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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN MATEO
12 UNLIMITED JURISDICTION

13 TANDENICO JONES, on behalf of herself
14 and all others similarly situated, and the
15 general public,

16 *Plaintiff,*

17 v.

18 MAPLEBEAR INC., a Delaware corporation;
and DOES 1 through 50, inclusive,

19 *Defendants.*
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Electronically
FILED
by Superior Court of California, County of San Mateo
ON 1/4/2023
By /s/ Jennifer Torres
Deputy Clerk

Case No. 23-CIV-00020

REPRESENTATIVE ACTION

COMPLAINT FOR:

1. Civil Penalties (Lab. Code § 2698, *et seq.*)

1 Plaintiff TANDENICO JONES ("Plaintiff"), on behalf of herself and all others similarly
2 situated, and the general public, complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this representative action against defendants MAPLEBEAR INC., a
5 Delaware corporation; and DOES 1 through 50, inclusive, (collectively referred to as
6 "Defendants") for alleged violations of the Labor Code. As set forth below, Plaintiff alleges that
7 Defendants have

- 8 (1) willfully misclassified Plaintiff and all other similarly situated individuals as
9 "independent contractors" when they were in reality employees of Defendants
- 10 (2) failed to provide Plaintiff and all other similarly situated individuals with meal
11 periods;
- 12 (3) failed to provide them with rest periods;
- 13 (4) failed to pay them premium wages for missed meal and/or rest periods;
- 14 (5) failed to pay them premium wages for missed meal and/or rest periods at the regular
15 rate of pay;
- 16 (6) failed to pay them at least minimum wage for all hours worked;
- 17 (7) failed to pay them overtime wages at the correct rate;
- 18 (8) failed to pay them double time wages at the correct rate;
- 19 (9) failed to pay them overtime and/or double time wages by failing to include all
20 applicable remuneration in calculating the regular rate of pay;
- 21 (10) failed to reimburse them for all necessary business expenses;
- 22 (11) failed to provide them with accurate written wage statements; and
- 23 (12) failed to pay them all of their final wages following separation of employment.

24 Based on these alleged violations, Plaintiff now brings this representative action to recover
25 penalties and related relief on behalf of herself and all others similarly situated, all other aggrieved
26 employees, and the State of California.

27 JURISDICTION AND VENUE

- 28 2. This Court has subject matter jurisdiction to hear this case because the penalties sought

1 by Plaintiff from Defendants exceeds the minimal jurisdictional limits of the Superior Court of the
2 State of California.

3 3. Venue is proper in the County of San Mateo pursuant to Code of Civil Procedure §§
4 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are the
5 subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices,
6 transacts business, and/or has an agent therein.

7 **PARTIES**

8 4. Plaintiff is and was, and at all relevant times mentioned herein, an individual
9 residing in the State of California.

10 5. Plaintiff is informed and believes, and thereupon alleges, that Defendant
11 MAPLEBEAR INC. is, and at all relevant times mentioned herein, a Delaware corporation doing
12 business in the State of California.

13 6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
14 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
15 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants
16 when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the
17 fictitiously named defendants are responsible in some manner for the occurrences, acts and
18 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these
19 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and
20 capacities of the DOE defendants when ascertained.

21 7. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
22 mentioned herein, some or all of the defendants were the representatives, agents, employees,
23 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some
24 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
25 and scope of such relationship and with the full knowledge, consent, and ratification by such other
26 defendants.

27 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

28 8. Plaintiff worked for Defendants as an hourly, non-exempt employee from

1 approximately July 2021 through January 2022.

2 **Willful Misclassification as Independent Contractors**

3 9. As a delivery driver, Plaintiff drove a vehicle to various retail, grocery, and
4 pharmacy locations to shop for a predetermined list of items and then deliver them to Defendants'
5 users and customers. Plaintiff and the aggrieved employees' duties included but were not limited to
6 driving, shopping, delivering, and safely dropping off items from a shopping list.

