

Law Offices of Todd M. Friedman, P.C.

ATTORNEYS FOR CONSUMERS

21031 Ventura Blvd, Suite 340

Woodland Hills, CA 91364

www.ToddFLaw.com

E-mail: tfriedman@toddflaw.com

Writer licensed in:

California

C.D., E.D., N.D., and S.D. California

June 16, 2022

CERTIFIED MAIL

Uber Technologies, Inc.

c/o

C T Corporation System

330 N Brand Blvd Ste 700

Glendale, CA 91202

RE: *Christopher Stokes v. Uber Technologies, Inc.*

To Whom It May Concern:

Please take notice that *Christopher Stokes* on behalf of himself and other current and former laborers and workers who are similarly situated, allege that *Uber Technologies, Inc.* (“Uber”), has violated, and continues to violate, the provisions of the *Labor Code* and wage orders promulgated by the Industrial Welfare Commission. Those similarly situated workers include all current and former independent contracting drivers, employed by Uber, who were denied wages for hours worked, not compensated, and who were denied compliant meal and rest breaks under California Law, and provided services for Uber, at any of its locations and/or job sites in the state of California, from a date four years prior to the date that the attached proposed complaint is filed, to the present date.

The complaint alleges that Uber’s actions are subject to civil penalties pursuant to the following provisions of the *Labor Code* and Industrial Welfare Commission Wage Orders 4 and/or 7:

- a. Sections 1194 and 1197, for failing to pay minimum wage;
- b. Sections 2800 and 2802, for failing to reimburse business expenses;
- c. Section 204, 1197, and 1199, for failing to pay all regular wages;
- d. Sections 510, 1194 and 1198, for failing to pay overtime wages;
- e. Sections 226.7 and 512, for failing to provide duty-free meal and rest periods;
- f. Sections 201-203, for failing to pay all wages due and owing when employees terminated;

- g. Section 226.8, for willful misclassification as independent contactor;
- h. Section 226, for failing to provide accurate, itemized wage statements; and,
- i. Section 1199, and Wage Orders No. 4 and/or 7 § 20, for failing to pay proper wages and/or provide required working conditions and/or for violating the applicable Wage Order/regulations.

Accordingly, Mr. Stokes requests that the Labor and Workforce Development Agency not investigate these violations and permit him to pursue a claim for such penalties under the Private Attorney General's Act (Labor Code section 2698 et seq. and Labor Code section 558). Upon receiving notice that this Agency does not intend to investigate the alleged violations, or, if no notice is provided, then within 60 calendar days of the postmark date of this letter, the named plaintiff will amend his lawsuit to include these claims.

Thank you for your time and consideration.

Yours Truly,

A handwritten signature in black ink, appearing to read 'Todd M. Friedman', with a stylized flourish at the end.

Todd M. Friedman, Esq.

Enclosure: Complaint

cc: Labor and Workforce Development Agency (with enclosure)

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
Meghan E. George (SBN 274525) Law
Offices of Todd M. Friedman, P.C.
21031 Ventura Blvd., Suite 340,
Woodland Hills, CA 91364
Phone: 877-206-4741
Fax: 866-633-0228
tfriedman@toddfllaw.com
abacon@toddfllaw.com
mgeorge@toddfllaw.com
**Attorneys for Plaintiff,
CHRISTOPHER STOKES**

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

CHRISTOPHER STOKES, individually and)	CASE NO.:
on behalf of all others similarly situated,)	
)	<u>CLASS ACTION</u>
Plaintiff,)	
vs.)	
)	PLAINTIFF'S CLASS ACTION
UBER TECHNOLOGIES, INC.; and)	COMPLAINT FOR DAMAGES
DOES 1 to 50, inclusive,)	
)	JURY DEMAND
Defendants.)	
)	
)	

Plaintiff CHRISTOPHER STOKES (hereinafter "Plaintiff"), on behalf of himself and all those similarly situated, alleges the following as and for a complaint against Defendants UBER TECHNOLOGIES, INC., a Delaware corporation that is headquartered in California, and DOES 1 through 50 (hereinafter sometimes collectively referred to as "Defendants").

Plaintiff brings this Class Action against Defendants, and each of them, pursuant to California *Code of Civil Procedure* § 382. All allegations in this Class Action Complaint ("Complaint") are based upon information and belief, except for those allegations which pertain to the Plaintiff named herein and his counsel. Plaintiff's information and beliefs are based upon, *inter alia*, the investigation conducted to date by Plaintiff and his counsel. Each allegation in this Complaint either has evidentiary

1 support or is likely to have evidentiary support after a reasonable opportunity for further investigation
2 and discovery.

3 INTRODUCTION

4 1. This action is within the Court's jurisdiction pursuant to the provisions of California
5 *Labor Code* §§ 201-204, 226, 226.7, 510, 1194, 1194.2 and 1199, and California *Business and*
6 *Professions Code* §§ 17200, *et seq.*

7 2. This Complaint challenges systemic illegal employment practices resulting in
8 violations of the California *Labor Code*, *Business and Professions Code*, and applicable Industrial
9 Welfare Commission ("IWC") wage order against employees of Defendants.

10 3. Plaintiff is informed and believe and based thereon alleges that Defendants, jointly and
11 severally, have acted intentionally and with deliberate indifference and conscious disregard of the
12 rights of all employees in, among other things, failing to provide the statutorily required meal and rest
13 periods and failing to pay the statutorily required meal period and rest period premium wages when
14 not provided, failing to pay all minimum, regular and overtime wages due, failing to pay wages in a
15 timely fashion, including at the end of employment, mis-classifying employees so as to avoid payment
16 of wages, failing to indemnify employees for business expenses, and failing to keep statutorily
17 required payroll records.

18 4. Plaintiff is informed and believe and based thereon alleges that Defendants have
19 engaged in, among other things, a system of willful violations of the California *Labor Code*, *Business*
20 *and Professions Code*, and applicable IWC wage order, including, but not limited to, Labor Code §§
21 201-203, 221, 222.5, 223, 226.8, 226.3, 226.7, 400-410, 450, 510, 512, 1182, 1174, 1194, 1197,
22 1197.1, and 2802; California Code of Regulations, Title 8 §11090 section 7 & 11-12; California Wage
23 Order No. 1-2001 (8 Cal. Code Reg., § 11090); and Industrial Wage Commission Wage (hereinafter
24 "IWC") Order No. 9. Specifically, Plaintiff challenge Defendants' acts of creating and maintaining
25 policies, practices and customs of: (1) classifying Drivers as independent contractors instead of
26 employees; (2) failing to reimburse Plaintiff and the Class for reasonable business expenses; (3)
27 making deductions from Plaintiff' and the Class' wages; (4) coercing or compelling Plaintiff and the
28 Class to purchase things of value from Defendants; (5) failing to provide, authorize, permit and/or

1 make available meal and rest periods to Plaintiff and the Class as required by California law; (6)
2 denying Plaintiff and the Class full compensation for all hours worked; (7) failing to pay Plaintiff and
3 the Class minimum wage; (8) failing to pay Plaintiff and the Class overtime and double time; (9)
4 failing to provide Plaintiff and the Class with accurate, itemized wage statements; (10) failing to timely
5 pay Plaintiff and the Class full wages upon termination or resignation; and (11) engaging in a pattern
6 or practice of willfully misclassifying employees as independent contractors. Plaintiff seeks
7 compensation, damages, penalties and interest to the full extent permitted by the Labor Code and IWC
8 Wage Orders.

