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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JON IZENMAN, individually, and on behalf of all
other aggrieved employees,

Plaintiff,

vs.

SHIPT, INC., a Delaware Corporation; and DOES
1-20, inclusive,

Defendants.

CASE NO. **23STCV16034**

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE §§ 2698 *et seq.*)**

COMES NOW Plaintiff JON IZENMAN (“Plaintiff”), on behalf of the general public and
all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private
attorney general, and asserts claims against Defendant SHIPT, INC., a Delaware Corporation, and
DOES 1-20, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys
General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved
employees” to bring a lawsuit as a representative action on behalf of the general public, as private

1 attorney general, and on behalf of all other current and former aggrieved employees, to recover civil
2 penalties and address an employer's violations of the California Labor Code.

3 2. In this case, Defendants violated various provisions of the California Labor Code. As
4 set forth below, Defendants implemented policies and practices which led to unpaid wages and civil
5 penalties resulting from Defendant's: (a) willful misclassification of Plaintiff and other aggrieved
6 employees as independent contractors; (b) requirement that Plaintiff and other aggrieved employees
7 work more than six days a week without one day of rest; (c) requirement that Plaintiff and other
8 aggrieved employees enter into written agreements with Defendants that contained numerous illegal
9 provisions; (d) failure to remit gratuities to Plaintiff and other aggrieved employees; (e) failure to
10 post the requisite information about time and place of employment and failure to pay compensation
11 in cash-negotiable instruments; (f) improper deduction of costs of equipment and tools necessary to
12 Plaintiff's and other aggrieved employees' work for Defendants, as well as improper deduction of
13 costs associated with damage to property and merchandise; (g) failure to allow Plaintiff and other
14 aggrieved employees to accrue and use paid sick days when permitted; (h) failure to secure workers'
15 compensation for Plaintiff and other aggrieved employees; (i) failure to pay all wages earned for
16 labor performed each pay period; (j) failure to pay earned minimum and/or overtime wages for all
17 hours worked; (k) failure to provide meal periods before the end of the fifth hour worked and failure
18 to pay an additional hour's pay in lieu of providing a meal period before the end of the fifth hour
19 worked; (l) failure to authorize and permit rest breaks for every four hours or major fraction thereof
20 worked and failure to pay an additional hour's of pay in lieu of providing a rest period; (m) failure
21 to provide wage statements containing all required information; (n) failure to maintain required
22 records of all hours worked by Plaintiff and other aggrieved employees; (o) failure to pay all wages
23 earned and owed upon separation from Defendants' employ; and (p) failure to indemnify Plaintiff
24 and other aggrieved employees for all necessary expenditures required by Defendants. As a result,
25 Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private
26 attorney general and all other aggrieved employees.

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II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief, each Defendant either has sufficient minimum contacts in California – Los Angeles County, or otherwise intentionally avails itself of the California – Los Angeles County market so as to render the exercise of jurisdiction over it by the California Courts consistent with traditional notions of fair play and substantial justice.

5. Venue is proper in this judicial district pursuant to Code of Civil Procedure section 395. Defendant SHIPT, INC., a Delaware corporation, and Does 1 through 20, are operating and doing business in, California – Los Angeles County, and each Defendant is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and all other aggrieved employees within the State of California and within Los Angeles County and elsewhere in California.

6. On information and belief, Defendants have conducted business within the State of California during the purported liability period and continue to conduct business in the State of California, including in Los Angeles County. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the similarly situated non-exempt aggrieved employees within Los Angeles County and the State of California.

7. The California Superior Court also has jurisdiction in this matter because on information and belief there are no federal questions at issue, as the issues herein are based solely on California statutes and law, including the California Labor Code, the IWC Wage Orders, the California Code of Civil Procedure, the California Civil Code, and the California Business and Professions Code.

