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all others similarly situated

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

JUAN JOSE LOPEZ, an Individual,
Individually, and on Behalf of All Similarly
Situating Individuals,

Plaintiffs,

v.

ARDWIN INC. d/b/a ARDWIN FREIGHT, a
California Corporation; and DOES 1 through
25, Inclusive,

Defendants.

Case No. 23STCV18809

CLASS ACTION

FIRST AMENDED COMPLAINT

1. FAILURE TO PAY MINIMUM WAGE;
2. FAILURE TO PAY OVERTIME
COMPENSATION;
3. REIMBURSEMENT OF EMPLOYMENT
EXPENSES;
4. UNLAWFUL DEDUCTION FROM
WAGES;
5. FAILURE TO PROVIDE MEAL
PERIODS;
6. FAILURE TO AUTHORIZE AND PERMIT
REST PERIODS;
7. FAILURE TO FURNISH ACCURATE
WAGE STATEMENTS;
8. WAITING TIME PENALTIES;
9. UNFAIR COMPETITION; AND
10. PRIVATE ATTORNEYS GENERAL ACT

JURY TRIAL DEMANDED

FILED
Superior Court of California
County of Los Angeles

12/29/2023

David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

1 Plaintiff JUAN JOSE LOPEZ (“Plaintiff”), individually and on behalf of all similarly
2 situated individuals, allege as follows:

3 **GENERAL ALLEGATIONS**

4 1. California law imposes numerous requirements on employers. The California Labor Code
5 requires employers to reimburse their employees for all expenses necessarily incurred in connection
6 with their employment. *See* California Labor Code §2802. The Labor Code and attendant
7 regulations also require employers to provide employees with meal and rest periods, and itemized
8 wage statements. The California Workers’ Compensation Act requires that employers provide
9 workers’ compensation insurance (or that employers be permissibly self-insured) for industrially
10 injured or ill employees, and prohibits employers from passing on the cost of such insurance to their
11 employees. *See* California Labor Code §§3200 *et seq*; § 3751. The California Unemployment
12 Insurance Code requires employers to register as employers, to report wages paid to employees, and
13 to pay an unemployment insurance tax to provide certain “safety net” benefits for “persons
14 unemployed through no fault of their own.” *See* California Unemployment Insurance Code §§100 *et*
15 *seq*. Employers may not avoid these important obligations by misclassifying their employees as
16 “independent contractors,” when in fact their workers do not control the means and manner by
17 which they perform their jobs, such that the true nature of the relationship is that of employer and
18 employee.

19 2. This is a proposed class action brought against Defendants ARDWIN, INC. d/b/a ARDWIN
20 FREIGHT, a California Corporation, and DOES 1 through 25 (collectively hereinafter referred to
21 as, “ARDWIN” or “Defendants”), on behalf of Plaintiff and all other non-employee workers who
22 worked in California as a Delivery Drivers for Defendants at any time from February 11, 2019¹ and
23 continuing while this action is pending (“Class Period”), who were denied the benefits and
24 protections required under the California Labor Code and other statutes and regulations applicable
25 to California employees. Although ARDWIN designates these Delivery Drivers as independent

26 _____
27 ¹ The statutory period here is four years and one hundred and seventy-eight days due to California
28 Emergency Rule of Court 9(a), which tolled the applicable statute of limitations for 178 days from
April 6, 2020 to October 1, 2020.

1 contractors, the true nature of the relationship between ARDWIN and these “independent
2 contractor” Drivers under California law is that of employer and employee. ARDWIN exercises
3 pervasive control over the work these Drivers perform, such that its designation of its Drivers as
4 “independent contractors” is a sham designation.

5 3. During the Class Period, Defendants:

- 6 a. unlawfully misclassified Drivers as independent contractors;
- 7 b. failed to reimburse Drivers for necessary business expenditures;
- 8 c. failed to pay wages for all hours worked by Drivers;
- 9 d. failed to pay Drivers the applicable legal minimum wage;
- 10 e. failed to pay overtime wages due to Drivers;
- 11 f. failed to provide meal and rest periods due to Drivers;
- 12 g. failed to provide the Drivers with timely and accurate wage and hour statements;
- 13 h. failed to pay the Drivers compensation in a timely manner upon their termination or
14 resignation;
- 15 i. failed to maintain complete and accurate payroll records for the Drivers;
- 16 j. wrongfully withheld wages and compensation due to the Drivers; and
- 17 k. committed unfair business practices in an effort to increase profits and to gain an
18 unfair business advantage at the expense of the Drivers and the public.