9 5. The policies, practices and customs of Defendants described above and below have
10 resulted in the unjust enrichment of Defendants and an unfair business advantage over businesses that
11 routinely adhere to the strictures of the California *Labor Code* and the *Business and Professions Code*.

12 **JURISDICTION AND VENUE**

13 6. This Court has jurisdiction over the alleged violations of the California *Labor Code*
14 §§ 201-204, 226, 226.7, 510, 512, 1194, 1194.2, 1197.1, 1198 and 1199, and California *Business and*
15 *Professions Code* §§ 17200, *et seq.*

16 7. This case is subject to the jurisdiction of this Court pursuant to California *Labor Code*,
17 California *Business and Professions Code*, California *Code of Civil Procedure*, and the California
18 Department of Industrial Relations. On information and belief, and at all times relevant, Defendants
19 operate and are doing business under the brand name of UBER TECHNOLOGIES, INC. Defendants,
20 and each of them, do business throughout the State of California. Further, Defendants' principal place
21 of business and corporate headquarters is in San Francisco, California.

22 8. The unlawful acts alleged herein have a direct effect on Plaintiff and other employees
23 similarly situated within the State of California. Plaintiff and the Class Members have suffered
24 damages and will continue to suffer the same harm as the Representative Plaintiff as a result of
25 Defendants', and each Defendant's, wrongful conduct unless the relief requested herein is granted.

26 **PARTIES**

27 9. Plaintiff are informed and believe and based thereon alleges that Defendant UBER
28 TECHNOLOGIES, INC. is a Delaware corporation, which regularly does business throughout the

1 State of California. Further, Defendants' principal place of business and corporate headquarters is in
2 San Francisco California. Plaintiff are informed and believe and thereon alleges that Defendants, at
3 all times herein mentioned, is and was doing business in the County of Los Angeles, State of
4 California.

5 10. Whenever in this Complaint reference is made to "Uber," such allegations collectively
6 mean and refer to Defendants UBER TECHNOLOGIES, INC., and its subsidiaries and divisions.

7 11. Plaintiff CHRISTOPHER STOKES is, and at relevant times herein was, a resident of
8 the County of Los Angeles, California. Plaintiff is currently a driver for Uber Eats (referred to as a
9 "Driver") employed by Defendants. Plaintiff was employed as an independent contractor Driver, and
10 worked throughout Los Angeles County, California.

11 12. Although Plaintiff was classified as an independent contractor, and not classified as an
12 employee, Plaintiff's employment nonetheless was subject to substantial control by Defendants over
13 his wages, hours, and working conditions.

14 13. Plaintiff is informed and believes and based thereon alleges that at all times herein
15 mentioned Defendants are and were corporations, business entities, individuals, and partnerships,
16 licensed to do business and actually doing business in the State of California.

17 14. Plaintiff does not know the true names or capacities, whether individual, partner or
18 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said
19 Defendants are sued under such fictitious names. Plaintiff prays for leave to amend this Complaint
20 when the true names and capacities of said Doe Defendants become known to Plaintiff. Plaintiff is
21 informed and believe and thereon alleges that each of said fictitious Defendants were responsible in
22 some way for the matters alleged herein, and proximately caused Plaintiff, as well as members of the
23 Class and members of the general public, damages as more specifically identified below.

24 15. At all times herein mentioned, each of said Defendants participated in the doing of the
25 acts hereinafter alleged to have been done by the named Defendants; and, furthermore, the Defendants,
26 and each of them, were the agents, servants and employees of each of the other Defendants, as well as
27 the agents of all Defendants, and at all times herein mentioned were acting within the course and scope
28 of said agency and employment.

16. Plaintiff is informed and believe and based thereon alleges that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

17. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acted within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

18. Plaintiff are further informed and believe and based thereon alleges, at all times herein material, each Defendants were completely dominated and controlled by its Co-Defendants, and each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to any conduct by Defendants or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this Complaint, but were employees and/or agents of Defendants, such individuals at all relevant times acted on behalf of Defendants named in this Complaint within the scope of their respective employments.

19. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

FACTUAL ALLEGATIONS

20. At all times herein mentioned, Class Members, including Plaintiff, were employees of Defendants in the State of California, and Defendants were and are employers employing persons in the State of California. As such, Class Members, including Plaintiff, were the type of persons

1 contemplated to be protected by the California *Labor Code* and the Wage Order, and said laws and
2 regulations were intended to apply to Defendants and to prevent the type of injury and damage herein.

3 21. Plaintiff is informed and believe and based thereon alleges that Defendants are and
4 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
5 the requirements of California's wage and hour laws.

6 22. During the relevant time period of this action, Defendants have employed, and continue
7 to employ, Plaintiff and other similarly situated individuals ("Drivers") to provide delivery services
8 for its customers. Defendants' entire business model is premised on outsourcing its core business
9 function onto Drivers as independent contractors, as a method of cutting costs in the delivery services
10 market, and thereby gain a competitive advantage.

11 23. Defendants has devised an elaborate scheme to skirt the requirements under the
12 California Labor Code, by misclassifying its Drivers as independent contractors rather than
13 employees, denying them the benefits of employment, and shifting the vast majority of the cost of
14 doing business onto the employees who carry out the day to day customer service duties for
15 Defendants, in fulfillment of their core business function of food delivery.

16 24. Defendants characterize its Drivers as independent contractors who merely utilize
17 Defendants' logistics software to independently provide Delivery services to facilitate private
18 transactions between private vehicle drivers and food service patrons. In fact, these Drivers are
19 subject to high levels of control by Defendants over their wages, hours, and working conditions, such
20 that the conditions of their employment are in fact dominated and controlled in every material aspect
21 by Defendants.

22 25. Defendants' control over Plaintiff' and Class Members' wages, hours, and working
23 conditions begins with Defendants' requirement that each Driver enter into a written agreement with
24 Defendants as to the terms of their employment. This agreement specifies that Drivers must adhere to
25 strict rules and regulations put in place at Defendants' sole discretion.

26 26. Defendants maintain sole discretion over the terms of the independent contractor
27 agreement, and require applicants to sign these agreements with no ability to negotiate the terms, but
28 rather as a condition of employment.

1 27. The Agreements are drafted exclusively by Defendants and/or its legal counsel.

2 28. The Agreement purports to classify Drivers as independent contractors so as to conceal
3 the true nature of the relationship between Defendants and their Drivers: that of employer and
4 employees.

5 29. Defendants retain the right to terminate Drivers without notice if they fail to adhere to
6 any part of the Agreement. Defendants require Drivers to comply with their numerous policies and
7 procedures, or face possible termination

8 30. Defendants maintain exclusive control over the rates of pay that Drivers will receive,
9 which is based on an hourly rate and other factors, determined at the sole discretion of Defendants.
10 Defendants reserve the right to make adjustments to their rates of pay, at any time, without notice to
11 Drivers directly impacting the wages earned by Plaintiff and Class Members.

12 31. Drivers are required to agree to Defendants' pay schedule, which is subject to change,
13 in order to activate Defendants' application on their Smartphone devices and accept fares from
14 Defendants' customers.

15 32. Defendants' managers also supervise and oversee the work performed by Drivers, and
16 are in regular email and telephone communication with Drivers about Defendants' policies and
17 procedures, and about the job duties of Drivers.

18 33. Defendants perform background and DMV checks on prospective Drivers.

19 34. Drivers must utilize Defendants' Smartphone application in order to access
20 Defendants' network of customers. Defendants' application place serious limitations and
21 requirements on Drivers in how they are required to carry out their job duties. Having a Smartphone
22 is a condition of employment with Defendants as a Driver.