1 8. On information and belief, during the statutory liability period and continuing to the
2 present ("liability period"), Defendants consistently maintained and enforced against Defendants'
3 non-exempt employees ("aggrieved employees"), among others, the following unlawful practices
4 and policies, in violation of California state wage and hour laws: (a) willfully misclassifying Plaintiff
5 and other aggrieved employees as independent contractors; (b) requiring Plaintiff and other
6 aggrieved employees to work more than six days a week without one day of rest; (c) requiring
7 Plaintiff and other aggrieved employees to enter into written agreements with Defendants that
8 contained numerous illegal provisions; (d) failing to remit gratuities to Plaintiff and other aggrieved
9 employees; (e) failing to post the requisite information about time and place of employment and
10 failing to pay compensation in cash-negotiable instruments; (f) improperly deducting costs of
11 equipment and tools necessary to Plaintiff's and other aggrieved employees' work for Defendants,
12 as well as improperly deducting costs associated with damage to property and merchandise; (g)
13 failing to allow Plaintiff and other aggrieved employees to accrue and use paid sick days when
14 permitted; (h) failing to secure workers' compensation for Plaintiff and other aggrieved employees;
15 (i) failing to pay all wages earned for labor performed each pay period; (j) failing to pay earned
16 minimum and/or overtime wages for all hours worked; (k) failing to provide meal periods before the
17 end of the fifth hour worked and failing to pay an additional hour's pay in lieu of providing a meal
18 period before the end of the fifth hour worked; (l) failing to authorize and permit rest breaks for every
19 four hours or major fraction thereof worked and failing to pay an additional hour's pay in lieu of
20 providing a rest period; (m) failing to provide wage statements containing all required information;
21 (n) failing to maintain required records of all hours worked by Plaintiff and other aggrieved
22 employees; (o) failing to pay all wages earned and owed upon separation from Defendants' employ;
23 and (p) failing to indemnify Plaintiff and other aggrieved employees for all necessary expenditures
24 required by Defendants.

25 9. On information and belief, during the statutory liability period and continuing to the
26 present, Defendants have had a consistent policy of willfully misclassifying Plaintiff and other
27 aggrieved employees as independent contractors, in violation of California's wage and hour laws.
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1 10. On information and belief, during the statutory liability period and continuing to the
2 present, Defendants have had a consistent policy of requiring Plaintiff and other aggrieved employees
3 to work more than six days a week without one day of rest, in violation of California's wage and
4 hour laws.

5 11. On information and belief, during the statutory liability period and continuing to the
6 present, Defendants have had a consistent policy of requiring Plaintiff and other aggrieved employees
7 to enter into written agreements with Defendants that contained numerous illegal provisions, in
8 violation of California's wage and hour laws.

9 12. On information and belief, during the statutory liability period and continuing to the
10 present, Defendants have had a consistent policy of failing to remit gratuities to Plaintiff and other
11 aggrieved employees, in violation of California's wage and hour laws.

12 13. On information and belief, during the statutory liability period and continuing to the
13 present, Defendants have had a consistent policy of failing to post the requisite information about
14 time and place of employment and failing to pay compensation in cash-negotiable instruments, in
15 violation of California's wage and hour laws.

16 14. On information and belief, during the statutory liability period and continuing to the
17 present, Defendants have had a consistent policy of improperly deducting costs of equipment and
18 tools necessary to Plaintiff's and other aggrieved employees' work for Defendants, as well as
19 improperly deducting costs associated with damage to property and merchandise, in violation of
20 California's wage and hour laws.

21 15. On information and belief, during the statutory liability period and continuing to the
22 present, Defendants have had a consistent policy of failing to allow Plaintiff and other aggrieved
23 employees to accrue and use paid sick days when permitted, in violation of California's wage and
24 hour laws.

25 16. On information and belief, during the statutory liability period and continuing to the
26 present, Defendants have had a consistent policy of failing to secure workers' compensation for
27 Plaintiff and other aggrieved employee, in violation of California's wage and hour laws.
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1 17. On information and belief, during the statutory liability period and continuing to the
2 present, Defendants have had a consistent policy of failing to pay all wages earned for labor
3 performed each pay period, in violation of California's wage and hour laws.

4 18. On information and belief, during the statutory liability period and continuing to the
5 present, Defendants have had a consistent policy of failing to pay earned minimum and/or overtime
6 wages for all hours worked, in violation of California's wage and hour laws.