7 10. Although Plaintiff and the aggrieved employees were classified as "independent
8 contractors," Plaintiff and the aggrieved employees were actually employees of Defendants.

9 11. Defendants maintained significant control over Plaintiff and the aggrieved
10 employees' working conditions in the following ways.

11 12. First, Plaintiff and the aggrieved employees were not free from the control and
12 direction of Defendants in connection with the performance of their work. Defendants provided
13 delivery locations, provided their own navigation interface for Plaintiff and the aggrieved
14 employees to follow routes determined by Defendants, and Defendants set and controlled the pay
15 structure for Plaintiff and the aggrieved employees. Although Defendants did not expressly dictate
16 the starting and ending times for each driver's shift, each driver's workload was structured such that
17 they were accepting deliveries prior to them even knowing where the delivery destination would be.
18 Plaintiff and the aggrieved employees had no control over which items they would be accepting or
19 rejecting, and had no control over where they were delivering those items. Plaintiff and the
20 aggrieved employees regularly communicated with "Shopper Happiness," Defendants' support
21 network, and Plaintiff and the aggrieved employees frequently interacted with Defendants'
22 corporate offices to deal with customer disputes and/or to alert Defendants of weather events or
23 traffic conditions in the event of delay on a delivery route. Furthermore, Plaintiff and the aggrieved
24 employees carried a credit card with Defendants logo on it, and expended funds on behalf of
25 Defendants to purchase to items ordered by Defendants users and customers.

26 13. Moreover, Defendants paid Plaintiff and the other aggrieved employees on a piece
27 rate and mileage basis that did not take into account the actual number of hours worked.

28 14. Second, Defendants had the power to train, discipline, supervise, and terminate

1 drivers. Plaintiff completed HIPAA and alcohol training in order to deliver prescription medicines
2 and alcoholic drinks to Defendants' customers. Defendants also provided training in how to
3 appropriately pack groceries, such that there was less of a chance for breakages or accidents.

4 15. Third, Plaintiff and the aggrieved employees used Defendants' tools, applications
5 and instrumentalities to perform their duties. Plaintiff and the aggrieved employees were required to
6 download and use Defendants' online application to perform their job. Plaintiff purchased an
7 insulated bag for \$25.99 directly from Defendants without reimbursement in order to keep
8 refrigerated items cold while performing her job duties for Defendants. The insulated bag bore the
9 logo of Defendants' business name "InstaCart." Defendants provided Plaintiff with the option of
10 purchasing a t-shirt with Defendants logo on it. Plaintiff and the aggrieved employees were given
11 navigation and instructions directly through Defendants' application, which they used to work for
12 Defendants. Plaintiff and the aggrieved employees did not perform work that is outside the usual
13 course of Defendants' business.

14 16. Also, the work performed by Plaintiff and the aggrieved employees required no
15 specialized skill. Plaintiff and the aggrieved employees were not customarily engaged in an
16 independently established trade, occupation, or business of the same nature as that involved in the
17 work performed. Plaintiff and the aggrieved employees were individuals and were not operating
18 under an incorporated name or any other business entity created by law. Furthermore, the work
19 performed by Plaintiff and the aggrieved employees, shopping and delivering items, is part of the
20 regular business of Defendants.

21 17. Despite Defendants' characterization to the contrary, at all relevant times, Plaintiff
22 and the aggrieved employees have been employees of Defendants and, as such, have been entitled
23 to the protections of the California Labor Code and Wage Order.

24 18. Defendants willfully misclassified Plaintiff and the aggrieved employees as
25 independent contractors. At all relevant times, they have engaged in a pattern and/or practice of
26 doing so.

27 **Missed Meal Periods**

28 19. Plaintiff and the aggrieved employees were not provided with meal periods of at

least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; (2) imposing so much work on each employee such that it made it unlikely that an employee would be able to take their breaks if they wanted to finish their work on time; and (3) no formal written meal and rest period policy that encouraged employees to take their meal and rest periods.