23 35. Defendant also monitors Drivers through use of the GPS devise in Drivers'
24 Smartphones, and by using Defendant's application, which must be loaded onto Drivers' devices as a
25 condition of their employment.

26 36. Despite requiring a smartphone as a condition of employment, Defendants do not
27 indemnify Drivers' for these business expenses.

1 37. Defendants also require Drivers' to utilize their personal vehicles for business
2 purposes, including to transport company marketing material between different zones throughout the
3 city at the benefit of the Defendants, yet fails to indemnify these business expenses. Defendants do
4 not compensate Drivers' in any fashion for these services.

5 38. Defendants require Drivers' to utilize motor vehicles in order to expedite the Driver
6 process, so that they can more quickly travel between a food pickup location, and the customer delivery
7 location, and Defendants allow Drivers to forego use of a motor vehicle and use a bicycle or walk only
8 in select "markets" determined entirely by Defendants.

9 39. Furthermore, Defendants do not indemnify Drivers for any kind of damage sustained
10 by their motor vehicles. Moreover, Defendants require, as an express material condition of
11 employment, Drivers to have and maintain their own motor vehicle insurance for which Defendants
12 do not reimburse Drivers.

13 40. Defendants determine where Drivers are required to work, when they are required to
14 work, and how they are required to work. Specifically, Defendants will set Drivers work schedules,
15 which instruct them where and when to work. Defendants also set pricing, including surge pricing at
16 intervals determined by the Defendant.

17 41. Defendants require Driver to log in to the attendant application on their smartphone
18 devices in order to start and end their shifts. Defendants maintain attendance records, and have the
19 ability to maintain accurate time records for all hours worked by Drivers.

20 42. Defendants secure Drivers contracts with an underlying \$10 per hour wage. However,
21 Defendants fail to account for all time worked by Drivers, and fail to fully compensate Drivers for all
22 working time. Further, where Drivers work more than 40 hours in a week or 8 hours in a day,
23 Defendants fail to pay Drivers overtime wages, including by not paying for all compensable hours,
24 and by using an improper regular rate of pay for purposes of said calculations.

25 43. Defendants provide Drivers with no meal or rest breaks, and do not provide Drivers
26 with any of the other benefits of employment.

27 44. Defendant fails to provide breaks, provides them late, does not provide breaks that are
28 duty free, and otherwise provides non-compliant breaks, such that a compliant meal break is the

1 exception rather than the norm. Further, Defendant fails to maintain accurate time records regarding
2 meal breaks for Drivers.

3 45. Defendants also require Plaintiff and other Class Member Drivers to utilize their
4 cellular phones for business purposes, in order to perform and carry out their work duties, at
5 considerable personal expense.

6 46. Defendants do not issue pay stubs of any kind to Plaintiff and other Class Members.
7 Rather these employees are paid via direct deposit.

8 47. Plaintiff is informed and believe and based thereon alleges that Defendants know,
9 should know, knew or should have known that Class Members, including Plaintiff, were entitled to
10 receive duty-free meal periods within the first five (5) hours of any shift of six (6) or more hours
11 worked, and that any failure to do so requires Defendants to pay Class Members one (1) hour of wages
12 per day for untimely, missed, or on-duty meal periods.

13 48. Plaintiff is informed and believe and based thereon allege that, during the Class Period,
14 Defendants had a consistent policy or practice of requiring Class Members, including Plaintiff, to
15 continue working through meal periods, or were required to stay on the premises during their meal
16 periods, or were interrupted during their meal periods, or Defendants otherwise failing to provide a
17 duty-free meal period within the first five (5) hours of any shift of six (6) or more hours worked.

18 49. Plaintiff is informed and believe and based thereon alleges, during the Class Period,
19 Defendants had a consistent policy or practice of failing to compensate Class Members, including
20 Plaintiffs, for duty-free meal periods that were not provided within the first five (5) hours of any shift
21 of six (6) or more hours worked, and for on-duty meal periods.

22 50. Plaintiff is informed and believe and based thereon alleges that Defendants know,
23 should know, knew or should have known that Class Members, including Plaintiff, were and are
24 entitled to one (1) ten (10) minute rest break for each shift of four (4) hours or more, and that any
25 failure to allow said breaks requires Defendants to pay Class Members, including Plaintiff, one (1)
26 hour of wages per day for missed or on-duty rest breaks.

1 51. Plaintiff is informed and believe and based thereon alleges that during the Class Period,
2 Defendants had a consistent policy or practice of failing to provide to Class Members, including
3 Plaintiff, one (1) ten (10) minute break for each shift of four (4) hours or more worked.

4 52. Plaintiff is informed and believe and based thereon alleges that, during the Class Period,
5 Defendants had a consistent policy or practice of failing to compensate Class Members, including
6 Plaintiff, for missed rest breaks that were not provided within each four (4) hours of a shift.

7 53. Plaintiff is informed and believe and based thereon allege that, during the Class Period,
8 Defendants had a consistent policy or practice of failing to compensate Class Members, including
9 Plaintiff, overtime pay for all overtime hours, and regular pay for any regular hours worked, and at
10 least minimum wage for all hours worked.

11 54. Plaintiff is informed and believe and based thereon alleges that, during the Class Period,
12 Defendants had a consistent policy or practice of failing to provide Class Members, including Plaintiff,
13 with accurate wage statements reflecting the true number of hours worked due to Defendants' failure
14 to provide lawful, timely, and duty-free meal and rest periods and failure to document all hours
15 worked.

16 **CLASS ALLEGATIONS**

17 55. Plaintiff brings this action individually, as well as on behalf of each and all other
18 persons similarly situated and, thus, seek class certification under California *Code of Civil Procedure*
19 § 382.

20 56. All claims alleged herein arise under California law for which Plaintiff seeks relief
21 authorized by California law.

22 57. Plaintiff seeks only class-wide injunctive relief, and do not seek monetary relief on
23 behalf of the Class.

24 58. On April 6, 2017 in *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), the California
25 Supreme Court ruled that any contract that waives the statutory remedy of public injunctive relief
26 under the Unfair Competition Law, False Advertising Law, and Consumers Legal Remedies Act is
27 contrary to California public policy and thus unenforceable under California Law. Plaintiffs seek
28 injunctive relief under the Unfair Competition Law, Cal. Bus. & Prof. C. § 17200 et. seq., and various

1 provisions of the California Labor Code that have been violated due to Defendant's misclassification
2 of Drivers as Independent Contractors. Plaintiff seeks to enjoin Defendant's illegal collection
3 practices misclassifying its Drivers in California. The arbitration agreement Defendant seeks to
4 enforce explicitly waives the statutory remedy of public injunctive relief as it requires all claims to be
5 submitted to arbitration and bars the arbitrator from awarding relief on behalf of any person not named
6 party to the arbitration. Plaintiff alleges this provision of the agreement to be unenforceable, per the
7 instructions of the California Supreme Court in *McGill*.

8 59. The "Class Period" is designated as the time from four years prior to the filing of this
9 Complaint, to the trial date, based upon the allegation that the violations of California's wage and hour
10 laws, as described more fully below, have been ongoing for at least the four years prior to the filing of
11 this Complaint.