7 19. On information and belief, during the statutory liability period and continuing to the
8 present, Defendants have had a consistent policy of failing to provide meal periods before the end of
9 the fifth hour worked and failing to pay an additional hour's pay in lieu of providing a meal period
10 before the end of the fifth hour worked, in violation of California's wage and hour laws.

11 20. On information and belief, during the statutory liability period and continuing to the
12 present, Defendants have had a consistent policy of failing to authorize and permit rest breaks for
13 every four hours or major fraction thereof worked and failing to pay an additional hour's pay in lieu
14 of providing a rest period, in violation of California's wage and hour laws.

15 21. On information and belief, during the statutory liability period and continuing to the
16 present, Defendants have had a consistent policy of failing to provide wage statements containing all
17 required information, in violation of California's wage and hour laws.

18 22. On information and belief, during the statutory liability period and continuing to the
19 present, Defendants have had a consistent policy of failing to maintain required records of all hours
20 worked by Plaintiff and other aggrieved employees, in violation of California's wage and hour laws.

21 23. On information and belief, during the statutory liability period and continuing to the
22 present, Defendants have had a consistent policy of failing to indemnify Plaintiff and other aggrieved
23 employees for all necessary expenditures required by Defendants, in violation of California's wage
24 and hour laws.

25 24. On behalf of the general public, as private attorney general, and on behalf of all other
26 aggrieved employees, Plaintiff brings this actions seeking penalties, interest, attorneys' fees and
27 costs, pursuant to Labor Code 2698, et. seq. for violations of the following enumerated Labor Code
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sections: sections 201, 202, 203, 204, 207, 210–214, 218, 218.5, 218.6, 221–224, 225.5, 226, 226.3, 226.7, 226.8, 227, 245–249, 256, 351, 353, 432.5, 510, 512, 550, 551, 552, 558, 558.1, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2699, 2753, 2802, 2802(a), 3700, 3700.5, 3712, and 3715.

III. PARTIES

A. Plaintiff

25. Plaintiff JON IZENMAN is a resident of California who was employed by Defendants and who provided notice to the Labor and Workforce Development Agency within the last year preceding the filing of this action. Specifically, Plaintiff was employed as a shopper. Plaintiff's duties as a shopper included accepting customer orders through Defendants' phone-based application and delivering those orders to the customer on time.

26. On information and belief, Defendants misclassified Plaintiff and other aggrieved employees as independent contractors. Plaintiff and other aggrieved employees worked for Defendants as shoppers, accepting customer orders through Defendants' phone-based application and delivering those orders to the customer on time. Plaintiff worked in excess of 10 hours each day, seven days a week. Plaintiff and other aggrieved employees were employees under California law, in that (1) they were not free from Defendants' control and direction in the performance of the work, both under the contract for the performance of the work and in fact, (2) the work they performed work was entirely within the usual course of the Defendants' delivery service business, and (3) at no time were Plaintiff and other aggrieved employees customarily engaged in an independently established trade, occupation, or business of the same nature as the work they performed for Defendants. Further, Defendants' phone-based application was supposed to track all the time Plaintiff and other aggrieved employees worked. However, Plaintiff and other aggrieved employees were regularly kicked off the app in the middle of completing an order. Out of fear of losing access to the app for failing to accept enough and complete all orders Plaintiff and other aggrieved employees finished orders even if it meant they were working off the clock. By intermittently booting Plaintiff and other aggrieved employees from the application and making their access to the application depend on completion of orders, Defendants (1) unilaterally prescribed specific dates,

1 times of day, or a minimum number of hours during which Plaintiff and other aggrieved employees
2 must be logged into Defendants' application and (2) required Plaintiff and other aggrieved employees
3 to accept specific delivery requests as a condition of maintaining access to Defendants' application.