20. Specifically, Defendants have a policy and/or practice of requiring Plaintiff and the aggrieved employees to take their meal periods after the fifth hour of work. Plaintiff and the aggrieved employees were required to accept delivery jobs even though they had no indication of how long a delivery job would take, or where the final delivery destination would be. Accordingly, Plaintiff and the aggrieved employees' workday was not structured so that Plaintiff and the aggrieved employees were consistently provided legally mandated uninterrupted meal periods of at least thirty minutes pursuant to California law. Plaintiff and the aggrieved employees could not simply "pause" while on Defendants' predetermined delivery route. Plaintiff and the aggrieved employees were required to go to a store location, shop, and deliver items to a destination, and couldn't stop while on route. Because the delivery is accepted without knowledge of the ultimate location, Plaintiff regularly delivered items to remote locations and as far as Sacramento, CA from a store in Berkely, CA.

21. As a result of Defendants' policy, Plaintiff and the aggrieved employees were regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours worked.

Missed Rest Periods

22. Plaintiff and the aggrieved employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift; (2) chronically understaffing each work shift with not enough workers; (3) imposing so much work on each employee such that it made it unlikely that an employee would be able to take their breaks if they wanted to finish their work on time; and (4) no formal written meal and rest period policy that encouraged employees to take their meal and rest periods.

23. Defendants' written policies failed to advise Plaintiff and the aggrieved employees of their legal right to take rest period in accordance with California law. Specifically, Defendants have a practice and/or policy of requiring Plaintiff and the aggrieved employees to work through their rest periods. Defendants pay Plaintiff and the aggrieved employees on a piece meal basis called "Batch Incentives." Defendants provide a dollar amount for items on a shopping list, and pay their delivery drivers according to the dollar amount determined by each "batch" that they deliver. Defendants also calculate out the distance a delivery location is away from a store and provide mileage pay at a specific rate based on the number of miles Plaintiff and the aggrieved employees drive. Plaintiff and the aggrieved employees did not receive "on-the-clock" rest periods and were denied premium wages.

24. As a result of Defendants' policy, Plaintiff and the aggrieved employees were regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked due to complying with Defendants' productivity requirements that required Plaintiff and the aggrieved employees to work through their rest periods in order to complete their assignments on time.

Regular Rate of Pay

25. The regular rate of pay under California law includes all remuneration for employment paid, on behalf of the employer, to the employee. This requirement includes, but is not limited, to, commissions and non-discretionary bonuses.

26. During the applicable limitations period, Defendants violated the rights of Plaintiff and the aggrieved employees under the above-referenced Labor Code sections by failing to pay them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194, and 1198 as a result of not correctly calculating their regular rate of pay to include all applicable remuneration, including, but not limited to, “Shopper Bump” pay, non-discretionary bonuses and/or commissions.

Piece Rate

27. Defendants use an application and practice which resulted in time during which non-exempt employees were subject to the control of Defendants but were not paid for all hours actually

1 worked.

2 28. Plaintiff and the aggrieved employees were compensated at least partially based on a
3 piece rate compensation plan called “Batch Incentives.” However, Defendants required and
4 expected Plaintiff and the aggrieved employees to spend substantial amounts of time under the
5 control of Defendants performing non-compensable tasks (i.e., tasks for which Plaintiff and the
6 aggrieved employees were paid nothing under Defendants’ pay plan).

7 29. In California, an employer is required to pay an employee for “all hours worked”
8 which includes all time that an employee is under the control of the employer and includes all time
9 that the employee is suffered or permitted to work. This includes the time an employee spends,
10 either directly or indirectly, performing services which inure to the benefit of the employer and any
11 time during which an employer’s policies and procedures do not allow employees to use that time
12 effectively for their own purposes. (*Morillion v. Royal Packing Co.* (2002) 22 Cal.4th 575, 586-588;
13 *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968.) In turn, this includes but is not
14 limited to time spent by employees that they cannot effectively use for their own purposes because
15 the employees are compelled by the necessities of the employer’s business.