19 4. The foregoing acts and other acts by Defendants - committed throughout California and
20 Los Angeles County - violated provisions of the California Labor Code, including sections 201,
21 202, 203, 204, 226, 226.7, 226.8, 246, 510, 512, 515, 551, 552, 558, 1194, 1198, and 2802
22 (collectively, “Employment Laws”), violated the applicable Wage Orders issued by California’s
23 Industrial Welfare Commission, including Wage Orders 9-2001 during the Class Period
24 (“Regulations”), violated California’s Unfair Business Practices Act, California Business &
25 Professions Code sections 17200 *et seq.*, and violated Plaintiff’s rights.

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1 **JURISDICTION AND VENUE**

2 5. Venue is proper in this Judicial District and the County of Los Angeles because work
3 was performed by Plaintiff and other members of the Class for Defendants in the County of Los
4 Angeles, California, and Defendants' obligations under the Employment Laws and Regulations to
5 pay overtime wages, to provide meal and rest periods and accurate wage statements to Plaintiff and
6 other members of the Class arose and were breached in California, including the County of Los
7 Angeles.

8 6. The California Superior Court has jurisdiction in this matter because Plaintiff is a
9 resident of California, and Defendants are corporations qualified to do business in California and
10 regularly conduct business in California. Further, no federal question is at issue as the claims are
11 based solely on California law.

12 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

13 7. Plaintiff has complied with the procedures for bringing suit specified in California Labor
14 Code Section 2699.3. By letter dated August 8, 2023, Plaintiff, on behalf of himself and the other
15 aggrieved employees, gave written notice by certified mail to the Labor and Workforce
16 Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor
17 Code alleged to have been violated, including the facts and theories to support the alleged
18 violations. Attached as Exhibit "1" is a true and correct copy of the letter sent to the LWDA and
19 Defendants.

20 8. More than sixty-five (65) calendar days have passed since Plaintiff provided the LWDA
21 with written notice. To date, Plaintiff has not received any written notice nor been notified from the
22 LWDA that it does intend to investigate the violations of the California Labor Code alleged herein.

23 **THE PARTIES**

24 9. Plaintiff JUAN JOSE LOPEZ is, and at all relevant times was, a competent adult
25 residing in California. Plaintiff was employed as a Driver by ARDWIN from on or about 2005 to
26 approximately February 2023. Plaintiff would drive a commercial truck and trailer, and was
27 considered a long-haul driver, delivering cargo to ARDWIN's clients and customers throughout
28 California and across the United States. Plaintiff signed an "Commercial Trucking Services and

1 Lease Agreement (Independent Contractor/Owner Operator)” with ARDWIN, the latest one being
2 in 2022, which purported to characterize him as an independent contractor. In fact, however, and as
3 a matter of law, the true relationship between ARDWIN and Plaintiff was that of employer and
4 employee. So much so, that in the approximately last three months of his tenure with Defendants,
5 Plaintiff was recategorized and reclassified as a W-2 employee but continued to perform the same
6 core responsibilities and essential functions as when he was misclassified as an independent
7 contractor.

8 10. Plaintiff brings suit on behalf of himself and all similarly situated individuals pursuant
9 California Code of Civil Procedure section 382, and California Business & Professions Code
10 sections 17200, *et seq.* Plaintiff was unlawfully classified by Defendants as independent
11 contractors and worked as Delivery Driver out of the terminal owned and operated by Defendants’
12 in Burbank, California.

13 11. Defendant ARDWIN INC. is, and at all relevant times was, a California corporation
14 registered with the State of California’s Secretary of State and doing business as ARDWIN
15 FREIGHT. ARDWIN provides logistics and delivery services to its retail merchants to deliver
16 products and services to their clients and/or clients’ customers. ARDWIN utilizes Delivery Drivers
17 to pick up the merchandise at the merchants’ stores or warehouses and to deliver them at the
18 customers’ businesses. ARDWIN is therefore a provider of managed transportation services
19 including the planning and execution for delivery of its merchant clients. ARDWIN has engaged in
20 unlawful employment practices addressed in this First Amended Complaint (“Complaint”)
21 throughout California and in Los Angeles County.

