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*Attorneys for Plaintiff
and all similarly situated Aggrieved Employees*

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

LISIMBA YAZID on behalf of himself and all
others similarly situated;

Plaintiff,

v.

KYTE RENTALS LLC, a California Limited
Liability Company; and DOES 1 through 10,
inclusive,

Defendant.

Case No.: 23CV028417

REPRESENTATIVE ACTION

FIRST AMENDED COMPLAINT

**1. VIOLATIONS OF THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
(Labor Code § 2698, et seq.)**

FILED
Superior Court of California
County of Alameda

05/04/2023

Clad Flake, Executive Officer/Clerk of the Court

By: A. Linhares Deputy

1 **I. INTRODUCTION**

2 1. This is a representative action under Labor Code section 2698, *et seq.*, brought by
3 plaintiff LISIMBA YAZID (“Plaintiff”).

4 2. Plaintiff brings this representative action on behalf of all current and former rental-
5 vehicle valets (“Surfers”) who worked for defendant KYTE RENTALS LLC, (“Defendant”) in the
6 State of California from December 15, 2021 through the present (“Aggrieved Employees”).

7 3. Defendant is a California-based rental-car company providing valet delivery and
8 pick-up of its vehicles to and from customers in the State of California. Plaintiff and other Class
9 Members worked for Defendant as valets, or Surfers, for the purpose of delivering and picking-up
10 Defendant’s vehicles to and from its customers.

11 4. Defendant willfully misclassified Plaintiff and other Class Members as independent
12 contractors. Through this pattern or practice, Defendant has sought to avoid various duties and
13 obligations owed to employees under the California Labor Code, Industrial Welfare Commission
14 Wage Order No. 9 (“Wage Order No. 9), and the General Minimum Wage Order (“Minimum Wage
15 Order”), resulting in the Labor Code violations further described below.

16 5. Plaintiff seeks civil penalties for these violations pursuant to the Private Attorneys
17 General Act, Labor Code sections 2698 *et seq.* (“PAGA”).

18 **II. JURISDICTION**

19 6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure section
20 395(a). Defendant regularly conducts business in Alameda County and Plaintiff performed work
21 for Defendant in Alameda County. The unlawful acts alleged herein have occurred in and have a
22 direct effect on Plaintiff and those similarly situated within the State of California and the County of
23 Alameda.

24 **III. PARTIES**

25 **A. PLAINTIFF**

26 7. Plaintiff and Aggrieved Employees are current or former Surfers who worked for
27 Defendant on a piece-rate basis at some time during the period beginning December 15, 2021 to the
28 present (the “PAGA Period”).

1 8. Plaintiff is a resident of California and worked for Defendant as a Surfer during the
2 relevant time periods herein. Plaintiff performed work for Defendant delivering its vehicles to
3 Defendant's customers in Albany, Berkeley, and Oakland.

4 **B. DEFENDANT**

5 9. Defendant KYTE RENTALS LLC is a California limited liability company, with its
6 principal address at 564 Market Street, Suite 700.

7 10. Plaintiff is informed and believes, and thereon allege that at all relevant time herein,
8 Defendant was and is subject to the Labor Code and Wage Order 9 as an employer, whose
9 employees were and are engaged in counties throughout the State of California, including Alameda
10 County. Defendant regularly conducts business in Alameda County.

11 11. The true names and capacities, whether individual, corporate, associate, or otherwise,
12 of defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiff, who
13 therefore sue defendants by such fictitious names under Code of Civil Procedure section 474.
14 Plaintiff is informed and believes, and based thereon alleges, that each of the defendants designated
15 herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein.
16 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
17 the defendants designated hereinafter as DOES when such identities become known.

18 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

19 12. On December 15, 2022, Plaintiff gave electronic and written notice by certified mail
20 of defendant's violations of various provisions of the California Labor Code as alleged in this
21 complaint to the LWDA and defendant.

22 13. The LWDA has not provided notice pursuant to Labor Code section 2699.3(a)(2)(A),
23 and 65 calendar days have passed since the postmark date of Plaintiff's LWDA notice. Therefore,
24 Plaintiff is entitled to commence a civil action pursuant to Labor Code section 2699.

25 **V. STATEMENT OF FACTS**

26 14. Defendant is a California-based rental-car company providing valet delivery and
27 pick-up of rental vehicles to and from its customers in the State of California. Defendant employed
28 Plaintiff and Aggrieved Employees as "Surfers" in California. Surfers deliver and pick up

1 Defendant's rental vehicles to and from its customers. Plaintiff was so employed by Defendant from
2 May to October of 2022.

