avoid paying overtime wages.

3 30. Weee also stresses that even if drivers do not have an opportunity to take their meal
4 breaks, they should nonetheless clock out for thirty minutes after approximately four (4) hours of
5 work in order to create a false record of having done so.

6 31. Plaintiff Song, Plaintiff Ji, and other similarly aggrieved drivers regularly worked
7 more than five (5) consecutive hours each day without an actual meal break. Generally, drivers
8 can only complete their delivery routes within an 8-hour on-the-clock workday if they forgo their
9 meal breaks. Therefore, Plaintiffs and other drivers are regularly deprived of the opportunity to
10 take uninterrupted 30-minute meal periods during which they are relieved of all duties.

11 32. Weee's actions constitute violations of the duty to provide employees with off-duty
12 30-minute meal periods as required by Labor Code Sections 226.7 and 512.

13 33. Weee has in essence implemented a continuous policy and practice of clocking-out
14 employees for a thirty-minute meal period despite demanding that they work without pause in
15 order to avoid putting in overtime hours at the end of the day. As a result, Weee drivers regularly
16 work thirty minutes per day for which they are not paid.

17 34. Weee fails to pay drivers their regular wages for working through their supposed
18 breaks and thereby engages in a routine and continuous practice of wage theft. In consequence,
19 Weee fails to pay delivery drivers all wages earned on a regular (at least semi-monthly) basis, in
20 violation of Labor Code Section 204; improperly deducts from and appropriates part of their wages
21 in violation of Section 221; and/or pays them less than the contractually-agreed upon wage for all
22 working hours in violation of Section 223.

23 35. Moreover, Weee fails to pay drivers the requisite minimum wage for time worked
24 through meal breaks, in violation of California Labor Code Section 1197.

25 36. Further, as a result of Weee's practices, drivers frequently worked unpaid overtime
26 hours. Not including their meal breaks, drivers typically worked eight (8) hours per day—
27 sometimes more. Time worked through breaks—when drivers are instructed to clock out and
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1 continue working—would often push drivers above eight hours of working time per day; such time
2 must therefore be compensated at the time-and-a-half overtime rate. Yet, in instances in which
3 drivers’ uncredited meal period hours should be paid at the overtime rate, Weee fails to pay the
4 overtime premium, in violation of Labor Code sections 510 and 1198 and relevant IWC orders.

5 37. In addition to withholding drivers’ wages, Weee also fails to pay premium
6 compensation mandated by Labor Code Section 226.7(c) for drivers’ missed meal break periods.

7 **Weee Fails to Keep Accurate Payroll Records**

8 38. As a result of these practices and conduct, Weee willfully fails to provide accurate
9 itemized statements showing the actual gross wages earned by Plaintiffs and other Weee delivery
10 drivers as required by Labor Code Section 226. Likewise, Weee fails to maintain accurate payroll
11 records showing employees’ hours worked and wages paid in violation of Section 1174(d).

12 **Weee Fails to Timely Pay Wages Due Upon Drivers’ Separation from Employment**

13 39. Further, as a result of refusing to pay drivers for hours and overtime worked during
14 designated meal periods, Weee also willfully fails to pay them all wages due upon their separation
15 from employment, as required by Labor Code Sections 201 and 202. Weee is liable for waiting
16 time penalties under Section 203.

17 **Weee Imposed an Illegal Confidentiality Requirement as a Condition of Employment**

18 40. Labor Code Section 232 prohibits employers from requiring “as a condition of
19 employment, that an employee refrain from disclosing the amount of his or her wages.” Labor
20 Code Section 232.5 prohibits employers from requiring “as a condition of employment, that an
21 employee refrain from disclosing information about the employer’s working conditions.”

22 41. At all times relevant to this action, Weee mandated that Plaintiffs and other
23 aggrieved employees are not to disseminate anything “improper,” including information regarding
24 their compensation and working conditions. Plaintiffs and other employees were informed by
25 Weee that any action doing so would lead to disciplinary “action” against them.

26 42. Specifically, in the July 17, 2021 WeChat statement excerpted above in Paragraph
27 17, the Company specifically admonished employees to not discuss information relating to their
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1 compensation or working conditions. The Company directed Plaintiffs and other Weee employees
2 not to discuss their concerns about tipped compensation with other employees or others or to
3 “disseminate any improper statements” but only to raise issues with HR or Legal.

4 43. In addition, the Company’s HR department approached both Plaintiffs and other
5 similarly aggrieved employees on multiple occasions to remind them not to disclose anything
6 about their grievances. In fact, the Company terminated a drivers’ WeChat group in order to deter
7 the drivers from discussing their wages and working conditions and to prevent the formation of a
8 forum in which drivers could pool their complaints. The Company has also discharged, disciplined,
9 or otherwise discriminated against Plaintiffs and other workers who disclosed information about
10 their wages and working conditions, in violation of Sections 232(c) and 232.5(c).

11 44. In summary, Weee imposed an illegal confidentiality requirement as a condition of
12 employment upon the Plaintiffs and other Weee employees in violation of Labor Code Sections
13 232 and 232.5 and unlawfully punished and retaliated against employees who did not comply.