12 60. Pursuant to California *Code of Civil Procedure* § 382, Plaintiff brings this action on
13 behalf of the following class:

14 All persons who have been, or currently are, employed by Defendants and who
15 performed at least one delivery service in California for Defendants as an
16 independent contractor Driver during the Class Period and who held, or hold, the
17 position of Driver. This definition includes any and all prior job titles assigned to
18 this position during the Class Period (collectively, the "Class" or "Class
19 Members"). Excluded from the Class are all persons who were employed by
20 Defendants as Managers, or in managerial or corporate positions equal, or superior,
21 to Managers, during the Class Period.

22 61. The Class seeks declaratory and injunctive relief that Defendant has violated the Labor
23 Code, specifically with respect to owing Drivers unpaid wages for meal period and rest periods, regular
24 hours and overtime hours worked, penalties, equitable relief, interest, and reasonable attorneys' fees
25 and costs, for failure to comply with applicable sections of the California *Labor Code*, Industrial
26 Welfare Commission Wage Order No. 7-2001 ("Wage Order"), California *Business and Professions*
27 *Code* §§ 17200, *et seq.*, and California *Code of Civil Procedure* § 1021.5. The Class does not seek
28 damages,

1 62. This action is also brought by Plaintiff on behalf of a sub-class, as follows:

2 All Class Members whose employment ended at any time during the Class Period
3 (collectively, the “Former Employee Sub-Class” or “Former Employee Sub-Class
4 Members”).

5 63. The Former Employee Sub-Class Members seek waiting time penalties of up to thirty
6 (30) days wages each, pursuant to California *Labor Code* § 203, due to Defendants’ failure to pay all
7 wages due and owing at the time of termination of the employment relationship.

8 64. Under California *Business and Professions Code* §§ 17200, *et seq.* (“Unfair Practices
9 Act”), and pursuant to both the class action and representative action procedures provided for in these
10 statutes, Plaintiff, on behalf of himself and the proposed Class Members, also seeks restitution of all
11 benefits Defendants have received from its unlawful actions as alleged herein.

12 65. During Plaintiff and Class Members’ employment with Defendants, Defendants did not
13 provide meal or rest periods in compliance with California law, and did not compensate Plaintiffs and
14 members of the Class for all regular hours worked, for all overtime hours worked, or for meal or rest
15 periods that did not comply with California law (including, but not limited to, missed meal and rest
16 periods). Plaintiffs and the Class Members he seeks to represent did not voluntarily or willfully waive
17 their meal or rest periods. Defendants maintained and implemented a course of conduct requiring
18 Plaintiffs and Class Members to involuntarily waive their meal or rest periods as a condition of
19 employment and failed to obtain uncoerced waivers.

20 66. During Plaintiffs’ and Class Members’ employment with Defendants, Defendants did
21 not reimburse Drivers for business expenses incurred in the course of their employment, in violation
22 of California *Labor Code* §§ 2800 *et. seq.*

23 67. Defendants did not keep accurate records of the hours worked by Plaintiff and members
24 of the Class, or of the amount of wages due to them. Plaintiff was and is a victim of the policies,
25 practices and customs of Defendants complained of in this action in ways that have deprived them of
26 the rights guaranteed by California *Labor Code* §§ 201-204, 226, 226.7, 510, 512, 1194, 1194.2,
27 1197.1, 1198 and 1199, and California *Business and Professions Code* §§ 17200, *et seq.* (Unfair
28 Practices Act).

1 68. As such, and based upon all the facts and circumstances incident to Defendants'
2 business in California, Defendants are subject to California *Labor Code* §§ 201-204, 226, 226.7, 227.3,
3 1194, 1194.2 and 2802, and California *Business and Professions Code* §§ 17200, *et seq.* (Unfair
4 Practices Act).

5 69. This action is brought, and may properly be maintained, as a Class Action under
6 California *Code of Civil Procedure* § 382 because there is a well-defined community of interest in the
7 litigation and the proposed Class is easily ascertainable. This action satisfies the predominance,
8 typicality, numerosity, superiority, and adequacy requirements of these provisions.

9 70. **Numerosity:** The members of the Class are so numerous that joinder of all members
10 would be impractical, if not impossible. The identity of the members of the Class is readily
11 ascertainable by review of Defendants' records, including payroll records. Plaintiff is are informed
12 and believe and based thereon alleges that: (a) Class Members regularly were denied payment of all
13 regular and overtime wages due and denied payment of overtime wages at the proper rate of overtime
14 pay; (b) Class Members were not provided meal periods or rest periods in compliance with California
15 *Labor Code* §§ 226.7 and 512 and the applicable IWC wage order, and were not paid all meal period
16 or rest period premium wages for non-compliant periods; (c) Class Members were not reimbursed for
17 business expenses incurred in the course of their employment, in violation of California *Labor Code*
18 §§ 2800 *et. seq.*; (d) Class Members were not paid all wages in a timely fashion, including all wages
19 at the end of employment based on Defendants' own records; and (e) Defendants did not maintain
20 accurate records and provide accurate wage statements to Class Members, pursuant to California
21 *Labor Code* § 226. Based on information and belief, there are more than 100 persons who are
22 potentially Class Members.

23 71. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
24 necessary steps to represent fairly and adequately the interests of the Class defined above with whom
25 they have a well-defined community of interests and typicality of claims as demonstrated herein.
26 Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the Class and the
27 representative Plaintiffs. Plaintiffs' attorneys have prosecuted and settled wage-and-hour class actions
28 in the past and currently have a number of wage-and-hour class actions pending in California courts.

1 Further, Plaintiffs' counsel is competent and experienced in litigation class actions involving
2 California *Business and Professions Code* §§ 17200, *et seq.*

3 72. Defendants uniformly administered corporate policies and practices that did not afford
4 Plaintiffs and Class Members proper meal and rest periods, as required by California *Labor Code* §§
5 226.7 and 512 and the applicable IWC wage order, that failed to pay all earned regular and overtime
6 wages, minimum wages, and all wages owed, and that uniformly paid their employees late wages.
7 Plaintiffs are informed and believe and based thereon alleges that this corporate conduct was
8 accomplished with the advance knowledge and designed intent to willfully withhold appropriate
9 wages for work performed by Class Members.

10 73. Plaintiffs are informed and believe and based thereon alleges that Defendants, in
11 violation of California *Labor Code* §§ 201 through 203, had a consistent and uniform policy,
12 procedure and practice of willfully failing to pay Plaintiffs and Sub-Class Members all wages due
13 them upon termination. Plaintiffs and other Sub-Class Members did not secret or absent themselves
14 from Defendants, nor refuse to accept the earned and unpaid wages from Defendants upon termination.
15 Accordingly, Defendants are liable for waiting time compensation for the unpaid wages to the Sub-
16 Class Members pursuant to California *Labor Code* § 203.

17 74. In addition, Defendants uniformly administered a corporate policy, procedure and
18 practice of not maintaining accurate records, and failing to provide true and accurate wage statements,
19 as required by California *Labor Code* § 226.

20 75. Plaintiffs are informed and believe and based thereon alleges that the foregoing
21 corporate conduct was accomplished with the advance knowledge and designed intent to willfully and
22 intentionally fail to accurately record proper rates of pay, hours worked, net wages, and deductions.

23 76. As a pattern and practice and matter of corporate policy, in violation of the
24 aforementioned labor laws, Defendants committed unfair practices based on the claims alleged in the
25 preceding paragraphs.