3 15. Defendant pays Surfers on a piece-rate basis, generally between \$15 and \$45, for
4 each rental vehicle they deliver to and later pick up from Defendant's customers. The amount of this
5 piece rate depends on the distance between Defendant's central location, where its rental vehicles
6 are parked, and the location of its customers.

7 16. Surfers receive push notifications whenever a new job is available to the entire
8 workforce. These notifications are sent to Surfers through the Slack messaging app, which
9 Defendant requires Surfers to download to their personal cell phones. Defendant issues these
10 notifications at all times of day. The first Surfer to accept a newly posted job receives the job. This
11 means that, in practice, individual Surfers must wait by their phones at all hours of the day and
12 check their phones immediately in order to obtain jobs. Even if Surfers timely check their phone
13 upon receiving a notification, a Surfer may not successfully obtain the job. Defendant does not
14 compensate Surfers for this reporting time. As further described below, Defendant also requires
15 Surfers to regularly communicate with its managers, supervisors, and other staff using the Slack app
16 before, during, and after they complete their jobs.

17 17. Defendant's customers often modify or cancel their reservations before the assigned
18 job date. Whenever this happens, the job is dropped from whichever Surfer it was previously
19 assigned to. Instead, the newly modified reservation is pushed to the entire workforce as an
20 available job. Individual Surfers are not notified when one of their jobs is dropped as a result of
21 modification. When Plaintiff had a job dropped as a result of modification by Defendant's
22 customers, he spent between 5 and 10 minutes communicating with his manager each time in order
23 to regain the job. Because the compensation of Plaintiff and other aggrieved employees is based on
24 each job completed and the distance of that job, this additional time is not compensated.

25 18. Defendant misclassifies Surfers as independent contractors. Under California law,
26 Labor Code section 2775, a person providing labor or services for remuneration is assumed to be an
27 employee and not an independent contractor unless the hiring entity demonstrates:

28 //

- a. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- b. The person performs work that is outside the usual course of the hiring entity's business; and
- c. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

19. Surfers perform work that is within the usual course of Defendant's business.

Defendant operates a valet rental-car business and hires Surfers as the valets. Plaintiff and other aggrieved employees are not customarily engaged in an independently established valet business. Based on the foregoing and other relevant factors, Plaintiff and Aggreived Employees are and were employees of Defendant.

20. On the day of an assigned job, Surfers travel to Defendant's central location, a three-story lot on O'Farrell Street in San Francisco. Surfers retrieve the keys to the rental car and prepare to drive them to the customer's location. Before driving, Surfers must check that the car is cleaned. If the car is not clean, they must clean it. If the car does not have a full tank of gas, drivers must drive the car to a station and fill up using Defendant's fuel card. Plaintiff estimates that 50% of the rental vehicles he delivered required filling up before delivery. Because the compensation of Plaintiff and other aggrieved employees is based on each job completed and the distance of that job, this additional time is not compensated.

21. Surfers must drive anywhere from 1 mile to 1 hour to deliver vehicles. These deliveries include destinations in Alameda County. Once they arrive at a job site, Surfers contact Defendant's customer to deliver the vehicle. Whenever a customer does not answer or there is a technical issue with the delivery—for instance, the customer's payment has not gone through—Surfers must contact Defendant's Help Advisor, a customer-service middleman between Surfers and Defendant's Customers. For roughly half of the jobs worked by Plaintiff, he had to contact a Help Advisor in order to complete the job. Plaintiff waited an average of ten minutes and sometimes as long as an hour for a Help Advisor to resolve the issue and permit him to complete his job. Because

1 the compensation of Plaintiff and other aggrieved employees is based on each job completed and the
2 distance of that job, this additional time is not compensated.

3 22. After Surfers deliver a rental vehicle to one of Defendant's customers, they must
4 make their way back to Defendant's central location in order to complete another job. Because the
5 compensation of Plaintiff and other aggrieved employees is based on each job completed and the
6 distance of that job, this additional time is not compensated. Surfers walk, skateboard, scooter, bike,
7 or take BART to return to Defendant after dropping off their vehicle. Defendant's policy is to
8 reimburse Surfers for public transportation costs associated with their work-related travel, but
9 Defendant has routinely failed to reimburse Plaintiff and other aggrieved employees for these and
10 other work-related travel costs.

11 23. After the customer completes their use of a rental vehicle, Surfers must travel
12 anywhere from 1 mile to 1 hour to pick up the vehicle from Defendant's customer's location.
13 Because the compensation of Plaintiff and other aggrieved employees is based on each job
14 completed and the distance of that job, this additional time is not compensated. Again, Surfers walk,
15 skateboard, scooter, bike, or take BART to Defendant's customers in order to pick up Defendant's
16 vehicles. Defendant's policy is to reimburse Surfers for public transportation costs associated with
17 their work-related travel, but Defendant has routinely failed to reimburse Plaintiff and other
18 aggrieved employees for these and other work-related travel costs. Once Surfers arrive at the rental
19 vehicle's location, Defendant requires Surfers to take a minimum of 22 photos of the rental
20 vehicle's condition. Surfers must upload these photos to Slack. Surfers then retrieve the vehicle and
21 drive it back to Defendant's central location.