14 **Weee Failed to Provide Necessary Safety Equipment and COVID-19-Related Equipment**

15 45. Labor Code Section 6400 explicitly mandates that “every employer shall furnish
16 employment and a place of employment that is safe and healthful for the employees therein.”
17 However, Weee has violated numerous workplace safety regulations and has failed to provide the
18 requisite safety equipment in violation of Labor Code Sections 142.3 and 6400 *et seq.*, as well as
19 in violation of Title 8 of the California Code of Regulations Sections 3205 and 3382(a).

20 46. First, Weee regularly uses dry ice—the solid form of carbon dioxide—as a cooling
21 agent to ensure that refrigerated and frozen products are kept cold during the delivery process.
22 However, dry ice presents dangers to the eyes and hands, and can cause severe burns if handled
23 with bare hands. In a poorly ventilated area, the presence of dry ice can result in the depletion of
24 oxygen, which can increase the risk of asphyxiation, loss of consciousness, and death.

25 47. Upon information and belief, Weee has failed to provide sufficient training in the
26 handling of dry ice and has failed to provide any hand protection for its drivers, in violation of
27 Labor Code Sections 142.3 and 6403. Under California regulations, “employers shall select,

1 provide and require employees to use appropriate hand protection when employee's hands are
2 exposed to hazards such as those skin absorption of harmful substances, cuts or lacerations,
3 abrasions, punctures, chemical burns, thermal burns, radioactive materials, and harmful
4 temperature extremes." Cal. Code Regs. tit. 8, § 3384(a). Despite these known dangers, at all times
5 relevant to this action, Weee has failed to provide the requisite protective equipment for its delivery
6 drivers; nor does it provide any training for handling such hazardous materials. Weee thereby
7 exposes the drivers to unsafe working conditions, resulting in significant physical harm.

8 48. In one instance, on August 11, 2021, Plaintiff Song felt dizziness and had difficulty
9 breathing during his delivery route, and nearly experienced a loss of consciousness. His team
10 lead/supervisor confirmed that the proximity to the hazardous dry ice in his delivery truck caused
11 him to suffer these symptoms. HR was informed of this occurrence on the same day.

12 49. Second, at all times relevant to this action, Weee has utilized highly reflective
13 insulated packaging to ensure that certain produce and goods are kept warm/cold for an extended
14 period of time and prevent the products from going stale. Often times, delivery drivers are required
15 to locate and pick up the packages for delivery under direct sunlight. As a result, the drivers are
16 often subject to intense glare from the light that reflects off the boxes that they deliver.

17 50. On numerous occasions, both Plaintiffs experienced tremendous strain to their eyes
18 during their delivery routes, and both are aware of other Weee employees who experienced this
19 issue on a regular basis. To this day, both Plaintiffs experience pain and discomfort to their eyes,
20 which has affected their vision and way of life.

21 51. Weee's failure to provide eye protection in this context directly violates Labor Code
22 Section 6403. Further, under California regulations, "[e]mployees working in locations where
23 there is a risk of receiving eye injuries such as punctures, abrasions, contusions, or burns as a result
24 of contact with flying particles, hazardous substances, projections or injurious light rays which are
25 inherent in the work or environment, shall be safeguarded by means of face or eye protection."
26 Cal. Code Regs. tit. 8, § 3384(a). By failing to provide this required protection, Weee illegally
27 subjects its drivers to potential harm, in direct violation of the Labor Code and relevant regulations.

1 52. In addition, Weee has failed to consistently provide face coverings for its
2 employees in violation of Section 3205(c)(6)(B), Title 8 of the California Code of Regulations.

3 53. While face coverings are supposed to be provided at the entrance of the warehouse,
4 Weee has often failed to restock the box in a timely fashion and exposed its employees to potential
5 harm and exposure to the COVID-19 virus. On numerous occasions, both Plaintiffs have arrived
6 at work only to see that there were no face coverings for employees to use. Further, at times,
7 Plaintiffs requested masks but were told by the Company to use their own personal masks instead,
8 which led to them incurring additional expenses to purchase masks to be used at work.

9 54. By failing to provide the requisite hand protection, eye protection, and face
10 coverings during a global pandemic, the Company has not only violated numerous regulations, but
11 has put the health and safety of its own employees—and its customers—in danger.

12 **Weee Unlawfully Retaliates Against Employees**

13 55. Labor Code Section 98.6 makes it unlawful for an employer to “discharge an
14 employee or in any manner discriminate, retaliate, or take any adverse action against any employee
15 or applicant for employment because the employee. . . has filed a bona fide complaint or claim. . .
16 made a written or oral complaint that he or she is owed unpaid wages, or because the employee
17 has initiated any action or notice pursuant to Section 2699. . .” Similarly, Labor Code Section
18 1102.5 provides that an employer “shall not retaliate against an employee for disclosing
19 information . . . to a person with authority over the employee or another employee who has the
20 authority to investigate, discover, or correct the violation or noncompliance . . . if the employee
21 has reasonable cause to believe that the information discloses a violation of state or federal statute,
22 or a violation of or noncompliance with a local, state, or federal rule or regulation.” Weee has
23 violated these statutes in retaliating against and otherwise silencing employees who speak out
24 about the Company’s unlawful policies and practices.

25 56. Concerned by Weee’s violations, Plaintiffs objected to and protested the
26 Company’s actions to HR and management, noting their reasonable belief that the Company’s
27 practices violated California labor law. Plaintiffs and other aggrieved employees made such
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1 complaints through WeChat messages and through in person conversations. In retaliation for
2 raising these objections and concerns, Weee penalized and discriminated against Plaintiffs and
3 other similarly aggrieved employees in violation of Labor Code Sections 98.6 and 1102.5.