4 27. As Defendants' employees, Plaintiff and other aggrieved employees were regularly
5 required to:

6 (a) work more than six days a week without one day of rest, all in violation of
7 California labor laws, regulations, and the Industrial Welfare Commission ("IWC")
8 Wage Orders;

9 (b) enter into written agreements with Defendants that contained numerous illegal
10 provisions, all in violation of California labor laws, regulations, and the IWC Wage
11 Orders;

12 (c) work without being paid all earned gratuities, all in violation of California labor
13 laws, regulations, and the IWC Wage Orders;

14 (d) work in an environment which lacked the requisite information about time and
15 place of employment and work without being paid compensation in cash-negotiable
16 instruments, all in violation of California labor laws, regulations, and the IWC Wage
17 Orders;

18 (e) suffer deduction of costs of equipment and tools necessary to Plaintiff's and other
19 aggrieved employees' work and suffer deduction of costs associated with property
20 damage, all in violation of California labor laws, regulations, and the IWC Wage
21 Orders;

22 (f) work without accruing and being able to use paid sick days, all in violation of
23 California labor laws, regulations, and the IWC Wage Orders;

24 (g) work without being provided workers' compensation, all in violation of California
25 labor laws, regulations, and the IWC Wage Orders;

26 (h) work without being paid all wages earned for labor performed each pay period,
27 all in violation of California labor laws, regulations, and the IWC Wage Orders;
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1 (i) work in excess of eight (8) hours per day, and/or forty (40) hours per week without
2 receiving overtime compensation, all in violation of California labor laws,
3 regulations, and the IWC Wage Orders;

4 (j) work without being paid minimum wage for all hours worked, all in violation of
5 California labor laws, regulations, and the IWC Wage Orders;

6 (k) work in excess of five hours per day without being provided meal periods and not
7 compensated one (1) hour of pay at the regular rate of compensation for each workday
8 that a meal period was not provided, all in violation of California labor laws,
9 regulations, and the IWC Wage Orders;

10 (l) work without being permitted or authorized a minimum ten-minute rest period for
11 every four hours or major fraction thereof worked and not compensated one (1) hour
12 of pay at his regular rate of compensation for each workday that a rest period was not
13 provided, all in violation of California labor laws, regulations, and the IWC Wage
14 Orders;

15 (m) work without being provided wage statements containing all required
16 information, all in violation of California labor laws, regulations, and the IWC Wage
17 Orders;

18 (n) work without having Defendants maintain all required records, all in violation of
19 California labor laws, regulations, and the IWC Wage Orders;

20 (o) work without being paid all earned wages upon separation from Defendants'
21 employ; and

22 (p) work without being reimbursed for business-related expenses, all in violation of
23 California labor laws, regulations, and the IWC Wage Orders.

24 28. Plaintiffs seek penalties under Labor Code 2698, et. seq. on behalf of the general
25 public as private attorney general and all other aggrieved employees.

26 **B. Defendants**
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1 29. On information and belief, Defendant SHIPT, INC., is a Delaware corporation
2 operating in and authorized to conduct business in the State of California. Defendant provides
3 shopping delivery services throughout California, including in Los Angeles County, and employs
4 numerous non-exempt employees as shoppers.

5 30. Other than identified herein, Plaintiff is unaware of the true names, capacities,
6 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
7 DOES 1 through 20, but is informed and believes and thereon alleges that said defendants are legally
8 responsible for the wrongful conduct alleged herein and therefore sues these defendants by such
9 fictitious names. Plaintiff will amend this complaint when their true names and capabilities are
10 ascertained.

11 31. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
12 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees,
13 and exercised control over their wages, hours, and working conditions. Plaintiff is informed and
14 believes and thereon alleges that each defendant acted in all respects pertinent to this action as the
15 agent of the other defendants, carried out a joint scheme, business plan or policy in all respects
16 pertinent hereto, and the acts of each defendant are legally attributable to the other defendants.

17 **IV. GENERAL ALLEGATIONS**

18 32. Plaintiff is informed and believes, and based thereon alleges that Defendants employ
19 or employed non-exempt employees throughout California during the liability period. Plaintiff and
20 other aggrieved employees were compensated generally based upon an hourly rate and have at all
21 times pertinent hereto been non-exempt within the meaning of the California Labor Code and the
22 implementing rules and regulations of the IWC California Wage Orders.