22 12. Plaintiff is informed and believes and based thereon alleges that Defendants uniformly
23 apply their pay practices, and overtime policies to all Delivery Drivers. Plaintiff is currently
24 unaware of the true names and capacities of the defendants sued in this action by the fictitious
25 names DOES 1 through 25, inclusive, and therefore sue those defendants by such fictitious names.

26 13. Plaintiff will amend this Complaint to allege the true names and capacities of such
27 fictitiously named defendants when they are ascertained.

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1 14. Plaintiff is informed and believes and based thereon alleges that each defendant sued in
2 this action, including each defendant sued by the fictitious names DOES 1 through 25, inclusive, is
3 responsible in some manner for the occurrences, controversies and damages alleged below.

4 15. Plaintiff is informed and believes and based thereon alleges that DOES 1 through 25,
5 inclusive were the agents, servants and/or employees of Defendants and, in doing the things
6 hereinafter alleged and at all times, were acting within the scope of their authority as such agents,
7 servants and employees, and with the permission and consent of Defendants.

8 16. Plaintiff is informed and believes and based thereon alleges that Defendants ratified,
9 authorized, and consented to each and all of the acts and conduct of each other as alleged herein.

10 17. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of
11 them, were his employer under California law, that Defendants did acts consistent with the
12 existence of an employer-employee relationship with Plaintiff despite their unlawful classification
13 of Plaintiff and other similarly situated Delivery Drivers as independent contractors.

14 **FACTS COMMON TO ALL CAUSES OF ACTION**

15 18. Defendants unlawfully classified Plaintiff and other similarly situated Drivers as
16 independent contractors when, in fact, they were heavily regulated through a series of work-related
17 restrictions and directives through Defendants.

18 19. Defendants have established an elaborate system and scheme in an attempt to conceal its
19 true status as the employer of its Drivers. As part of this scheme, ARDWIN requires its Drivers to
20 sign various agreements as a condition of employment. Among these agreements is a purported
21 “Commercial Trucking Services and Lease Agreement (Independent Contractor/Owner Operator),”
22 (hereinafter the “CTSLA”) whereby ARDWIN purports to lease the driver a truck. ARDWIN then
23 requires the drivers to execute the CTSLA, and the enclosed appendixes, which characterizes the
24 Driver as an independent contractor who will perform delivery services using his or her “own”
25 equipment (that equipment, in reality, is the truck and trailer that ARDWIN leases to the driver
26 under a separate agreement). Under the CTSLA, cloaked in the form of “agreements,” the driver is
27 engaged to perform work for ARDWIN as a delivery truck driver and ARDWIN controls the
28 manner in which that work is performed in virtually every way. The CTSLA also requires the

1 driver, like Plaintiff, to “agree” to pay numerous expenses incident to the employment, and to
2 assume various risks that ordinarily and by law are the responsibility of an employer.

3 20. This CTSLA is a sham agreement that misclassifies ARDWIN drivers as “independent
4 contractors,” when in fact and under the law they are not. The CTSLA is specifically designed and
5 intended to conceal the true nature of the employment relationship between ARDWIN and its
6 delivery drivers, which is that of employer and employee, and to evade the provisions of California
7 law that confer protections on employees. In particular, ARDWIN has devised and used the
8 CTSLA, and its sham designation of its Drivers as independent contractors, to transfer substantial
9 costs and risks that are the responsibility of ARDWIN as a matter of law to its employees, in
10 violation of California Labor Code §2802 and other provisions of California law.

11 21. Despite ARDWIN'S control over virtually all aspects of the employment relationship, and
12 despite the unequivocal command of applicable statutes and case law that workers such that
13 Plaintiff is entitled to all of the protections due to employees under California law, ARDWIN
14 mischaracterized its Drivers as independent contractors, and to evade and ignore the provisions of
15 California law. As a result, these drivers must pay substantial sums of their own money for work-
16 related costs and expenses, including without limitation, those related to the “lease” of trucks and
17 other equipment provided by ARDWIN; those incidental to the operation and maintenance of the
18 trucks and other equipment, in the manner dictated by ARDWIN (on ARDWIN'S own equipment),
19 for fuel, oil, tires, and repairs; the cost of insurance (obtained by ARDWIN); a fee for accounting
20 services (provided by ARDWIN); charges for purchased equipment or services, fuel cards, cargo
21 claims (provided and required by ARDWIN); and the cost of workers' compensation and liability
22 insurance (obtained by ARDWIN). These costs and expenses that ARDWIN Drivers are required to
23 pay amount to hundreds, if not thousands, of dollars per month for each driver. They are calculated
24 entirely by ARDWIN and are deducted by ARDWIN before any pay is issued to ARDWIN Drivers,
25 including to Plaintiff, each week. ARDWIN'S practice of misclassifying its Delivery Drivers as
26 independent contractors, and forcing them to pay for numerous and substantial expenses that are
27 necessarily incurred by Delivery Drivers in connection with the work performed for ARDWIN,
28 violates Labor Code § 2802.