4 57. Plaintiffs allege that Weee violated the anti-retaliation provisions of the California
5 Labor Code in a systematic fashion as it pertains to all aggrieved employees. Plaintiffs'
6 experiences at Weee serve as examples of the ways in which Weee violated the Labor Code as to
7 employees who raised complaints of Labor Code and health and safety violations.

8 58. During his tenure at Weee, Plaintiff Ji actively voiced his complaints regarding
9 safety concerns and illegal tip deductions, noting his reasonable belief that the Company's
10 practices violated California labor law. As a result, Plaintiff Ji experienced retaliation for reporting
11 the Company's violations to management.

12 59. On July 3, 2021, Plaintiff Ji complained to HR regarding the lack of safety
13 equipment and sent videos regarding the safety issues presented by dry ice and the reflective lining
14 of the packages. His complaints clearly suggested that the Company's policies violated California
15 law, which requires employers to create and foster safe and healthy work environments.

16 60. Mere days after his complaint, on July 8, 2021, Plaintiff Ji received a "Final
17 Warning Letter" and was forced to sign the document despite his objections.

18 61. In the July 8, 2021 letter—the first and only warning letter Plaintiff Ji ever received
19 at Weee—the Company cited to three separate incidents from May 2, May 26, and June 13. None
20 of these cited incidents were substantiated or bore any basis in fact. In fact, this was the first time
21 that Plaintiff Ji had received any documentation regarding these alleged incidents. The lack of
22 contemporaneous discipline or documentation, compounded with the particularly suspicious
23 timing in issuing the letter, strongly suggests that the Company's motivation was Plaintiff Ji's
24 protected complaints and further establishes that the Company's enumeration of random
25 infractions from months prior was plainly pretextual.

26 62. On July 17, 2021, Plaintiff Ji was provided with a cash tip of around \$2-3 from a
27 customer he assisted in carrying several boxes of groceries; the customer stated that the extra cash
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1 was in addition to the amount she had entered for a driver tip when purchasing her groceries. In
2 response, Plaintiff Ji commented that, as a driver, he was not privy to the tip amount designated
3 by a given customer. Concerned, the customer contacted Weee's customer service and complained
4 that the Company was not transparent or honest to its drivers regarding their tips.

5 63. Only one day later, on July 18, 2021, Weee falsely accused Plaintiff Ji of soliciting
6 this customer for an additional tip and terminated his employment.

7 64. That is, two weeks after Plaintiff Ji engaged in protected activity and less than nine
8 days after he was provided with the fabricated warning letter, Weee terminated him under false
9 pretenses.

10 65. By way of another example, Plaintiff Song experienced retaliation for his
11 identification of the Company's violations to management, including an issue where the delivery
12 route coordinator, Louis Beh, appeared to be taking bribes from some delivery drivers in exchange
13 for assigning them more favorable delivery routes. In July and August of 2021, after noticing
14 preferential treatment in delivery route assignments, Plaintiff Song raised concerns to HR that Mr.
15 Beh was violating the law by accepting bribes for corruptly using his position to benefit other
16 employees (*see, e.g.*, Cal. Penal Code § 641.3— Commercial Bribery). In response, HR directed
17 Plaintiff Song to speak directly with Mr. Beh. After doing so, Plaintiff Song received different
18 delivery assignments that were well-known to contain low-tipping customers and required
19 roundabout and cumbersome driving routes. When Plaintiff Song again raised his concern that Mr.
20 Beh was retaliating against him, HR informed Plaintiff Song that Mr. Beh did not manipulate route
21 assignments, directly contradicting what he had witnessed after he complained to Mr. Beh.

22 66. In raising concerns with an HR representative about what he reasonably believed
23 to be Mr. Beh's violations of the law in accepting bribes for corruptly using his position to benefit
24 other employees (*see, e.g.*, Cal. Penal Code § 641.3— Commercial Bribery), Plaintiff Song
25 indisputably engaged in protected activity. Mr. Song also engaged in protected activity by
26 reiterating protests about safety issues involving potential violations of Labor Code Sections 142.3
27 and 6403.

67. By assigning Plaintiff Song unfavorable routes, Weee retaliated against him for disclosing information to HR that he had reasonable cause to believe disclosed a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation in violation of California Labor Code Sections 1102.5 and 98.6.

68. Weee's pattern of adverse employment actions in response to aggrieved employees' protected activity violates California Labor Code §§ 1102.5 and 98.6. Through its actions, Weee retaliated against Plaintiff Ji, Plaintiff Song, and other aggrieved employees for reporting information to HR that they reasonably believed disclosed violations of one or more state or federal statutes or noncompliance with local, state, or federal rules and regulations. Specifically, Plaintiffs' complaints implicated Labor Code Sections 351, 142.3, and 6403 among other statutes and regulations.

69. Moreover, Weee's actions in terminating Plaintiff Ji and retaliating against other employees for disclosing information about their wages and working conditions violated Labor Code Sections 232 and 232.5. These statutes prohibit employers from retaliating against employees who disclose wages or working conditions to anyone. The statutes contain no limitation on the parties to whom disclosure may be made and thus cover disclosures to coworkers, third parties, and the public.