22 24. After a job is completed, Defendant sends Surfers an invoice of the completed job on
23 Slack. This invoice merely states the day and time of the assignment and the amount earned for each
24 job. Within one to two days thereafter, Defendant deposits a piece-rate payment for the jobs or tips
25 completed on a given day to the Surfer's bank account. Defendant makes these deposits using a
26 Stripe Express application. Defendant requires Surfers to download Stripe Express to their personal
27 phones. Defendant does not issue Surfers a formal wage statement or any other record of their work
28 performed.

25. In addition to requiring Surfers to download Slack and Stripe Express, Defendant requires Surfers to use their personal cell phones in order to complete their job duties. Surfers must use a maps application on their cell phone in order to find the pick-up or drop-off location for a given customer. Surfers must use their personal cell phones to contact a manager or Help Advisor should any issues arise, as they did on half of Plaintiff's jobs. The photos that Defendant requires Surfers to take recording the condition of a picked-up rental vehicle are so voluminous that Plaintiff regularly ran out of data in his personal data plan of 25 gigabytes per month. Defendant does not provide Surfers with company cell phones and does not reimburse Surfers for personal-cell phone expenses that Surfers incur as part of Defendant's business operations.

26. Defendant required Plaintiff and Class Members to continuously work without authorizing or providing paid rest periods. Plaintiff and Class Members regularly worked more than three-and-one-half (3½) hours without being authorized or permitted to take a paid ten (10) minute rest period. Defendant failed to pay one additional hour of pay at Plaintiff's and Class Members' respective regular rates of compensation for each workday that they were not provided a rest period.

27. The work Plaintiff performed on Defendant's behalf was entirely consistent with that of other Surfers as described in paragraphs 14-27 above.

28. Defendant did not pay Plaintiff and Aggrieved Employees all wages owed at the time of their separation from employment.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

(Labor Code §§ 2698 *et seq.*)

(On behalf of Plaintiff and other aggrieved employees)

29. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference. Plaintiff alleges as follows a representative cause of action on behalf of himself and all other aggrieved employees of Defendant who have suffered the Labor Code violations described below.

1 30. Pursuant to Labor Code section 2699.3(a), on December 15, 2022, Plaintiff gave
2 notice by electronic filing and by certified mail to Defendant, and the Labor and Workforce
3 Development Agency (“LWDA”) of the factual and legal basis for the labor law violations alleged
4 in this complaint. The LWDA has not provided notice pursuant to Labor Code section
5 2699.3(a)(2)(A), and 65 calendar days have passed since the postmark date of Plaintiff’s LWDA
6 notice. Therefore, Plaintiff is entitled to commence a civil action pursuant to Labor Code section
7 2699.

8 31. Labor Code section 2699(f) provides, in pertinent part: “For all provisions of this
9 code except those for which a civil penalty is specifically provided, there is established a civil
10 penalty for a violation of these provisions, as follows: . . . If, at the time of the alleged violation, the
11 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
12 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
13 aggrieved employee per pay period for each subsequent violation.”

14 32. Labor Code section 226.8 subsections (b) and (c) specifically provide for a civil
15 penalty as follows:

16 (b) If the Labor and Workforce Development Agency or a court issues a
17 determination that a person or employer has engaged in any of the enumerated
18 violations of subdivision (a), the person or employer shall be subject to a civil
19 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen
20 thousand dollars (\$15,000) for each violation, in addition to any other penalties
21 or fines permitted by law

22 (c) If the Labor and Workforce Development Agency or a court issues a
23 determination that a person or employer has engaged in any of the enumerated
24 violations of subdivision (a) and the person or employer has engaged in or is
25 engaging in a pattern or practice of these violations, the person or employer shall
26 be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and
27 not more than twenty-five thousand dollars (\$25,000) for each violation, in
28 addition to any other penalties or fines permitted by law.

1 33. Labor Code section 2699(g)(1) provides, in pertinent part: [A]n aggrieved employee
2 may recover the civil penalty described in subdivision (f) in a civil action . . . filed on behalf of
3 himself or herself and other current or former employees against whom one or more of the alleged
4 violations was committed. Any employee who prevails in any action shall be entitled to an award of
5 reasonable attorney's fees and costs.

6 34. Plaintiff is an aggrieved employee as defined by Labor Code section 2699(a).