23 33. On information and belief, and during the relevant time frame, all aggrieved
24 employees have been residents of California and citizens of the United States.

25 34. On information and belief, Defendants operate a shopping and delivery service
26 throughout California, including in Los Angeles County. Plaintiff was employed as a non-exempt
27 shopper for Defendants, accepting customer orders and delivering products to customers on time.
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1 35. Throughout Plaintiff's employment with Defendants, Plaintiff was not exempt from
2 California employment laws and regulations, in that he routinely spent a majority of his working
3 hours performing duties delegated to non-exempt employees including, but not limited to, accepting
4 customer orders and delivering products to customers on time. Defendants misclassified Plaintiff
5 and other aggrieved employees as independent contractors. Plaintiff and other aggrieved employees
6 worked for Defendants as a shopper, accepting customer orders through Defendants' phone-based
7 application and delivering those orders to the customer on time. Plaintiff worked in excess of 10
8 hours each day, seven days a week. Plaintiff and other aggrieved employees were actually employees
9 under California law, in that: (1) they were not free from Defendants' control and direction in the
10 performance of the work, both under the contract for the performance of the work and in fact; (2) the
11 work they performed work was entirely within the usual course of the Defendants' delivery service
12 business; and (3) at no time were Plaintiff and other aggrieved employees customarily engaged in
13 an independently established trade, occupation, or business of the same nature as the work they
14 performed for Defendants. Further, Defendants' phone-based application was supposed to track all
15 the time Plaintiff and other aggrieved employees worked. However, Plaintiff and other aggrieved
16 employees were regularly kicked off the app in the middle of completing an order. Out of fear of
17 losing access to the app for failing to accept enough and complete all orders Plaintiff and other
18 aggrieved employees finished orders even if it meant they were working off the clock. By
19 intermittently booting Plaintiff and other aggrieved employees from the application and making their
20 access to the application depend on completion of orders, Defendants (1) unilaterally prescribed
21 specific dates, times of day, or a minimum number of hours during which Plaintiff and other
22 aggrieved employees must be logged into Defendants' application and (2) required Plaintiff and other
23 aggrieved employees to accept specific delivery requests as a condition of maintaining access to
24 Defendants' application.

25 36. Throughout Plaintiff's employment with Defendants, Plaintiff spent few to none of
26 his working hours performing work that was primarily intellectual, managerial or creative, or work
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1 that required the regular and customary exercise of discretion and independent judgment with respect
2 to matters of significance on more than an occasional basis.

3 37. Throughout Plaintiff's employment, and as a result of Defendants' misclassification
4 of Plaintiff, Plaintiff was required to work more than six days a week without being provided a day
5 of rest; enter into written agreements with Defendants that contained numerous illegal provisions;
6 work without being paid all earned gratuities; work in an environment which lacked the requisite
7 information about time and place of employment and work without being paid compensation in cash-
8 negotiable instruments; suffer deduction of costs of equipment and tools necessary to Plaintiff's and
9 other aggrieved employees' work and suffer deduction of costs associated with property damage;
10 work without accruing and being able to use paid sick days; work without being provided workers'
11 compensation; work without being paid all wages earned for labor performed each pay period; work
12 in excess of eight (8) hours per day, and/or forty (40) hours per week without receiving overtime
13 compensation; work without being paid minimum wage for all hours worked; work in excess of five
14 hours per day without being provided meal periods and not compensated one (1) hour of pay at the
15 regular rate of compensation for each workday that a meal period was not provided; work without
16 being permitted or authorized a minimum ten-minute rest period for every four hours or major
17 fraction thereof worked and not compensated one (1) hour of pay at his regular rate of compensation
18 for each workday that a rest period was not provided; work without being provided wage statements
19 containing all required information; work without having Defendants maintain all required records;
20 work without being paid all earned wages upon separation from Defendants' employ; and work
21 without being reimbursed for business-related expenses.

22 38. Upon information and belief, Defendants knew and or should have known that it is
23 improper to implement policies and commit unlawful acts such as those listed in paragraph 37.