PAGA ALLEGATIONS

70. As set forth above, Weee has committed various violation of the California Labor Code. Accordingly, Plaintiffs seek penalties provided by Section 2698, *et seq.*, of Private Attorneys General Act (“PAGA”) on behalf of the State of California for violations committed against themselves and all other aggrieved employees. Defendants’ unlawful policies and practices have continued without remediation since at least the start of Plaintiffs’ employment with the Defendants in April 2021.

71. The PAGA penalty period covers violations committed against current and former drivers who worked for Weee in California from March 4, 2021 through the date of judgment.

CLASS ACTION ALLEGATIONS

1 72. The **Class** that Plaintiffs seek to represent is composed of: All delivery drivers
2 employed by Defendants in California during the Class Period.

3 73. The Class Period begins on March 4, 2018 and continues through the date of
4 judgment. To the extent that equitable or other tolling operates to toll claims by Class Members
5 against the Defendants, the Class Period should be adjusted accordingly.

6 74. The class action aspect of this matter addresses the following wrongful acts against
7 the Plaintiffs and the Class:

- 8 a. unlawful misappropriation of drivers' tips;
- 9 b. failure to provide full and uninterrupted off-duty meal periods during the
10 workday;
- 11 c. failure to pay wages due for time worked during supposed meal breaks,
12 including minimum wage for all time worked as well as overtime
13 compensation where appropriate;
- 14 d. failure to pay statutory premiums and penalties for missed meal breaks;
- 15 e. failure to provide accurate wage statements;
- 16 f. failure to pay wages due upon separation (claim for waiting time penalties
17 on behalf of a Subclass of drivers who left Weee during the class period);
18 and
- 19 g. for purposes of injunctive relief, Weee's health and safety violations and its
20 unlawful policies restricting employees from disclosing their wages and
21 working conditions.

22 75. The relevant violations, described above, are routine and systematic and result from
23 centralized policies and practices created by Weee upper management, including the Human
24 Resources and Payroll departments, located in Fremont, California. The centralized policies and
25 practices were implemented by department managers and HR/Payroll staff with respect to the
26 Class of Weee delivery drivers.

27 76. This action may be properly maintained as a class action pursuant to California
28

Code of Civil Procedure Section 382 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable.

a. **Numerosity**: The potential members of the Class as proposed are so numerous as to make joinder impracticable. The Class consists of well over one hundred individuals employed by Weee as delivery drivers during the applicable time period. The precise class list is easily ascertainable through Weee's Payroll Database.

b. **Commonality**: Common questions of law and fact predominate over any questions affecting only individual Class Members. These common questions include, without limitation: (i) whether Weee's practice of taking deductions from the Class Members' earned tips breached its contractual obligations to drivers, constitutes conversion of their rightfully-owed compensation, and/or constitutes unjust enrichment; (ii) whether Weee took actions to affirmatively provide off-duty meal periods as required by Wage Order No. 7-2001 and Labor Code §§ 226.7 and 512; (iii) whether Weee had policies and practices discouraging Class Members from taking full, uninterrupted meal periods and from reporting and claiming missed meal periods; (iv) whether Weee has violated the Labor Code, including §§ 204, 221, and 223, by failing to pay Plaintiffs and the Class Members for work performed during their designated unpaid meal periods; (v) whether Weee has violated Labor Code § 1197 by failing to pay its drivers the applicable minimum wage for time worked during such meal periods; (vi) whether Weee has violated Labor Code §§ 510 and 1198 by failing to pay overtime compensation to Plaintiffs and the Class Members for work performed during such meal periods that would take them beyond eight hours of work time in any given work day; (vii) whether Weee paid the statutory premiums mandated by Labor Code § 226.7 for missed meal breaks; (viii) whether Weee violated Labor Code § 226 by failing to provide accurate wage statements to Plaintiffs the and Class Members; (ix) whether Weee violated Labor Code §§ 201 and 202 by failing to pay wages due and owed at the time that certain Plaintiffs' and Class Members' employment with Weee ended and is liable for waiting time penalties under § 203; (x) whether Weee knowingly and willfully violated the Labor Code; (x) whether Weee violated Business and Professions Code §§ 17200, et seq the Unfair Competition

1 Law (UCL) by virtue of its class-wide practices; and (xi) whether Weee should be enjoined from
2 continuing its unlawful practices.

3 c. **Typicality**: Each Plaintiff, being a non-exempt employee of Weee in
4 California, has suffered the same violations and similar injuries as other Class Members arising
5 out of and caused by Weee's common course of conduct in violation of law as alleged here.

6 d. **Adequacy of representation**: Plaintiffs are members of the Class and will
7 fairly and adequately represent and protect the interests of all Class Members. Counsel who
8 represent the Plaintiffs are competent and experienced in litigating large wage and hour, California
9 Labor Code, and other employment class actions.

10 e. **Superiority of a class action in this case**: A class action is superior to
11 other available means for the fair and efficient adjudication of this controversy. The Class
12 Members in this case are among the most disadvantaged low-wage workers in the state's
13 workforce. Most, if not all, of them have limited proficiency in English, lack the resources to
14 prosecute their wage claims individually, and are particularly susceptible to retaliation and
15 coercion by the Company. The individual damages suffered by the Class Members are too low for
16 these workers to obtain legal representation. Class action treatment will allow the Class Members
17 to litigate their claims, which otherwise would not likely be brought, in a manner that is most
18 efficient and economical for the parties and the judicial system.