26 77. **Common Question of Law and Fact:** There are predominant common questions of
27 law and fact and a community of interest among Plaintiffs and the Class Members concerning whether:

28 a) Class Members are independent contractors or employees under applicable law;

- b) Defendants have the right to control the manner and means by which the Drivers perform their work;
- c) Defendants direct and/or supervise the work that the Drivers perform;
- d) Defendants' policy manuals and handbooks instruct the Drivers on how to conduct themselves and perform their work;
- e) The Drivers use and receive forms and materials provided by Defendants;
- f) The Drivers attend meetings or training conducted by Defendants regarding their work assignments and performance;
- g) Defendants assign the Drivers schedules and routes;
- h) Defendants exercise control, directly or indirectly, over Class Members' work hours;
- i) Defendants exercise control, directly or indirectly, over Class Members' working conditions;
- j) Defendants exercise control, directly or indirectly, over the kinds equipment the Drivers use;
- k) Defendants' logos and/or names are affixed on the Drivers' vehicles;
- l) Drivers' need special training, skills or education to perform their work;
- m) Defendants supply tools and equipment to the Drivers;
- n) The Driver work is part of the regular business of Defendants;
- o) The method by which Defendants pay the Drivers;
- p) The Driver tenure with the company is indefinite and/or whether the contracts signed by the Driver contain automatic renewal clauses and can be terminated by either party;
- q) Defendants have the authority to discipline and/or terminate a Driver;
- r) The Class Members are entitled to be reimbursed for Defendants' business expenses and deductions;
- s) Defendants failed to provide Plaintiffs and the Class Members with meal and rest periods in compliance with California law;
- t) Defendants failed to pay Plaintiffs and the Class Members statutory meal and rest period premium wages for non-compliant meal and rest periods;

- u) Plaintiff and the Class Members regularly were denied payment of all overtime wages due for overtime hours worked;
- v) Plaintiff and the Class Members regularly were denied payment of all regular wages due for regular hours worked;
- w) Plaintiff and the Class Members regularly were denied payment of at least minimum wage for all hours worked;
- x) Defendants failed to pay all wages due in a timely fashion under California law;
- y) Waiting time penalties are owed to Plaintiff and the Class Members;
- z) Defendants failed to maintain accurate records of hours worked by Plaintiff and the Class Members, and failed to provide accurate wage statements that comply with California *Labor Code* § 226; and
- aa) Defendants' employment practices towards Plaintiff and Class Members constitute unfair business practices pursuant to California *Business and Professions Code* §§ 17200, *et seq.*

78. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class. Plaintiff is a member of the Class and have suffered harm as a result of the violations of the Wage Order and California *Labor Code* alleged herein, including but not limited to California *Labor Code* §§ 201-204, 226, 226.7, 227.3, 1194, 1194.2 and 2802.

79. The Wage Order and the California *Labor Code* upon which Plaintiff bases these claims contain provisions that are broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power by establishing onerous terms and conditions of employment.

80. The nature of this action and the format of laws available to Plaintiff and members of the Class identified herein make the Class Action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual Plaintiff with their

1 vastly superior financial and legal resources. Requiring each Class Member to pursue an individual
2 remedy would also discourage the assertion of lawful claims by current employees for fear of
3 retaliation, and even by former employees, for fear of retaliation within the industry.

4 81. The prosecution of separate actions by the individual Class Members, even if possible,
5 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
6 Class Members against the Defendants, which would establish potentially incompatible standards of
7 conduct for the Defendants, and/or (b) adjudications with respect to individual Class Members which
8 would, as a practical matter, be dispositive of the interests of the other Class Members not parties to
9 the adjudications, or which would substantially impair or impede the ability of the Class Members to
10 protect their interests. Further, the claims of the individual members of the Class are not sufficiently
11 large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

12 82. Such a pattern, practice and uniform administration of corporate policy regarding
13 illegal employee compensation described herein is unlawful and creates an entitlement to recovery by
14 the Plaintiffs and the Class identified herein, in a civil action, for the unpaid balance of the full amount
15 of unpaid wages, overtime and vacation wages, including interest thereon, applicable penalties,
16 reasonable attorney's fees, and costs of suit according to the mandate of California *Labor Code* §§
17 218.6, 226, 226.7, 227.3, & 1194, 1194.2 and 2802, California *Code of Civil Procedure* § 1021.5, and
18 applicable IWC wage order.

19 83. Proof of a common business practice or factual pattern, which the named Plaintiff
20 experienced and is representative of, will establish the right of each of the Class Members to recovery
21 on the causes of action alleged herein.

22 84. The Class Members are commonly entitled to a specific fund with respect to the
23 compensation illegally and unfairly retained by Defendants. The Class Members are commonly
24 entitled to restitution of those funds being improperly withheld by Defendants. This action is brought
25 for the benefit of the entire Class and will result in the creation of a common fund.

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1 **FIRST CAUSE OF ACTION**

2 **Unpaid Overtime Wages**

3 **(California *Labor Code* §§ 510, 1194 and 1198,**

4 **and Industrial Welfare Commission Wage Order No. 9)**

5 **-By Plaintiffs and Class Members Against All Defendants-**

6 85. Plaintiff re-alleges and incorporates herein by reference each and every allegation
7 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

8 86. This action is brought, in part, pursuant to the Wage Order and *California Labor Code*
9 §§ 510, 1194 and 1198. Under the Wage Order and *California Labor Code* § 510, Defendants were
10 required to compensate Plaintiff and all Class Members for all overtime, calculated at one and one-
11 half (1-½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or
12 forty (40) hours per week, two (2) times the regular rate of pay for hours worked in excess of twelve
13 (12) hours per day, and two (2) times the regular rate of pay for hours worked in excess of eight (8)
14 hours on the seventh (7th) day of work.

15 87. While employed by Defendants, Plaintiff and the Class Members were required to work
16 more than eight (8) hours in a day or forty (40) hours in a week. Regardless of the number of actual
17 hours worked, and even though Plaintiff and all Class Members are not exempt from California
18 overtime laws, Plaintiff and all Class Members were not and are not afforded overtime compensation
19 for any hours in excess of eight (8) hours in a workday and/or forty (40) hours per week. By failing
20 to compensate Plaintiff and all Class Members for the hours actually worked, Defendants have failed
21 and continue to fail to pay the overtime compensation owed to Plaintiff and all Class Members
22 pursuant to the Wage Order and the *California Labor Code*.

23 88. Plaintiff is informed and believe and based thereon alleges that Defendants' policy and
24 practice of requiring overtime work and not paying for said work according to the overtime mandates
25 of California law is, and at all times herein mentioned was, in violation of *California Labor Code* §
26 1194, applicable regulations, and the Wage Order. Defendants' employment policies and practices
27 wrongfully and illegally failed to compensate Plaintiff and Class Members for overtime compensation
28 earned as required by California law.

1 89. The conduct of Defendants and their agents and employees as described herein was
2 willful and intentional and part of a corporate policy, procedure and practice. Furthermore, Defendants
3 willfully failed to pay Plaintiff and Class Members proper compensation for all overtime hours worked
4 at the appropriate rate of overtime pay.

5 90. Plaintiff is informed and believe and based thereon alleges that Defendants' willful
6 failure to provide all overtime wages due and owing them upon separation from employment results
7 in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore,
8 Plaintiff and other members of the Class who have separated from employment are entitled to
9 compensation pursuant to California *Labor Code* § 203.

10 91. Such a pattern, practice and uniform administration of unlawful corporate policy
11 regarding employee compensation as described herein creates an entitlement to recovery by Plaintiffs
12 and each Class Member for damages and wages owed, and for penalties, interest, costs and attorney's
13 fees, in an amount to be proven at time of trial.