1 22. In addition, ARDWIN deducts the cost of workers' compensation insurance from each
2 Driver's pay, a practice that is specifically prohibited by Labor Code § 3751, and that constitutes a
3 misdemeanor. ARDWIN drivers are also denied the protections of unemployment insurance,
4 because ARDWIN has unlawfully failed to register as an employer and/or has failed to report its
5 employment of these Drivers. ARDWIN Drivers are also denied meal and rest breaks, itemized
6 wage statements, and other protections to which they are entitled under the California Labor Code
7 and its implementing regulations by virtue of Defendants' scheme to misclassify Drivers as
8 independent contractors.

9 23. ARDWIN'S mischaracterization of its drivers as independent contractors, and its
10 attendant requirement that Drivers pay for costs and expenses necessarily incurred in the
11 performance of their work for ARDWIN, all in violation of California law, is an ongoing unlawful
12 and unfair business practice that this Court should enjoin.

13 24. Plaintiff JUAN JOSE LOPEZ was hired by ARDWIN as a delivery truck driver on or about
14 2005. As alleged hereinabove, Plaintiff was required as a condition of his employment to execute
15 various agreements, including the "Commercial Trucking Services and Lease Agreement
16 (Independent Contractor/Owner Operator)." Plaintiff signed said agreement and the enclosed
17 appendixes, at the express instruction of ARDWIN supervisory personnel, in an office of ARDWIN
18 located in Burbank, California. Plaintiff did not negotiate any of the terms of said contracts; they
19 were presented to him as pre-drafted standard form contracts that he was required to sign as a
20 condition of employment.

21 25. The CTSLA ARDWIN required Plaintiff to sign purported to characterize him as an
22 independent contractor who had agreed to provide his own equipment to perform transportation
23 services for ARDWIN. In fact, however, ARDWIN supplied the truck and the trailer that Plaintiff
24 used to perform delivery services for ARDWIN, which ARDWIN purported to lease to Plaintiff:
25 \$300 for the truck and another \$300 for the trailer. Plaintiff spent 100 percent of his working hours
26 making deliveries throughout the United States at the express and explicit direction of ARDWIN's
27 dispatch supervisors.

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1 26. By way of example, Plaintiff drove routes beginning in Burbank, California to Ontario,
2 California to pick up cargo, and drove out of state to ARDWIN's customers in Washington and
3 Florida to complete deliveries. Plaintiff was required to contact ARDWIN's dispatch team in
4 Burbank, California for instructions as to the deliveries he was required to perform. Plaintiff was
5 also directed to utilize a dispatching software application and equipment that was termed "Load
6 Connex" for Defendants to monitor the movement and progress of his deliveries. Load Connex
7 LLC is, in fact, an affiliate of ARDWIN and has designed and implemented software and devices in
8 conjunction with the delivery of cargo. In addition to ARDWIN's dispatching team, the Load
9 Connex platform would also provide details and instructions to Plaintiff for upcoming deliveries
10 and assignments. Plaintiff was also required to submit paperwork concerning his deliveries to
11 ARDWIN's Burbank office in connection with his assignments. On average, Plaintiff worked at
12 least eight to ten hours per day, six days a week in order to accomplish the deliveries he performed
13 pursuant to ARDWIN's instructions.

14 27. Defendants' classification and treatment of the Delivery Drivers as "independent
15 contractors" rather than as "employees" is and during all relevant times has been unlawful.

16 **CLASS ACTION ALLEGATIONS**

17 28. Plaintiffs bring these claims as a class action pursuant to Code of Civil Procedure § 382 and
18 Business and Professions Code §§ 17203 & 17204. Plaintiffs bring this action on their own behalf
19 and on behalf of the following class of individuals (the "Class" or "Class Members"):

20 **All individuals who performed delivery services for Defendants as delivery**
21 **truck drivers and worked in the State of California from February 11, 2019,**
22 **and continuing while this action is pending.**

23 29. All Delivery Drivers, including Plaintiff, are putative class members.