19 **FIRST CAUSE OF ACTION**

20 **Private Attorneys General Act of 2004: Labor Code §§ 2698 et seq.**

21 77. Plaintiffs incorporate by reference the allegations contained in the previous
22 paragraphs of this complaint.

23 78. The policies, acts and practices described above were and are unlawful acts in
24 violation of applicable Labor Code sections and the applicable IWC Wage Orders. The unlawful
25 policies, acts and practices include, but are not limited to:

26 a. unlawful deduction of tips in violation of Labor Code Section 351;

27 b. failure to provide off-duty meal periods in violation of Labor Code Sections

226.7 and 512 and to pay premiums for missed breaks under Section 226.7(c);

c. failure to pay wages due for time worked during unpaid breaks in violation of Labor Code Sections 204, 221, 223, and/or other provisions;

d. failure to pay the applicable minimum wage for time worked during unpaid breaks in violation of Labor Code Section 1197;

e. failure to pay overtime wages for time worked during unpaid breaks in violation of Labor Code Sections 510 and 1198;

f. failure to provide accurate wage statements to Plaintiff and Weee employees in violation of Labor Code Section 226 and to maintain accurate payroll records in violation of Section 1174(d);

g. failure to timely pay wages due upon drivers' separation from employment under Labor Code Sections 201 and 202 and to pay waiting time penalties under Section 203;

h. imposition of confidentiality requirements regarding compensation and working conditions as a condition of employment in violation of Labor Code Sections 232 and 232.5;

i. disciplining, penalizing, or otherwise discriminating against employees for breaching these confidentiality requirements in violation of Labor Code Sections 232(c) and 232.5(c);

j. unlawful misclassification of certain delivery drivers as independent contractors in violation of Labor Code Section 226.8;

k. failure to furnish a safe and healthful working environment, including by failure to provide necessary safety equipment and COVID-19-related equipment, in violation of Labor Code Sections 142.3 and 6400 *et seq.*, and Title 8 of the California Code of Regulations Sections 3205 and 3382(a);

l. unlawful retaliation against employees who raise reports and complaints of

unlawful practices, in violation of Labor Code Sections 98.6 and 1102.5.

79. The acts and practices described in this Complaint violate applicable Labor Code sections, and the violations are ongoing and continuing.

80. Plaintiffs, as aggrieved employees, seek recovery of civil penalties as prescribed by PAGA on behalf of the State of California. The penalties cover violations of the Labor Code against themselves and other current and former employees of Weee.

81. In accordance with Labor Code Section 2699.3, Plaintiffs Song and Ji gave written notice by certified mail to the California Labor and Workforce Development Agency and Weee of the primary Labor Code violations alleged in this complaint on March 10, 2022. Plaintiffs' notice is attached as Exhibit A. Plaintiffs did not receive written notification from the LWDA of the State's intention to investigate the allegations set forth in Plaintiff's March 10, 2022 certified mail notice. Plaintiffs did not receive written notice of cure by Weee.

82. In On June 21, 2022, Plaintiffs Song and Ji gave written notice to the California Labor and Workforce Development Agency through online filing and Weee through certified mail of additional Labor Code violations in an Amended Notice, which is attached as Exhibit B to this complaint. Plaintiffs did not receive written notification from the LWDA of the State's intention to investigate the allegations set forth in the June 21, 2022 certified mail notice. Plaintiffs did not receive written notice of cure by Weee.

83. Plaintiffs have incurred and continue to incur attorneys' fees and legal expenses to prosecute the Labor Code violations and are entitled to an award of fees and costs under Cal. Lab. Code § 2699(g)(1), Cal. Civ. Proc. Code § 1021.5, and other applicable fee-shifting provisions.

SECOND CAUSE OF ACTION

Misappropriation of Earned Tip Compensation: Conversion (Plaintiffs Song and Ji, on Behalf of Themselves and the Class)

84. Plaintiffs incorporate by reference the allegations contained in the previous paragraphs of this complaint.

85. Throughout the relevant time period, Defendants operated under a common policy

1 and plan of unlawfully deducting from Plaintiffs' and Class Members' gratuities that were paid,
2 given, or left by patrons. Weee is an online service that permits patrons to pay gratuities by credit
3 card. When customers do so, Defendants are required to pay their employees the full amount of
4 the gratuity entered and intended by the patron.

5 86. As delivery drivers, Plaintiffs and Class Members are entitled to the full amount of
6 these gratuities. Indeed, Defendant's website clearly instructs customers that "100% of your tip
7 goes to the driver of your delivery." In addition, Weee informs and contracts with its drivers that
8 they will receive the full amount of their tips, with the deductions consisting of required tax
9 withholdings. This forms part of the contractual bargain under which the drivers are employed by
10 and perform work for Weee.

11 87. Defendants have failed to provide all gratuities that Plaintiffs and Class Members
12 were entitled to receive. While Defendants have claimed that the deductions were needed for tax
13 purposes, they far exceed any possible tax on driver gratuities. Defendants regularly decreased
14 drivers' tip compensation by a significant amount that was more than could be accounted by
15 supposed tax deductions. In consequence, Defendants have engaged in wage theft—appropriating
16 drivers' tips to pad their own corporate profits.

17 88. Even apart from violating Labor Code Section 351, Defendants' actions give rise
18 to a common law claim of conversion.

19 89. By misappropriating Plaintiffs' and Class Members' tips, Weee has wrongfully
20 exercised dominion over their property. Each of the elements of conversion is satisfied here.