7 35. Plaintiff's cause of action under Labor Code section 2698, *et seq.* is based on the
8 following allegations:

- 9 a. Violations of Labor Code section 226.8 for willfully misclassifying Plaintiff and other
10 aggrieved employees as independent contractors.
- 11 b. Violations of Labor Code section 2802 for failing to reimburse Plaintiff and other
12 aggrieved employees for business-related expenses due to the costs of (1) cell phone
13 use to (a) obtain jobs from Defendant, (b) communicate with Defendant regarding each
14 job, (c) upload photographs to Slack regarding each job, (d) use maps applications to
15 reach the location of Defendant's customers, and (e) receive payments and wage
16 information; and (2) travel to and from the location of Defendant's customers when
17 picking up and dropping off Defendant's rental vehicles, such travel including but not
18 being limited to the costs incurred through (a) public transportation fares, and the
19 work-related use of (b) bikes, (c) scooters, (d) skateboards, and (e) other personal
20 vehicles.
- 21 c. Violations of Labor Code section 226 for failing to provide Plaintiff and other
22 aggrieved employees with adequate itemized wage statements that included, among
23 other things, all hours worked.
- 24 d. Violations of Labor Code section 226.2 for failing to compensate Plaintiff and other
25 aggrieved employees for rest and recovery periods separate from any piece-rate
26 compensation; for failing to compensate Plaintiff and other aggrieved employees for
27 nonproductive time, specifically the time spent responding to notifications,
28 communicating with Defendant when a job is dropped due to Defendant's customer's

1 modification, returning to Defendant's location after delivering a car, traveling to a
2 customer's location before picking up a car, and waiting for and speaking with
3 Defendant's Help Advisor whenever there is a technical issue on a job; and for failing
4 to provide Plaintiff and other aggrieved employees with adequate itemized wage
5 statements that included, among other things, the total hours of compensable rest and
6 recovery periods, the rate of compensation, and the gross wages paid for those periods
7 during the pay period, and the total hours of other nonproductive time, the rate of
8 compensation, and the gross wages paid for that time during the pay period.

- 9 e. Violations of Labor Code section 558 and 1197.1 for failing to pay Plaintiff and other
10 aggrieved employees at least minimum wages for all hours worked and for failing to
11 pay all wages due at the time of termination.
- 12 f. Violations of Labor Code section 558, 510, and 1194 for failing to pay Plaintiff and
13 other aggrieved employees overtime wages for all hours worked in excess of 40 hours
14 in a week or 8 hours in a day up to 12 hour and double-time wages for all hours
15 worked in excess of 12 hours in a day.
- 16 g. Violations of Labor Code sections 201 through 203, requiring the timely payment of
17 wages upon separation from employment. Defendant has not timely paid Plaintiff and
18 other aggrieved employees who are no longer employed by Defendant all wages owed
19 and due at the time of their separation from employment.
- 20 h. Violations of Labor Code section 204 and 210 for failing to set a regular payday on
21 which Plaintiff and other aggrieved employees are paid all wages owed and for failing
22 to pay Plaintiff and other aggrieved employees all wages owed on their regular payday.

23 36. As a direct and proximate result of Defendant's unlawful practices and policies,
24 Plaintiff and other aggrieved employees have suffered and continue to suffer monetary losses.

25 37. Plaintiff, on behalf of himself and all other aggrieved employees, requests civil
26 penalties against Defendant for violations of the Labor Code, as provided under Labor Code section
27 2699(f) and as provided under any of the Labor Code sections that Plaintiff alleges herein that
28

1 Defendant violated, plus reasonable attorneys' fees and costs, as provided under Labor Code section
2 2699(g)(1), in amounts to be proven at trial.

3 **VII. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, on behalf of himself and all other aggrieved employees requests
5 relief as follows:

- 6 a. An award of civil penalties under Labor Code section 2698, *et seq.*, including any civil
7 penalties specifically set forth under any of the Labor Code sections that Plaintiff alleges
8 herein that Defendant violated;
- 9 b. An award to Plaintiff of reasonable attorneys' fees and costs, pursuant to Labor Code
10 section 2699, and/or other applicable law; and
- 11 c. An award to Plaintiff of such other and further relief as this Court deems just and proper.

12 DATED: May 4, 2023

HUNTER PYLE LAW

13
14 By:  _____

15 Hunter Pyle
16 John J. Darin

17 *Attorneys for Plaintiff*
18 *and all similarly situated Aggrieved Employees*
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Hunter Pyle Law, 505 14th Street, Suite 600, Oakland, California 94612. On this day, I served the following Document(s):

FIRST AMENDED COMPLAINT

☒ By Electronic Service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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Attorneys for Defendant
Kyte Rentals LLC

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, May 4, 2023.



DARLENE SANCHEZ