24 30. During the Class Period, by virtue of unlawfully classifying Plaintiff and Class
25 Members as independent contractors and compensating Class Members with a "flat rate" or "per
26 load," Defendants have routinely failed to compensate Delivery Drivers of all the wages they are
27 due ("off-the-clock" work).

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1 31. During the Class Period, Plaintiff and Delivery Drivers were subject to Defendants’
2 unlawful company practice of classifying them as independent contractors and paying them a daily
3 flat sum of money when in fact they were subjected to the pervasive control of Defendants. All
4 who were subject to this unlawful classification and compensation scheme suffered damages.
5 Defendants applied this illegal wage device uniformly to all Delivery Drivers to the disadvantage of
6 Class Members.

7 32. As a result, during the Class Period, Defendants have failed to provide Drivers
8 and Helpers with accurate wage and hour statements since the “flat rate” or “per load” did not fully
9 compensate Delivery Drivers for all hours worked. Defendants have failed to provide Delivery
10 Drivers with accurate wage and hour statements since the gross hours earned, total hours worked,
11 all deductions made, net wages earned, and all applicable hourly rates in effect during each pay
12 period and the corresponding number of hours worked at each hourly rate.

13 33. During the Class Period, Plaintiff and Delivery Drivers have been required to
14 work more than eight hours per day and more than forty hours per workweek. Defendants have
15 routinely failed to compensate Delivery Drivers all of the overtime wages they are due.

16 34. During the Class Period, Defendants have failed to pay accrued wages and other
17 compensation due immediately to Delivery Drivers who were terminated, and Defendants have
18 failed to pay accrued wages and other compensation due within seventy-two hours to Delivery
19 Drivers who ended their employment.

20 35. The proposed class is ascertainable in that its members can be identified using
21 information contained in Defendants’ payroll and personnel records.

22 36. Numerosity. The Delivery Drivers are so numerous, conservatively estimated
23 to include over 40 Delivery Drivers, that joinder of each individual Class Member would be
24 impracticable, and the disposition of their claims in a class action, rather than numerous individual
25 actions, will benefit the parties, the Court and the interests of justice.

26 37. Commonality. There is a well-defined community of interest in the questions of
27 law and fact involved in this action, because Defendants’ failure to pay Delivery Drivers their
28 wages or afford them the protections required under the Employment Laws and Regulations affects

1 all Class Members. Common questions of law and fact predominate over questions that affect only
2 individual Delivery Drivers, because all Delivery Drivers were subject to the uniform, unlawful pay
3 practices and policies. The predominate questions of law and fact include, but are not limited to:

- 4 a. Whether Defendants devised a scheme and/or plan to circumvent California
5 wage and hour laws;
- 6 b. Whether Defendants' conduct was fraudulent and/or deceitful;
- 7 c. Whether Defendants' conduct violated the Employment Laws and
8 Regulations; and
 - 9 (i) failed to compensate Plaintiffs and the Class Members
10 for all hours worked;
 - 11 (ii) failed to compensate Plaintiffs and the Class Members at the
12 applicable and legally-mandated minimum hourly rate then in
13 effect;
 - 14 (iii) failed to provide Plaintiffs and the Class Members with timely
15 and accurate wage and hour statements; and
 - 16 (iv) failed to maintain complete and accurate payroll records for
17 Plaintiffs and the Class Members;
- 18 d. Whether Defendants' systematic acts and practices violate, *inter alia*,
19 California Business & Professions Code section 17200, *et seq.*

20 38. Typicality. Plaintiffs' claims are typical of those of the other Delivery Drivers because
21 all Delivery Drivers share the same or similar employment duties and activities, all are
22 automatically classified as independent contractors, and all have been denied the benefits and
23 protections of the Employment Laws and Regulations in the same manner. Since Defendants have
24 uniformly applied the same pay practices and policies to each Delivery Driver, Plaintiff's claims are
25 typical of the claims of all Delivery Drivers. Plaintiff's claims are also typical because Plaintiff has
26 suffered the same damages as those suffered by all Class Members.