21 90. First, Weee drivers had a right to possession of their tips. Customers paid the tips
22 in addition to the cost of their orders with the intention and expectation that they go to the drivers,
23 not Weee. Weee informed both its drivers and customers that drivers would receive 100% of their
24 tips as part of their regular compensation—the sole exception being required tax deductions.
25 Drivers hold legal title to gratuities designated to them by customers under Labor Code Section
26 351 as well as established principles of common law.

27 91. Second, Defendants have converted drivers' rightful property by virtue of wrongful
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1 acts or disposition of that property. Instead of giving drivers their full post-tax tips, Weee took the
2 bulk of the tips to line its own pockets.

3 92. Third, Plaintiffs and the Class Members have suffered damages in the amount of
4 the misappropriated portion of their tips.

5 93. Plaintiffs and the Class Members seek recovery of all misappropriated tips plus
6 appropriate interest on withheld tips. The amount of tips paid to drivers, the amounts actually paid
7 to taxing authorities, and the amounts retained by Weee should be reflected in Weee's corporate
8 payroll records and financial records.

9 94. Plaintiffs seek attorney's fees and costs under Cal. Lab. Code § 218.5, Cal. Civ.
10 Proc. Code § 1021.5, and other applicable fee-shifting provisions.

11 **THIRD CAUSE OF ACTION**

12 **Misappropriation of Earned Tip Compensation:**

13 **Breach of Contract/Covenant of Good Faith and Fair Dealing**

14 **(Plaintiffs Song and Ji, on Behalf of Themselves and the Class)**

15 95. Plaintiffs incorporate by reference the allegations contained in the previous
16 paragraphs of this complaint.

17 96. Weee formed a contractual relationship with its drivers under which they would
18 perform deliveries in exchange for wages and tips from customers. Weee informed drivers that the
19 only deductions would be for obligatory tax withholdings. Weee systematically breached this term
20 of its driver contracts when it appropriated a portion of the tips that customers entered on credit
21 card transactions.

22 97. Here, the parties formed an express or implied contract under which drivers would
23 perform deliveries in exchange for compensation and benefits, including any tips offered by
24 customers. Food delivery is a traditional service-oriented job in which a significant portion of
25 drivers' compensation consists of customer tips.

26 98. Plaintiffs and the Class Members performed their contractual obligations by
27 completing their deliveries.

99. Weee breached its contracts with drivers by withholding and appropriating substantial portions of their tips—often two-thirds or more of the amounts designated by customers.

100. Drivers have suffered damages as a result.

101. Notably, a covenant of good faith and fair dealing is implied by law in every contract. The covenant functions as a supplement to the express contractual terms and prevents a party from engaging in conduct that frustrates the other party's rights to the benefits of the contract. It requires each party to do everything the contract presupposes the party will do to accomplish the agreement's purposes. Breach of a specific provision of the contract is not necessary to a claim for breach of the implied covenant of good faith and fair dealing.

102. Accordingly, even supposing that Weee and its drivers had no specific agreements on the disposition of customer tips, Weee breached the covenant and frustrated drivers' rights to the benefits of their contracts by acting in bad faith to deprive them of a critical component of their remuneration as drivers. The parties had a mutual understanding that customers would regularly give gratuities intended for drivers and that these tips would form a substantial part of the benefits of being a Weee driver and performing deliveries.

103. As a result of Weee's systematic breaches of contract, Plaintiffs and the Class Members seek recovery of all misappropriated tips plus appropriate interest on withheld tips. The amount of tips paid to drivers, the amounts actually paid to taxing authorities, and the amounts retained by Weee should be reflected in Weee's corporate payroll records and financial records.

104. Plaintiffs seek attorney's fees and costs under Cal. Lab. Code § 218.5, Cal. Civ. Proc. Code § 1021.5, and other applicable fee-shifting provisions.

FOURTH CAUSE OF ACTION

Misappropriation of Earned Tip Compensation: Unjust Enrichment

(Plaintiffs Song and Ji, on Behalf of Themselves and the Class)

105. Plaintiffs incorporate by reference the allegations contained in the previous paragraphs of this complaint.

1 as required by IWC Wage Order No. 4-2001 and Labor Code Sections 226.7 and 512.

2 115. Plaintiffs and Class Members were regularly expected and encouraged to work
3 during lunch to perform deliveries as the Defendants discouraged them from working overtime.
4 Drivers were automatically registered as having taken a thirty-minute lunch break and were not
5 paid for their time even though they were not relieved of duty and were frequently required to
6 perform work throughout their designated meal periods.

7 116. Defendants failed to provide compensation for an additional hour of pay at the
8 regular wage rate for meal periods that were not provided.

9 117. As a result of their practices, Defendants regularly forced Plaintiffs and Class
10 Members to work through their purported meal breaks. Consequently, Defendants failed to provide
11 Plaintiffs and the Class Members with uninterrupted, off-duty meal periods after five (5) hours of
12 work. In addition to being entitled to wages for their work time, Plaintiffs and the Class Members
13 are each entitled under Labor Code Section 226.7(c) to one extra hour of pay at their regular rates
14 of compensation for each workday that the requisite statutory meal period was not provided.

15 118. Plaintiffs seek attorney's fees and costs under Cal. Civ. Proc. Code § 1021.5 and
16 other applicable fee-shifting provisions.