24 39. In addition to the violations above, and on information and belief, Defendants knew
25 they had a duty to compensate Plaintiff and other aggrieved employees for the allegations asserted
26 herein, and Defendants had the financial ability to pay such compensation, but willfully, knowingly,
27 recklessly, and/or intentionally failed to do so.
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1 V. **REPRESENTATIVE CLAIMS**

2 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.***

3 40. Plaintiff incorporates by reference and re-alleges each and every allegation contained
4 above, as though fully set forth herein.

5 41. On or about May 5, 2023, Plaintiff complied with notice requirements pursuant to
6 Labor Code section 2699.3. A copy of the notice was electronically submitted to the LWDA and a
7 copy was also mailed via certified mail to Defendants indicating that they were on notice of the
8 claims alleged here and that the notice requirement has been satisfied. Sixty-five days have passed
9 and the LWDA has not indicated intent to investigate the claims and Defendants did not provide
10 notice of an attempt to cure any of the alleged violations. Therefore, Plaintiff may proceed with this
11 action in a representative capacity. The LWDA has received timely notice of the substance and
12 violations set forth in this Complaint. Plaintiff has also sent a copy of this PAGA Representative
13 Action Complaint to the LWDA.

14 42. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). Plaintiff
15 brings this cause of action on behalf the general public and all non-exempt aggrieved employees,
16 acting on behalf of the California Attorney General as private attorney general.

17 43. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties due
18 and owing for which Defendants are liable due to numerous Labor Code violations as set forth in
19 this Complaint, including, without limitation, Labor Code section 201, 202, 203, 204, 207, 211–214,
20 218, 218.5, 218.6, 221–224, 225.5, 226, 226.3, 226.7, 226.8, 227, 245–249, 351, 353, 432.5, 510,
21 512, 550, 551, 552, 558, 558.1, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 2699, 2753, 2802, 2802(a),
22 3700, 3700.5, 3712, and 3715 *et seq.*, applicable IWC Wage Orders and California Code of
23 Regulations, Title 8, section 11000 *et. seq.*

24 44. At all times relevant, Plaintiff and all other aggrieved employees regularly performed
25 non-exempt work in excess of 50% of the time, and thus, were subject to the meal and rest break
26 requirements of the applicable IWC wage order and the Labor Code.

1 45. Defendants violated Labor Code section 226.8 and 2573 by willfully misclassifying
2 Plaintiff and other aggrieved employees as independent contractors. Plaintiff and other aggrieved
3 employees worked for Defendants as a shopper, accepting customer orders through Defendants'
4 phone-based application and delivering those orders to the customer on time. Plaintiff worked in
5 excess of 10 hours each day, seven days a week. Plaintiff is informed and believes that Plaintiff and
6 other aggrieved employees were actually employees under California law, in that: (1) they were not
7 free from Defendants' control and direction in the performance of the work, both under the contract
8 for the performance of the work and in fact; (2) the work they performed work was entirely within
9 the usual course of the Defendants' delivery service business; and (3) at no time were Plaintiff and
10 other aggrieved employees customarily engaged in an independently established trade, occupation,
11 or business of the same nature as the work they performed for Defendants. Further, Defendants'
12 phone-based application was supposed to track all the time Plaintiff and other aggrieved employees
13 worked. However, Plaintiff and other aggrieved employees were regularly kicked off the app in the
14 middle of completing an order. Out of fear of losing access to the app for failing to accept enough
15 and complete all orders Plaintiff and other aggrieved employees finished orders even if it meant they
16 were working off the clock. By intermittently booting Plaintiff and other aggrieved employees from
17 the application and making their access to the application depend on completion of orders,
18 Defendants (1) unilaterally prescribed specific dates, times of day, or a minimum number of hours
19 during which Plaintiff and other aggrieved employees must be logged into Defendants' application
20 and (2) required Plaintiff and other aggrieved employees to accept specific delivery requests as a
21 condition of maintaining access to Defendants' application. Accordingly, Defendants are subject to
22 civil penalties under Labor Code sections 226.8 and 2753.