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1 39. Adequacy of Representation. Plaintiff can fairly and adequately represent and protect the
2 interests of all Delivery Drivers in that Plaintiff does not have disabling conflicts of interest which
3 are antagonistic to those of all other Delivery Drivers. Plaintiff seeks no relief which is antagonistic
4 or adverse to the other Class Members, and the infringement of their rights and the damages they
5 have suffered are typical of all other Class Members. Plaintiff's counsel is competent and
6 experienced in litigating class actions in California based on large employers' violations of the
7 Employment Laws and Regulations.

8 40. As mentioned above, to the extent that any Delivery Drivers entered into any arbitration
9 agreement with any Defendants and such agreements purport to require arbitration, such
10 agreements
11 are void and unenforceable. Even if such agreements are deemed enforceable, however, class-wide
12 arbitration is appropriate and should be utilized to obtain class-wide relief.

13 41. Superiority of Class Action. The nature of this action and the nature of laws available to
14 Plaintiffs and the other Delivery Drivers in the putative Class make use of the class action a
15 particularly efficient and effective procedure because:

- 16 a. For many of the Delivery Drivers, individual actions or other
17 individual remedies would be impracticable and litigating individual
18 actions would be too costly;
- 19 b. The action involves a large corporate employer or employers (Ardwin, Inc.)
20 and a large number of individual employees (Plaintiffs and the other Class
21 Members), many with relatively small claims and all with common issues of
22 law and fact;
- 23 c. If the Delivery Drivers are forced to bring individual lawsuits, the
24 corporate defendants would necessarily gain an unfair advantage, the
25 ability to exploit and overwhelm the limited resources of individual
26 Class Members with vastly superior financial and legal resources;
- 27 d. The costs of individual suits would likely consume the amounts
28 recovered;

- 1 e. Requiring each Class Member to pursue an individual remedy would
2 also discourage the assertion of lawful claims by current employees
3 of Defendants, who would be disinclined to pursue an action against
4 their present and/or former employer due to an appreciable and
5 justified fear of retaliation and permanent damage to their immediate
6 and/or future employment; and
- 7 f. Common business practices Plaintiff experienced are representative of those
8 experienced by all Delivery Drivers and can establish the right of all Delivery
9 Drivers to recover on the alleged claims.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY MINIMUM WAGE**

12 **(CAL. LABOR CODE §§ 1182.11, 1194 ET SEQ.; IWC WAGE ORDER NO. 9;**
13 **MINIMUM WAGE ORDER)**

14 42. The allegations of each of the preceding paragraphs are realleged and incorporated
15 herein by reference, and Plaintiff alleges as follows a claim of relief.

16 43. At all times relevant to this complaint, Cal. Labor Code §§ 1182.11, 1182.12, and 1197,
17 IWC wage order No. 9, and the Minimum Wage Order were in full force and effect and required
18 that Defendant's California nonexempt employees receive the minimum wage for all hours worked
19 irrespective of whether nominally paid on an hourly, piece rate, or any other basis, at the rate of
20 twelve dollars (\$12) per hour for work performed up through January 1, 2020, thirteen dollars (\$13)
21 per hour for work performed up through January 1, 2021, fourteen dollars (\$14) per hour for work
22 performed up through January 1, 2022, fifteen dollars (\$15) per hour for work performed up
23 through January 1, 2023, and fifteen dollars and fifty cents (\$15.50) thereafter.

24 44. Defendants failed to pay Plaintiffs and putative class members for all hours worked
25 at the statutory minimum wage rate, as required by law, including for work time spent at
26 mandatory meetings; work time spent waiting to receive assignments and merchandise at
27 Defendant's client's stores or warehouses; work time spent picking up and transporting "haul
28

1 away” merchandise; and work time spent driving and returning paperwork to Defendants’ client’s
2 warehouse at the end of the workday.

3 45. At various times throughout the relevant statutory period, Defendants have caused
4 Plaintiff and putative class members to incur expenses and deductions that contributed to
5 Defendants’ failing to pay minimum wages for all hours worked, as required by law.

6 46. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff
7 and putative class members have been deprived of minimum wages due in amounts to be
8 determined at trial, and to additional amounts as liquidated damages, pursuant to Cal. Labor Code
9 §§ 1194 and 1194.2.

10 47. By violating Cal. Labor Code §§ 1182.11, 1182.12, and 1197, IWC wage order No.
11 9, § 4, and the Minimum Wage Order, Defendants are also liable for civil penalties, interest and
12 reasonable attorneys’ fees and costs under Cal. Labor Code §§ 558, 1194, 1197.1.