16 30. The minimum wage statute applicable to Defendants’ business currently provides:
17 “Every employer shall pay to each employee, on the established payday for the period involved, not
18 less than the applicable minimum wage for all hours worked in the payroll period, whether the
19 remuneration is measure by time, piece, commission or otherwise.” This language expresses the
20 intent to ensure that employees be compensated at the minimum wage for each hour worked.

21 31. Labor Code §§ 1194 and 1197 require that an employer compensate employees for
22 “hours worked” at least at a minimum wage rate of pay as established by the wage orders.

23 32. Despite the fact California law requires employers to pay employees for all hours
24 worked at least at a minimum wage rate, Defendants suffered and permitted Plaintiff and the
25 aggrieved employees to perform work for which they received no compensation at all.

26 33. Plaintiff and the aggrieved employees were paid based on their “Batch Incentives”
27 which is calculated based on the number of items on a customer or customers shopping list(s)
28 without regard to the amount of hours actually worked. This payment scheme could result in a daily

1 wage that is less than the legal minimum wage and failed to compensate Plaintiff and the aggrieved
2 employees for daily overtime and double time to which they were entitled.

3 34. Defendants failed to pay Plaintiff and the aggrieved employees at least the minimum
4 wage for all hours worked, including overtime and/or double time hours when they worked
5 overtime and/or double time.

6 35. Defendants regularly required Plaintiff and the aggrieved employees to get out of
7 their vehicles and physically shop for all the items on a list as part of their job, in addition to
8 actually driving to the delivery location, finding parking, and then taking the bags to their
9 destination safely. Plaintiff and the aggrieved employees were sometimes forced to park blocks
10 away due to street conditions, and it could take multiple trips between their vehicles and the
11 delivery location to ensure all items are safely delivered. Plaintiff and the aggrieved employees
12 frequently contacted customers and had to figure out the best method to ensure the safe delivery of
13 the customers' shopping items. Plaintiff and the aggrieved employees then took pictures to prove
14 the items were delivered and uploaded them through Defendants application.

15 36. More significantly, Plaintiff and the aggrieved employees were not paid all time
16 spent working.

17 **Failure to Pay for Training Time**

18 37. Plaintiff and the aggrieved employees completed training videos, tutorials, and
19 examinations through Defendants application and were not paid for the time spent completing these
20 trainings for Defendants. Plaintiff and the aggrieved employees were trained in proper packaging
21 and bagging of items. Plaintiff and the aggrieved employees watched videos through Defendants
22 application that could last anywhere between 5 and 12 minutes long. Plaintiff and the aggrieved
23 employees also completed HIPAA training and training on delivery of alcoholic beverages. In total,
24 Plaintiff and the aggrieved employees spent as much as approximately eight hours completing
25 training videos for the benefit of Defendants, and on information and belief they received no form
26 of compensation or remuneration for doing so.

27 **Expense Reimbursement**

28 38. At all relevant times during the applicable limitations period, Defendants required

1 Plaintiff and the aggrieved employees to incur expenses which Defendants failed and/or refused to
2 reimburse them for including, but not limited to, constant usage of their personal cell phones,
3 insulated bags to handle refrigerated items, and gas.

4 39. Defendants failed to reimburse Plaintiff and the aggrieved employees for such
5 necessary business expenses incurred by them.

6 **Wage Statements**

7 40. Plaintiff and the aggrieved employees were not provided with accurate wage
8 statements as mandated by law pursuant to Labor Code § 226.

9 41. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
10 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-
11 clock” work were not included.

12 42. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours
13 worked by the employee” were not accurately reflected in that all hours worked, including overtime
14 and “off-the-clock” work were not included.