23 46. In violation of Labor Code sections 551 and 552, Defendants caused aggrieved
24 employees, including Plaintiff, to work more than six days in seven without at least one day's rest.
25 Accordingly, Defendants are subject to civil penalties pursuant to Labor Code sections 551, 552,
26 558, and 2699.

1 47. In violation of Labor Code section 432.5, Defendants required Plaintiff and other
2 aggrieved employees to enter into written agreements with Defendants that contained numerous
3 illegal provisions. Accordingly, Defendants are subject to civil penalties under Labor Code sections
4 432.5 and 2699.

5 48. In violation of Labor Code section 351, Defendants collected gratuities from clients
6 as part of their delivery service but failed to remit these gratuities to Plaintiffs. Further, in violation
7 of Labor Code section 353, Defendants have not maintained records of these gratuities. Accordingly,
8 Defendants are subject to civil penalties under Labor Code sections 351 and 2699.

9 49. In violation of Labor Code sections 207 and 211 through 214, Defendants failed to
10 post the requisite information about time and place of payment and did not pay Plaintiff and other
11 aggrieved employees the full compensation owed to them in cash-negotiable instruments.
12 Accordingly, Defendants are subject to civil penalties pursuant to Labor Code sections 225.5 and
13 2699.

14 50. In violation of California Labor Code sections 221, 222.5, 223, 224, and 227,
15 Defendants have deducted from Plaintiff's and other aggrieved employees' pay the costs of
16 equipment and tools necessary for rendering services as well as costs associated with property
17 damage. Accordingly, Defendants are subject to civil penalties under Labor Code sections 225.5 and
18 2699.

19 51. In violation of Labor Code section 246, Defendants failed to implement policies and
20 procedures that would allow Plaintiff and other aggrieved employees to accrue and use paid sick
21 days when permitted. Accordingly, Defendants are subject to civil penalties pursuant to Labor Code
22 sections 248.5, 558, and 2699.

23 52. In violation of Labor Code sections 3700, 3700.5, 3712, and 3715, Defendants have
24 failed to secure workers' compensation for Plaintiff and other aggrieved employees.

25 53. Labor Code section 204 provides that covered employees are entitled to receive all
26 wages earned for the pay period corresponding to the payday. Here, Defendants regularly failed to
27 pay Plaintiff and other aggrieved employees all wages earned for labor performed each pay period.
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1 For example, Defendants regularly suffered or permitted Plaintiff and other aggrieved employees to
2 work off the clock, but Plaintiff and other aggrieved employees were not compensated for hours
3 worked off the clock. For example, among other things, Defendants failed to provide meal periods
4 or any breaks and required Plaintiff and other aggrieved employees to continue working after being
5 locked out of their application in order to service customers such that employees overall lost hours
6 worked. Defendants also failed to provide the requisite one hour of pay at the regular rate of
7 compensation for shifts with missed or non-compliant meal and/or rest periods.

8 54. Defendants violated Labor Code sections 1194 and 1197 and IWC Wage Order No.9-
9 2001 section 4 by failing to pay Plaintiff and other aggrieved employees their earned minimum
10 and/or overtime wages for all hours worked. For example, Defendants regularly suffered or permitted
11 Plaintiff and other aggrieved employees to work off the clock without compensation. Defendants
12 failed to provide meal periods or any breaks and required Plaintiff and other aggrieved employees to
13 continue working after being locked out of Defendants' application in order to service customers.
14 This resulted in Plaintiff and other aggrieved employees not being paid for all hours worked.