14 **SECOND CAUSE OF ACTION**

15 **Failure to Pay All Regular Wages**

16 ***(California Labor Code § 204)***

17 **-By Plaintiff and Class Members Against All Defendants-**

18 92. Plaintiff re-alleges and incorporates herein by reference each and every allegation
19 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

20 93. At all times relevant herein, Defendants were required, by California *Labor Code*
21 § 204, to compensate Plaintiffs and Class Members correct and proper regular wages for all regular
22 hours worked.

23 94. As a pattern and practice, Defendants regularly required Plaintiff and Class Members
24 to work more than eight (8) hours in a day, and forty (40) hours in a week; and required Plaintiff and
25 Class Members to work through meal and rest breaks. Regardless of the number of hours worked,
26 Plaintiff and Class Members received the same pay, without payment of wages for all hours actually
27 worked.
28

1 95. As a pattern and practice, Defendants regularly failed to pay Plaintiff and Class
2 Members the proper wages for all hours worked

3 96. Plaintiff is informed and believe and based thereon alleges that Defendants willfully
4 failed to pay Plaintiff and Class Members all regular wages for all hours worked. Plaintiff is informed
5 and believe and based thereon alleges that Defendants' willful failure to provide all regular wages due
6 and owing upon separation from employment results in a continued payment of wages up to thirty (30)
7 days from the time the wages were due. Therefore, Plaintiff and Sub-Class Members are entitled to
8 compensation pursuant to California *Labor Code* § 203.

9 97. Such a pattern, practice and uniform administration of unlawful corporate policy
10 regarding employee compensation as described herein creates an entitlement to recovery by Plaintiff,
11 Class Members and Sub-Class Members for damages and wages owed, and for penalties, interest,
12 costs and attorney's fees.

13 **THIRD CAUSE OF ACTION**

14 **Failure to Pay Minimum Wages**

15 **(California *Labor Code* § 1194, 11.942 and 1197.1)**

16 **-By Plaintiff and Class Members Against All Defendants-**

17 98. Plaintiff re-alleges and incorporates herein by reference each and every allegation
18 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

19 99. This cause of action is brought pursuant to California *Labor Code* § 1194, which
20 provides that non-exempt employees are entitled to the statutory hourly minimum wage for work
21 performed.

22 100. At all times relevant herein, Defendants were required to compensate Plaintiff and
23 Class Members at least the statutorily mandated minimum wage for all regular hours worked.

24 101. As a pattern and practice, Defendants regularly required Plaintiff and Class Members
25 to work without recording the time worked in any capacity, due to the misclassification of Drivers as
26 independent contractors.

27 102. As a result, Defendants regularly failed to pay Plaintiff and Class Members the
28 statutorily required minimum wage for all hours worked.

103. Defendants' conduct as alleged herein is in violation of California *Labor Code* § 1194 and the Wage Order. Defendants' employment policies and practices wrongfully and illegally failed to compensate Plaintiff and Class Members for all hours worked at minimum wages as required by California law.

104. Plaintiff is informed and believe and based thereon alleges that Defendants willfully failed to pay Plaintiff and Class Members minimum wages for all hours worked. Plaintiff is informed and believe and based thereon alleges that Defendants' willful failure to provide wages due and owing upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and Sub-Class Members who have separated from employment are entitled to compensation pursuant to *California Labor Code* § 203.

105. Such a pattern, practice and uniform administration of unlawful corporate policy regarding employee compensation as described herein creates an entitlement to recovery by Plaintiff, Class Members and Sub-Class Members for damages and wages owed, and for liquidated damages, penalties, interest, costs and attorney's fees.

FOURTH CAUSE OF ACTION

Failure to Pay All Regular Wages

(California Labor Code §§ 1197.1 and 1199, and the Wage Order)

-By Plaintiff and Class Members Against All Defendants-

106. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

107. At all times relevant herein, Defendants were required by California *Labor Code* §§ 1197.1 and 1199 and the Wage Order to compensate Plaintiff and Class Members correct and proper wages for all hours worked.

108. As a pattern and practice, Defendants regularly failed to pay Plaintiff and Class Members for all hours worked in excess of eight (8) hours in one day or forty (40) hours in a week.

109. Plaintiff is informed and believe and based thereon alleges that Defendants willfully failed to pay Plaintiff and Class Members wages for all hours worked. Plaintiff is informed and believes and based thereon alleges that Defendants' willful failure to provide all wages due and owing

1 upon separation from employment results in a continued payment of wages up to thirty (30) days from
2 the time the wages were due. Therefore, Plaintiff and Sub-Class Members are entitled to compensation
3 pursuant to California *Labor Code* § 203.

4 110. Such a pattern, practice and uniform administration of unlawful corporate policy
5 regarding employee compensation as described herein creates an entitlement to recovery by Plaintiffs,
6 Class Members and Sub-Class Members for damages and wages owed, and for penalties, interest,
7 costs and attorney's fees, in an amount according to proof.

8 **FIFTH CAUSE OF ACTION**

9 **Failure to Allow or Pay for Meal Periods**

10 **(California *Labor Code* §§ 226.7 and 512)**

11 **-By Plaintiff and Class Members Against All Defendants-**

12 111. Plaintiff re-alleges and incorporates herein by reference each and every allegation
13 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

14 112. At all times relevant herein, Defendants were required to provide Plaintiff and Class
15 Members with meal periods that comply with the California *Labor Code* and applicable regulations
16 and the Wage Order, including California *Labor Code* §§ 226.7 and 512.

17 113. Consistent with Defendants' corporate policy, practice and pattern, Defendants
18 regularly failed to provide, and in fact denied, Plaintiff's and Class Members' statutorily compliant
19 meal periods.

20 114. Consistent with Defendants' policy, practice and pattern, Defendants regularly failed
21 to provide any breaks to Drivers, allow Plaintiff and Class Members to take or timely take
22 uninterrupted, duty-free meal periods. As a pattern and practice, Defendants regularly failed to
23 accurately record meal periods.

24 115. Plaintiff is informed and believe and based thereon alleges that Defendants willfully
25 failed to pay Plaintiff and Class Members proper meal period premium wages for all non-compliant
26 or missed meal periods. Plaintiff is informed and believes and based thereon alleges that Defendants'
27 willful failure to provide all such meal period wages due and owing to Sub-Class Members upon
28 separation from employment results in a continued payment of wages up to thirty (30) days from the

1 time the wages were due. Therefore, Sub-Class Members are entitled to compensation pursuant to
2 California *Labor Code* § 203.

3 116. Such a pattern, practice and uniform administration of unlawful corporate policy
4 regarding employee compensation as described herein creates an entitlement to recovery by Plaintiffs,
5 Class Members and Sub-Class Members for damages and wages owed, and for penalties, interest,
6 costs and attorney's fees.

7 117. Accordingly, Plaintiff and all members of the Class are entitled to one (1) hour of
8 compensation at their regular hourly rate for each workday that the proper meal periods were not
9 provided and one (1) hour of compensation at their regular hourly rate for each workday that the proper
10 meal periods were not provided in penalty wages pursuant to California *Labor Code* § 226.7 and the
11 Wage Order.

12 118. Plaintiff and Class Members are further entitled to civil penalties under California
13 *Labor Code* § 558 as follows: For the initial violation, Fifty Dollars (\$50.00) for each pay period for
14 which the employee was underpaid, in addition to any amount sufficient to recover underpaid wages;
15 and, for each subsequent violation, One Hundred Dollars (\$100.00) for each pay period for which the
16 employee was underpaid, in addition to any amount sufficient to recover underpaid wages.