15 43. Defendants failed to comply with Labor Code section 226(a)(3) as “the number of
16 piece-rate units earned and any applicable piece rate” were not accurately reflected.

17 44. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
18 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-
19 clock” work were not included.

20 45. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours worked at each
22 hourly rate by the employee” were not accurately reflected in that all hours worked, including
23 overtime and “off-the-clock” work were not included.

24 **FIRST CAUSE OF ACTION**

25 **CIVIL PENALTIES**

26 **(Lab. Code §§ 2698 *et seq.*)**

27 46. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

28 47. During the applicable limitations period, Defendants have violated Labor Code §§

201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, 1198, and 2802.

48. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of herself and other current and former employees, to bring a representative civil action to recover civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

49. Plaintiff, a former employee against whom Defendants committed one or more of the alleged Labor Code violations during the applicable limitations period, is an aggrieved employee within the meaning of Labor Code § 2699(c).

50. Plaintiff has complied with the procedures for bringing suit specified in Labor Code § 2699.3. Notice was provided to the California Labor & Workforce Development Agency (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an intent to investigate.

51. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 221, 223, 226(a), 226.7, 226.8, 510, 512, 1194, 1197, 1198 and 2802:

- i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 1194, 1198 and 2802, one hundred dollars (\$100) for each employee per pay period for each initial violation and two hundred dollars (\$200) for each employee per pay period for each subsequent violation (penalties set by Labor Code § 2699(f)(2));
- ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each employee for each initial violation that was neither willful nor intentional, two hundred dollars (\$200) for each employee, plus 25% of the amount unlawfully withheld from each employee, for each initial violation that was either willful or intentional, and two hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of the amount unlawfully withheld

1 from each employee, for each subsequent violation, regardless of whether the
2 subsequent violation was either willful or intentional (penalties set by Labor
3 Code § 210);

4 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
5 employee for each initial violation that was neither willful nor intentional,
6 two hundred dollars (\$200) for each employee, plus twenty-five percent
7 (25%) of the amount unlawfully withheld from each employee, for each
8 initial violation that was either willful or intentional, and two hundred dollars
9 (\$200) for each employee, plus twenty-five percent (25%) of the amount
10 unlawfully withheld from each employee, for each subsequent violation,
11 regardless of whether the subsequent violation was either willful or
12 intentional (penalties set by Labor Code § 225.5);

13 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
14 citation, two hundred and fifty dollars (\$250) for each employee for each
15 violation. Alternatively, if an initial citation or its equivalent occurred before
16 the filing of this action, one thousand dollars (\$1,000) for each employee for
17 each violation (penalties set by Labor Code § 226.3);

18 vi. For all violations of California Labor Code § 226.8, \$25,000.00 for each of
19 Defendants' violations in addition to any other penalties or fines permitted by
20 law (penalties set by Labor Code § 226.8)

21 vii. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
22 employee for each initial pay period for which the employee was underpaid,
23 and one hundred dollars (\$100) for each employee for each subsequent pay
24 period for which the employee was underpaid (penalties set by Labor Code §
25 558);

26 viii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each
27 aggrieved employee for each initial violation of Labor Code § 1197 that was
28 intentional and two hundred and fifty dollars (\$250) for each aggrieved

1 employee per pay period for each subsequent violation of Labor Code §
2 1197, regardless of whether the initial violation was intentional (penalties set
3 by Labor Code § 1197.1);

4 ix. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable
5 attorneys' fees and costs in connection with Plaintiff's claims for civil
6 penalties.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general
9 public, prays for relief and judgment against Defendants as follows:

- 10 (1) Pre-judgment interest;
11 (2) Civil penalties;
12 (3) Costs of suit;
13 (4) Reasonable attorneys' fees; and
14 (5) Such other relief as the Court deems just and proper.
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17 Dated: December 28, 2022

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