15 55. Defendants violated Labor Code sections 510 and 1194 by requiring Plaintiff and
16 other aggrieved employees to work in excess of eight (8) hours in a day and/or in excess of forty (40)
17 hours in one workweek without being compensated overtime pay. Section 510 of the Labor Code
18 codifies the right to overtime compensation at the rate of one and one-half times the regular rate of
19 pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week.
20 Further, Defendants suffered or permitted Plaintiff and other aggrieved employees to work off the
21 clock without compensation. Defendants, among other things, required Plaintiff and other aggrieved
22 employees to continue working after being locked out of Defendants' application in order to service
23 customers. Yet Defendants did not compensate Plaintiff and other aggrieved employees for such
24 work, nor did Defendants count such time working off the clock for purposes of calculating overtime.
25 As another example, Defendants did not allow Plaintiff and other aggrieved employees to include
26 pre- and post-trip inspections in their time worked. This meant Defendant did not pay Plaintiff and
27 other aggrieved employees for all overtime hours worked.
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1 56. Defendants violated Labor Code sections 226.7 and 512 by failing to provide timely,
2 uninterrupted meal periods or compensation in lieu thereof. Pursuant to Labor Code section 512, no
3 employer shall employ an employee for a work period of more than five (5) hours without providing
4 a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her
5 duties.

6 57. Plaintiff and other aggrieved employees were systematically not permitted or
7 authorized to take one ten-minute rest period for every four hours worked or major fraction thereof,
8 which is a violation of the Labor Code and IWC wage order 9-2001, section 11. On shifts where
9 Plaintiff and aggrieved employees worked in excess of three and a half hours, they were routinely
10 not permitted or authorized to take lawful rest periods. Plaintiff, and on information and belief,
11 aggrieved employees, were not compensated with one hour of wages for every day in which a rest
12 period was missed as a result of Defendants' policies and practices. By failing to authorize and permit
13 a ten-minute rest period for every four hours or major fraction thereof worked per day, and by failing
14 to provide compensation for such unprovided rest periods as alleged above, Defendants willfully
15 violated the provisions of Labor Code sections 226.7 and 512 and the applicable IWC Wage Order.

16 58. Defendants violated Labor Code section 226 by failing to provide compliant wage
17 statements containing all information required by that section. For example, Defendants failed to
18 provide compliant wage statements because the statements provided failed to reflect all compensable
19 hours Plaintiff and other aggrieved employees worked, including time lost due to Defendants'
20 practice of requiring Plaintiff and other aggrieved employees to work after being locked out of the
21 application. As another example, Defendants failed to provide compliant wage statements because
22 the statements failed to list meal and/or rest period premiums owed for shifts with non-compliant
23 meal/rest periods.

24 59. Due to Defendants' practice of allowing off-the-clock work, requiring aggrieved
25 employees to continue working after being locked out of the application, failing to pay overtime
26 wages due, failing to provide compliant meal and rest periods, and failing to provide compliant wage
27 statements, Defendants knowingly and intentionally failed to maintain all required records, including
28

1 all hours worked by Plaintiff and other aggrieved employees, meal periods taken, and accurate
2 itemized wage statements. Accordingly, Defendants are subject to civil penalties under Labor Code
3 sections 1174 and 1174.5.

4 60. Defendants failed to pay all earned wages in accordance with Labor Code sections
5 201, 202, and 203. Aggrieved employees who quit or were discharged were not paid all earned wages
6 in accordance with Labor Code sections 201, 202, and 203 due to Defendants' policy of requiring
7 aggrieved employees to continue working after being locked out of the application, failing to pay
8 aggrieved employees overtime to which they were entitled, failing to pay penalties for non-compliant
9 meal and rest breaks. Nor have defendants paid any of the continuation wages required by Labor
10 Code section 203.

11 61. Defendants violated Labor Code section 2802 by failing to reimburse Plaintiff and
12 other aggrieved employees for all necessary expenditures required by Defendants, including vehicle-
13 related expenses, mileage, losses and breakages, and use of personal cell phones.

14 62. Plaintiff and other aggrieved employees are entitled to recover penalties and
15 attorneys' fees and costs under Labor Code section 2698, et. seq.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 18 1. For penalties according to proof, pursuant to Labor Code §§ 2698 *et seq.*;
19 2. For reasonable attorneys' fees and costs; and
20 3. For such other and further relief as the Court deems proper.

21 Dated: July 10, 2023

MAKAREM & ASSOCIATES, APLC

22
23 By: Daniel Bass
24 Ronald W. Makarem
25 Samuel Almon
26 Daniel J. Bass
27 Attorneys for Plaintiff, individually
28 and on behalf of all other aggrieved
employees