17 **SIXTH CAUSE OF ACTION**

18 **Wage Theft/Time-Shaving**

19 **(Plaintiffs Song and Ji, on Behalf of Themselves and the Class)**

20 119. Plaintiffs incorporate by reference the allegations contained in the previous
21 paragraphs of this complaint.

22 120. Defendants have operated under and continue to operate under a common policy
23 and plan of failing to pay all wages owed to Plaintiffs and Class Members. Specifically, Defendants
24 have a continuous policy of clocking out Plaintiffs and Class Members for a thirty-minute meal
25 period, despite Plaintiffs and Class Members regularly working through their meal periods at the
26 Company's behest. Defendants do not pay drivers for time worked during supposed "breaks" that
27 are given in name only.

121. Defendants have in essence stolen earned wages from Plaintiffs and Class Members for each and every instance in which they worked through their unpaid meal periods.

122. Defendants have breached their legal duty to pay full wages to Plaintiffs and the Class Members by automatically deducting one half hour of pay from earned their wages under the guise of an unpaid meal period that is actually just an extra half hour of work making deliveries. Defendants were fully aware that Plaintiffs and Class Members regularly worked through breaks.

123. By deducting from drivers' earned wages for sham meal breaks, failing to pay employees' full contractually-agreed upon wages for all hours, and failing to pay all wages earned and due on a regular (at least semi-monthly) basis, Weee has violated Labor Code Sections 204, 221, 223, and/or other applicable wage payment statutes and regulations.

124. As a result, Plaintiffs and the Class Members have suffered, and continue to suffer, substantial unpaid wages, lost interest on such wages, and other related injuries and harm.

125. Plaintiffs and the Class seek lost wages, interest, and penalties under applicable statutes and regulations as well as attorneys' fees and costs under Cal. Lab. Code § 218.5, Cal. Civ. Proc. Code §1021.5, and other applicable fee-shifting provisions.

SEVENTH CAUSE OF ACTION

Unlawful Failure to Pay Required Overtime

(Plaintiffs Song and Ji, on Behalf of Themselves and the Class)

126. Plaintiffs incorporate by reference the allegations contained in the previous paragraphs of this complaint.

127. In many instances, Plaintiffs' and the Class Members' unpaid work time during supposed meal breaks consisted of work hours beyond eight hours per workday and/or 40 hours per workweek. Specifically, Plaintiffs and the Class Members typically log eight hours or more of on-the-clock work time apart from their off-the-clock time worked during breaks. Any additional hours must be paid at the time-and-a-half overtime rate prescribed by California law.

128. At all relevant times, the California Labor Code Section 510 and Wage Order No. 7-2001 required that an employer compensate all work performed by an employee in excess of

1 eight hours in any one workday and 40 hours in any one workweek at one and one-half times the
2 employee's regular rate of pay. Further, by incorporating the Wage Order, Labor Code Section
3 1198 also makes it unlawful to for employers to employ workers beyond the maximum workday
4 and workweek without paying overtime compensation.

5 129. Defendants, knowingly and willfully, failed to pay overtime wages earned and due
6 to drivers who worked more than eight hours per day due to working through their designated meal
7 breaks. Defendants did not compensate employees for this work time at all, much less at the
8 requisite overtime rate. Defendants' conduct deprives the Class of full and timely payment for all
9 overtime hours worked in violation of the California Labor Code.

10 130. As a result of Defendants' willful and unlawful failure to pay the Class properly
11 earned overtime wages, Plaintiffs and Class Members are entitled to recover their unpaid overtime
12 compensation for time worked during unpaid breaks that would have been in excess of eight hours
13 per day or 40 hours per week.

14 131. Plaintiffs and the Class seek lost wages, interest, and penalties under applicable
15 statutes and regulations as well as attorneys' fees and costs under Cal. Lab. Code § 1194, Cal. Civ.
16 Proc. Code § 1021.5, and other applicable fee-shifting provisions.

17 **EIGHTH CAUSE OF ACTION**

18 **Failure to Pay Minimum Wage for Time Worked During Meal Breaks**

19 **(Plaintiffs Song and Ji, on Behalf of Themselves and the Class)**

20 132. Under California law, employers must pay their employees the applicable
21 minimum wage for each and every hour worked. Here, Weee did not pay drivers at all for time
22 worked during unpaid meal breaks and thus failed to pay them the applicable minimum wage for
23 this time. In so doing, Weee violated Labor Code Section 1197.

24 133. Accordingly, in addition to being liable for Plaintiffs' and class members' regular
25 and overtime wages for these hours, Weee is liable for the remedies provided by Labor Code
26 Sections 1194.2 and 1197.1, namely liquidated damages in the amount of the pertinent minimum
27 wage applicable to each employee for each unpaid hour along with interest and statutory civil
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1 penalties. Plaintiffs further seek attorneys' fees and costs under Cal. Lab. Code § 1194, Cal. Civ.
2 Proc. Code §1021.5, and other applicable fee-shifting provisions.

3 **NINTH CAUSE OF ACTION**

4 **Unlawful Failure to Provide Accurate Wage Statements**

5 **(Plaintiffs Song and Ji, on Behalf of Themselves and the Class)**

6 134. Plaintiffs incorporate by reference the allegations contained in the previous
7 paragraphs of this complaint.