13 48. Plaintiffs request relief as described below.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME COMPENSATION**

16 **(CAL. LABOR CODE §§ 510, 1194 ET SEQ.; IWC WAGE ORDER NO. 9.)**

17 49. The allegations of each of the preceding paragraphs are realleged and incorporated
18 herein by reference, and Plaintiffs allege as follows a claim of relief.

19 50. Defendants have been required, pursuant to Cal. Labor Code § 510 and IWC wage order No.
20 9, § 3, to pay Plaintiffs and putative class members overtime compensation at a rate of 1.5 times
21 their regular rates of pay for all hours worked in excess of eight in a day and in excess of 40 in a
22 week, and at a rate of two times their regular rates of pay for all hours worked in excess of 12 in a
23 day.

24 51. Defendants failed to pay Plaintiffs and putative class members daily or weekly overtime
25 compensation in violation of Cal. Labor Code § 510 and IWC wage order No. 9, § 3.

26 52. As a result of Defendants’ unlawful acts, Plaintiffs and putative class members have
27 been deprived of overtime compensation in an amount to be determined at trial, and are entitled to
28 recovery of such amounts, plus interest thereon, and attorneys’ fees and costs, under Cal. Labor

1 Code § 1194.

2 53. By violating Cal. Labor Code § 510, Defendants are liable for civil penalties and
3 attorneys' fees and costs under Cal. Labor Code §§ 558, 1194, and 1197.1.

4 54. Plaintiffs request relief as described below.

5 **THIRD CAUSE OF ACTION**

6 **REIMBURSEMENT OF EMPLOYMENT EXPENSES**

7 **(CAL. LABOR CODE § 2802)**

8 55. The allegations of each of the preceding paragraphs are realleged and incorporated
9 herein by reference, and Plaintiffs allege as follows a claim of relief.

10 56. Cal. Labor Code § 2802 provides: "An employer shall indemnify his or her
11 employee for all necessary expenditures or losses incurred by the employee in direct consequence
12 of the discharge of his or her duties, or of his or her obedience to the directions of the employer . . .
13 . [which includes] all reasonable costs, including, but not limited to, attorney's fees incurred by the
14 employee enforcing the rights granted by this section."

15 57. As a direct consequence of discharging their duties for Defendants and/or obeying
16 Defendants' directions, Plaintiffs and putative class members have necessarily incurred expenses
17 for which they have not been indemnified by Defendants, including the purchase and/or lease and
18 depreciation of vehicles, fuel, maintenance, and other vehicle operating costs; various forms of
19 insurance; wages paid to Delivery Drivers; costs associated with lost or damaged merchandise and
20 other property damage; Defendants proprietary uniforms; certain tools and equipment Defendants
21 have required Plaintiffs and class members to purchase or rent from Defendants' clients; other
22 miscellaneous equipment including moving pads and blankets, dollies, hand tools, installation
23 supplies, GPS navigational equipment, and cellular telephones; fees for payroll administration
24 services; expenses associated with a cash bond or fund; and the attorneys' fees incurred to enforce
25 Plaintiff's and putative class members' rights under Cal. Labor Code § 2802.

26 58. Defendants have failed to indemnify or in any manner reimburse Plaintiffs and putative
27 class members for these expenditures and losses.

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1 59. By requiring Plaintiff and putative class members to pay expenses and cover losses
2 that they incurred in direct consequence of the discharge of their duties for Defendants and/or in
3 obedience of Defendants' direction, Defendants have violated and continues to violate Cal. Labor
4 Code § 2802.

5 60. As a direct and proximate result of Defendants' conduct, Plaintiffs and putative
6 class members have suffered substantial losses according to proof, as well as pre-judgment interest,
7 costs, and attorneys' fees for the prosecution of this action, which losses are compensable under
8 Cal. Labor Code §2802.

9 61. Plaintiffs request relief as described below.

10 **FOURTH CAUSE OF ACTION**

11 **UNLAWFUL DEDUCTIONS FROM WAGES**

12 **(CAL. LABOR CODE §§ 221 & 223; IWC WAGE ORDER NO. 9)**

13 62. The allegations of each of the preceding paragraphs are realleged and incorporated
14 herein by reference, and Plaintiff alleges as follows a claim of relief.

15 63. Cal. Labor Code § 221 provides: "It shall be unlawful for any employer to collect
16 or receive from an employee any part of wages theretofore paid by said employer to said
17 employee."