17 **SIXTH CAUSE OF ACTION**

18 **Failure to Allow or Pay For Rest Periods**

19 **(California *Labor Code* §226.7)**

20 **-By Plaintiff and Class Members Against All Defendants-**

21 119. Plaintiff re-alleges and incorporates herein by reference each and every allegation
22 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

23 120. At all times relevant herein, Defendants were required to provide Plaintiff and Class
24 Members with rest periods that comply with the California *Labor Code* and applicable regulations and
25 IWC wage order, including California *Labor Code* § 226.7.

26 121. Consistent with Defendants' corporate policy, practice and pattern, Defendants
27 regularly failed to provide, and in fact denied, Plaintiff and Class Members statutorily compliant rest
28 periods.

1 122. Consistent with Defendants' corporate policy, practice and pattern, Defendants failed
2 to provide or allow Plaintiff and Class Members to take or timely take mandated rest periods due to
3 their misclassification as independent contractors.

4 123. Plaintiff is informed and believe and based thereon allege that Defendants willfully
5 failed to pay Plaintiff and Class Members proper rest period premium wages for all non-compliant or
6 missed rest periods. Plaintiff is informed and believe and based thereon alleges that Defendants'
7 willful failure to provide all such rest period wages due and owing upon separation from employment
8 results in a continued payment of wages up to thirty (30) days from the time the wages were due.
9 Therefore, members of the Sub-Class who have separated from employment are entitled to
10 compensation pursuant to California *Labor Code* § 203.

11 124. Such a pattern, practice and uniform administration of unlawful corporate policy
12 regarding employee compensation as described herein creates an entitlement to recovery by Plaintiff,
13 Class Members and Sub-Class Members for damages and wages owed, and for penalties, interest,
14 costs and attorney's fees.

15 125. Plaintiff and all members of the Class were regularly scheduled as a matter of uniform
16 company policy to work, and in fact worked, without rest breaks in violation of California *Labor Code*
17 §§ 226.7 and 512 and the Wage Order, in that they are not and were not permitted to take one (1) ten
18 (10) minute rest break for every four (4) hours worked.

19 126. Accordingly, Plaintiff and all members of the Class are entitled to one (1) hour of
20 compensation at their regular hourly rate for each workday that the proper rest periods were not
21 provided and one (1) hour of compensation at their regular hourly rate for each workday that the proper
22 rest periods were not provided in penalty wages pursuant to *California Labor Code* § 226.7 and the
23 Wage Order.

24 127. Plaintiff and Class Members are further entitled to civil penalties under California
25 *Labor Code* § 558 as follows: For the initial violation, Fifty Dollars (\$50.00) for each pay period for
26 which the employee was underpaid, in addition to any amount sufficient to recover underpaid wages;
27 and, for each subsequent violation, One Hundred Dollars (\$100.00) for each pay period for which the
28 employee was underpaid, in addition to any amount sufficient to recover.

1 **SEVENTH CAUSE OF ACTION**

2 **Waiting Time Penalties**

3 **(California *Labor Code* §§ 201-203)**

4 **-By Plaintiffs and Sub-Class Members Against All Defendants-**

5 128. Plaintiff re-alleges and incorporates herein by reference each and every allegation
6 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

7 129. At all times relevant herein, Defendants were required to pay their employees all wages
8 owed in a timely fashion during and at the end of their employment, pursuant to California *Labor*
9 *Code* §§ 201 through 203.

10 130. As a pattern and practice, Defendants regularly failed to pay Plaintiff and Sub-Class
11 Members their final wages pursuant to California *Labor Code* §§ 201 through 203, and accordingly
12 owe waiting time penalties pursuant to California *Labor Code* § 203.

13 131. The conduct of Defendants and their agents and managerial employees as described
14 herein was willful, and in violation of the rights of Plaintiffs and the Sub-Class Members.

15 132. Plaintiff is informed and believe and based thereon alleges that Defendants' willful
16 failure to pay wages due and owing to Sub-Class Members upon separation from employment results
17 in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore,
18 Sub-Class Members are entitled to compensation pursuant to California *Labor Code* § 203.

19 **EIGHTH CAUSE OF ACTION**

20 **Failure to Provide Accurate Itemized Wage Statements**

21 **(California *Labor Code* § 226(a))**

22 **-By Plaintiff and Class Members Against All Defendants-**

23 133. Plaintiff re-alleges and incorporates herein by reference each and every allegation
24 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

25 134. At all times relevant hereto, California *Labor Code* § 226(a) provides, and provided,
26 that every employer shall furnish each of its employees an accurate itemized wage statement in writing
27 showing nine (9) pieces of information, including: (1) gross wages earned, (2) total hours worked by
28 the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee

1 is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
2 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
3 of the period for which the employee is paid, (7) the name of the employee and the last four digits of
4 his or her social security number or an employee identification number other than a social security
5 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
6 rates in effect during the pay period and the corresponding number of hours worked at each hourly
7 rate by the employee.

8 135. Defendants failed and continue to fail in their affirmative obligation to keep accurate
9 payroll records reflecting the actual hours worked, and the amount of compensation due to their
10 California employees. Defendants, as a matter of policy and practice, did not maintain accurate records
11 in violation of California *Labor Code* § 226.

12 136. For example, as a matter of policy and practice, among the violations of California
13 *Labor Code* § 226, Defendants failed to keep accurate records reflecting total number of hours worked,
14 rates of pay, rates of overtime pay (as a result of Defendants' failure to record proper overtime hours
15 worked, and to properly calculate the overtime rate of pay), and daily or weekly overtime pay. As a
16 result, Defendants failed to provide true and accurate wage statements to Plaintiff and Class Members,
17 as required by California *Labor Code* § 226.

18 137. Such a pattern, practice and uniform administration of corporate policy as described
19 herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class Members in a civil
20 action for all damages and/or penalties pursuant to California *Labor Code* § 226, including interest
21 thereon, penalties, reasonable attorney's fees, and costs of suit according to the mandate of California
22 *Labor Code* § 226, in amount according to proof.

23 138. Class Members, including Plaintiff, are entitled to recover from Defendants the greater
24 of their actual damages caused by Defendants' failure to comply with California *Labor Code* § 226(a),
25 or an aggregate penalty not exceeding Four Thousand Dollars (\$4,000.00) per employee.

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1 **NINTH CAUSE OF ACTION**

2 **Failure to Reimburse Business Expenses**

3 **(California Labor Code § 2800, and 2802)**

4 **-By Plaintiff and Class Members Against All Defendants-**

5 139. Plaintiff re-alleges and incorporates herein by reference each and every allegation
6 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

7 140. While acting on the direct instruction of Defendants and discharging his duties for
8 them, Plaintiff and putative class members incurred work-related expenses.

9 141. Such expenses include but are not limited to the costs associated with travel, including
10 fuel, maintenance, vehicle depreciation, and others, as well as the cost of maintaining a personal cell
11 phone for purposes of using for Defendants' business. Plaintiff necessarily incurred these substantial
12 expenses and losses as a direct result of performing their job duties for Defendants.

13 142. Defendants have failed to indemnify or in any manner reimburse Plaintiff for these
14 expenditures and losses. By requiring Plaintiff to pay expenses and cover losses that he incurred in
15 direct consequence of the discharge of his duties for Defendants and/or in obedience to Defendants'
16 direction, Defendants have violated Cal. Labor Code § 2802

17 143. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered
18 substantial losses according to proof, as well as pre-judgment interest, costs, and attorney fees for the
19 prosecution of this action.