8 135. By unlawfully deducting from Plaintiffs and Class Members' tips and by failing to
9 pay wages, including overtime premiums, for work performed during designated sham meal
10 periods, defendants knowingly and intentionally failed to furnish and continue to fail to furnish
11 Plaintiffs and each Class Member with timely, itemized statements that accurately reflect total tips
12 and wages earned—as mandated by California Labor Code § 226(a). The statute requires that
13 employers furnish each employee with statements that accurately reflect the gross wages earned.

14 136. As a result, Defendants are liable to Plaintiffs and each of the Class Members for
15 the amounts provided by California Labor Code § 226(e): the greater of actual damages or fifty
16 dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation,
17 up to four thousand dollars (\$4,000).

18 137. In addition, Weee is subject to civil penalties under Labor Code Section 1174.5 for
19 failing to maintain accurate payroll records of drivers' daily hours worked and wages paid in
20 violation of Section 1174(d).

21 138. Plaintiffs and the Class Members seek an award of attorney's fees and costs under
22 Cal. Lab. Code § 226(e)(1), Cal. Code Civ. P. 1021.5, and other applicable fee-shifting provisions.

23 **TENTH CAUSE OF ACTION**

24 **Unlawful Failure to Timely Pay Wages Upon Separation from Employment**

25 **(Plaintiff Ji, on Behalf of Himself and the Subclass)**

26 139. Plaintiff Ji, on behalf of himself and a subclass of Weee drivers who separated from
27 the Company during the Class Period, repeats and incorporates by reference the allegations
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1 contained in the previous paragraphs of this Complaint.

2 140. Defendants have operated under and continue to operate under a common policy
3 and plan of failing to timely pay unpaid wages owed to Class Members whose employment is
4 terminated, as required by California Labor Code § 201. As a result of their failure to timely pay
5 employees owed wages upon discharge, Defendants are liable for statutory waiting time penalties
6 under Cal. Lab. Code § 203.

7 141. Defendants have operated under and continue to operate under a common policy
8 and plan of failing to timely pay unpaid wages owed to voluntarily departing Class Members
9 within seventy-two (72) hours of their resignations, as required by Labor Code § 202. As a result
10 of their failure to timely pay employees who left the Company voluntarily, Defendants are liable
11 for statutory penalties under Cal. Lab. Code § 203.

12 142. Plaintiffs seek attorney's fees and costs under Cal. Lab. Code § 218.5, Cal. Civ.
13 Proc. Code §1021.5, and other applicable fee-shifting provisions.

14 **ELEVENTH CAUSE OF ACTION**

15 **Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq.**

16 **(Plaintiffs Song and Ji, on Behalf of Themselves and the Class)**

17 143. Plaintiffs incorporate by reference the allegations contained in the previous
18 paragraphs of this complaint.

19 144. Each Defendant is a "person" as defined under California Business and Professions
20 Code Section 17021.

21 145. Defendants' willful appropriation of tips, failure to pay for all hours worked
22 including overtime hours, failure to pay premium wages when they did not provide off-duty meal
23 periods, failure to provide accurate wage records, and other Labor Code violations constitute
24 unlawful activity prohibited by California Business and Professions Code Section 17200.

25 146. As a result of their unlawful acts, Defendants have reaped and continue to reap
26 unfair benefits and illegal profits at the expense of Plaintiffs and the Class Members.

27 147. Defendants should be made to disgorge these ill-gotten gains and restore to
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1 Plaintiffs and the Class Members the wrongfully withheld tips and wages to which they are entitled
2 along with appropriate interest and penalties. The Court should award all other injunctive and
3 preventive relief authorized by Cal. Bus. & Prof. Code §§ 17202 and 17203. Plaintiffs seek an
4 award of attorneys' fees pursuant to Cal. Lab. Code § 218.5 and Cal. Civ. Proc. Code §1021.5.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs on behalf of themselves and the Class members they seek to
7 represent in this action pray that the Court enter judgment and grant the following relief:

8 A. Certify this action as a Class Action on behalf of the Class pursuant to California
9 Code of Civil Procedure Section 382;

10 B. Designate Plaintiffs Song Yi and Xiangyang Ji as representatives of the Class and
11 Plaintiff Ji as representative of the Subclass;

12 C. Award compensatory damages, interest, and liquidated damages in an amount to be
13 determined at trial, and statutory penalties pursuant to the California Labor Code and the
14 supporting IWC Wage Orders;

15 D. Enter injunctive relief ordering Defendants to cease and desist from unlawful,
16 unfair, and/or fraudulent activities and to remedy all violations of the California Labor Code,
17 including by reforming its policies and practices to ensure that violations do not recur;

18 E. Award civil penalties as provided by the Private Attorneys General Act of 2004;

19 F. Award costs and expenses of this suit, including reasonable attorneys' fees, costs,
20 and expert fees, pursuant to California Labor Code Sections 218.5, 226(e), 1194, and 2699(g);
21 California Code of Civil Procedure Section 1021.5; and other applicable fee-shifting provisions;

22 G. Award pre-judgment and post-judgment interest, as provided by law; and

23 H. Order such other and further relief as the Court deems just and proper.

24 **DEMAND FOR JURY TRIAL**

25 Plaintiffs and the Class demand a jury trial in this action on all the claims so triable.
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27
28

1 Date: March 23, 2023

2 By: _____



3 Qiaojing Ella Zheng
4 SANFORD HEISLER SHARP, LLP

5 *Attorneys for Plaintiffs*
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