20 144. The conduct of Defendants and their agents and managerial employees as described
21 herein was willful, and in violation of the rights of Plaintiff and the Sub-Class Members.

22 145. Plaintiff requests relief as described below.

23 **TENTH CAUSE OF ACTION**

24 **Willful Misclassification of Individual as Independent Contractor**

25 **(California Labor Code § 226.8)**

26 **-By Plaintiff and Class Members Against All Defendants-**

27 146. Plaintiff re-alleges and incorporates herein by reference each and every allegation
28 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

1 147. Defendants intentionally and willfully characterized Plaintiff and members of the Class
2 as independent contractors rather than employees in violation of Labor Code §226.8.

3 148. Defendants have been engaging in a pattern and practice of misclassifying employees
4 as independent contractors for their own financial benefit.

5 149. As a direct and proximate result of the unlawful acts and/or omissions of Defendants,
6 Plaintiff and Class Members are entitled to recover damages in an amount to be determined at trial,
7 civil penalties, plus interest thereon, and attorneys' fees, and costs of suit pursuant to Labor Code §
8 226.8.

9 150. Defendants have engaged in or are engaging in a pattern or practice of misclassifying
10 the Drivers, and Plaintiff seeks recovery for civil penalties of not less than ten thousand dollars
11 (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to
12 any other penalties or fines permitted by law.

13 151. Plaintiff realleges and incorporates herein by reference each and every allegation
14 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

15 **ELEVENTH CAUSE OF ACTION**

16 **Unfair Business Practices**

17 **(California Business and Professions Code §§ 17200, et seq.)**

18 **-By Plaintiffs and Class Members Against All Defendants-**

19 152. Plaintiff re-alleges and incorporates herein by reference each and every allegation
20 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

21 153. Defendant, and each of them, have engaged in unfair business practices in California
22 by practicing, employing and utilizing the employment practices outlined above, including but not
23 limited to, requiring Class Members to perform the labor complained of herein without overtime
24 compensation, regular compensation or minimum wage for all hours worked, failing to provide meal
25 and rest breaks, failing to reimburse/indemnify business expenses, and failing to provide itemized
26 wage statements. Defendants' utilization of such unfair business practices constitutes unfair
27 competition and provides an unfair advantage over Defendants' competitors.
28

1 154. Plaintiff and the Class Members, and other similarly situated members of the general
2 public, seek full restitution and disgorgement of monies, as necessary and according to proof, to restore
3 any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair
4 practices complained of herein. Plaintiff seeks, on his own behalf and on behalf of the Class Members
5 and general public, the appointment of a receiver, as necessary. The acts complained of herein
6 occurred, at least in part, within the last four (4) years preceding the filing of the original complaint in
7 this action.

8 155. Plaintiff is informed and believe and on that basis alleges that, at all times herein
9 mentioned, Defendants have engaged in unlawful, deceptive and unfair business practices, as
10 proscribed by California *Business and Professions Code* §§ 17200, *et seq.*, as set forth above, thereby
11 depriving Plaintiff, Class Members, and other members of the general public the minimum working
12 condition standards and conditions due to them under the California labor laws and the Wage Order
13 as specifically described herein.

14 156. Plaintiff, Class Members, and all persons similarly situated, are further entitled to and
15 do seek a declaration that the above-described business practices are unfair, unlawful and/or
16 fraudulent.

17
18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment for themselves and all others on whose behalf this
20 suit is brought against Defendants, jointly and severally, as follows:

- 21 a) That the Court determine that this action may be maintained as a class action under Code of
22 Civil Procedure § 382;
23 b) That the Plaintiff be appointed as the representatives of the Class;
24 c) That counsel for Plaintiff be appointed as Class Counsel;
25 d) That the Court find that Defendants have been in violation of applicable provisions of the
26 California Labor Code by failing to pay each member of the proposed Classes for all hours
27 worked, including minimum wage;
28

e) That the Court find that Defendants have been in violation of applicable provisions of the California Labor Code §§510, 1194 et seq., and IWC Wage Order by failing to pay overtime wages to Plaintiff and members of the Class;

f) That the Court find that Defendants have been in violation of California Labor Code §§226.7 and 512 by failing to provide Plaintiff and members of the Class with meal periods and therefore owe compensation under California Labor Code §226.7(b);

g) That the Court find that Defendants have been in violation of California Labor Code §§226.7 by failing to authorize and permit rest periods for Plaintiff and members of the Class, and therefore owe compensation under California Labor Code §226.7(b);

h) That the Court find that Defendants have been in violation of California Labor Code § 2802, by failing to reimburse the Plaintiff and the Class reasonable business expenses and losses;

i) That the Court find that Defendants have violated the recordkeeping provisions of California Labor Code §§ 1174 and 1174.5 as to Plaintiff and the Class;

j) That the Court find that Defendants have been in violation of California Labor Code § 226 by failing to timely furnish Plaintiff and members of the Class with itemized statements accurately showing the total hours worked, vacation benefits, bonus benefits, and wages earned by each of them during each pay period;

l) That the Court find that Defendants have been in violation of California Labor Code §§201 and 202 and therefore owe waiting time penalties under California Labor Code §203 for willful failure to pay all compensation owed at the time of termination of employment to Plaintiff and other formerly employed members of the Class;

m) That the Court find that Defendants have been in violation of California Labor Code §226.8 and therefore owe civil penalties under California Labor Code §226.8 and all damages proximately caused by Defendants' wrongful conduct of engaging in a pattern or practice of willfully misclassifying Dasher as independent contractors;

n) That the Court find that Defendants have committed unfair and unlawful business practices, in violation of California Business and Professions Code §17200, et seq., by their violations of the Labor Code and Wage Orders as described above;

- 1 o) That the Court find that Defendants' violations of the California Labor Code described herein
2 have been willful;
- 3 p) That the Court award to Plaintiff individually restitution for the reasonable business expenses
4 and deductions incurred by Drivers, including interest thereon, liquidated damages and/or
5 statutory penalties and other statutory penalties in amounts subject to proof at trial;
- 6 q) That the Court award to Plaintiff individually restitution for the amounts of unpaid wages,
7 including interest thereon, liquidated damages and/or statutory penalties for failure to timely
8 furnish accurate itemized wage statements, and waiting time and other statutory penalties in
9 amounts subject to proof at trial;
- 10 r) That Defendants be ordered and enjoined to reclassify its Drivers as employees, including
11 reclassifying Plaintiff and the proposed Class Members, due to Defendants' unlawful and/or
12 unfair activities, pursuant to Business and Professions Code §§17200-17205;
- 13 s) That Defendants further be enjoined to cease and desist from unlawful and/or unfair activities
14 in violation of Business and Professions Code §17200, pursuant to §17203;
- 15 t) That Plaintiff and the Class be awarded reasonable attorneys' fees and costs pursuant to Labor
16 Code §§ 203, 225.5, 226, 1194, 1197, and 2804, Code of Civil Procedure § 1021.5, and/or other
17 applicable law;
- 18 u) That the Court award any other relief this Court deems just, equitable, and proper;
- 19 v) That these Defendants be ordered to refrain from retaliating against any Class Members who
20 are current employees; and
- 21 x) Any other and further relief the Court deems just and proper.

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff requests a trial by jury on all applicable claims.

24
25 Dated: May 19, 2022

By: 27

26 Law Offices of Todd M. Friedman, P.C.

27 Todd M. Friedman
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