18 64. Cal. Labor Code § 223 provides: "Where any statute or contract requires an employer to
19 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
20 purporting to pay the wage designated by statute or by contract."

21 65. IWC wage order No. 9, § 8 provides that the only circumstance under which an employer
22 can make a deduction from an employee's wage due to cash shortage, breakage, or loss of
23 equipment is if the employer can show that the shortage, breakage, or loss was the result of the
24 employee's gross negligence or dishonest or willful act.

25 66. These and related statutes, along with California's fundamental public policy protecting
26 wages and wage scales, prohibit employers from subjecting employees to unanticipated or
27 unpredicted reductions in their wages; making employees the insurers of their employer's business
28 losses; otherwise passing the ordinary business losses of the employer onto the employee; taking

1 deductions from wages for business losses in any form unless the employer can establish that the
2 loss was caused by a dishonest or willful act, or gross negligence of the employee; or taking other
3 unpredictable deductions that may impose a special hardship on employees.

4 67. Defendants have violated Cal. Labor Code §§ 221 and 223 and IWC wage order No. 9, § 8
5 by unlawfully taking deductions from Plaintiffs' and putative class members' compensation to
6 cover certain ordinary business expenses of Defendants, including various forms of insurance;
7 payment services; equipment and tools; losses associated with lost or damaged merchandise and
8 other property damage; and "charge-back" items Defendants claim to reserve the right to deduct
9 from Plaintiff's and putative class members' pay.

10 68. Defendants have further violated Cal. Labor Code §§ 221 and 223 and IWC wage
11 order No. 9, § 8 by unlawfully taking deductions from Plaintiffs' and putative class members'
12 compensation for the purpose of establishing a reserve account to draw upon to cover ordinary
13 business expenses. Because Defendants made unlawful deductions from Plaintiffs' and putative
14 class members' compensation, they are liable to Plaintiff and putative class members for the
15 compensation that should have been paid but for the unlawful deductions, pursuant to Cal. Labor
16 Code §§ 221 and 223 and IWC wage order No. 9, § 8.

17 69. By unlawfully deducting wages and failing to pay Plaintiff and putative class members,
18 Defendants are also liable for penalties, interest and reasonable attorneys' fees and costs
19 under Cal. Labor Code §§ 218.5 and 1194.

20 70. Plaintiffs request relief as described below.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE MEAL PERIODS**

23 **(CAL. LABOR CODE §§ 226.7, 512; IWC WAGE ORDER NO. 9)**

24 71. The allegations of each of the preceding paragraphs are realleged and incorporated
25 herein by reference, and Plaintiffs allege as follows a claim of relief.

26 72. Plaintiffs and putative class members have regularly worked in excess of five (5)
27 hours in a workday without being provided at least a half-hour meal period in which they were
28 relieved of all duties, as required by Cal. Labor Code §§ 226.7 and 512, and IWC Wage Order No.

1 9, § 11(A).

2 73. Because Defendants failed to provide proper meal periods, they are liable to Plaintiffs and
3 putative class members for one hour of additional pay at the regular rate of compensation for each
4 workday that the proper meal periods were not provided, pursuant to Cal. Labor Code § 226.7(b)
5 and IWC wage order No. 9, § 11(B).

6 74. By violating Cal. Labor Code §§ 226.7 and 512, and IWC wage order No. 9, §11,
7 Defendants are also liable for penalties, reasonable attorneys' fees, and costs under Cal. Labor Code
8 §§ 218.5 and 1194.

9 75. Plaintiffs request relief as described below.

10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

12 **(CAL. LABOR CODE § 226.7; IWC WAGE ORDER NO. 9)**

13 76. The allegations of each of the preceding paragraphs are realleged and incorporated
14 herein by reference, and Plaintiff alleges as follows a claim of relief.

15 77. Plaintiff and putative class members have regularly worked in excess of four (4)
16 hours in a workday without Defendants' authorizing and permitting them to take at least a ten
17 minute rest period, as required by Cal. Labor Code § 226.7 and IWC wage order No. 9, § 12.

18 78. Because Defendants failed to authorize and permit proper rest periods, Defendants are
19 liable to Plaintiff and putative class members for one hour of additional pay at the regular rate of
20 compensation for each workday that the proper rest periods were not authorized and permitted,
21 pursuant to Cal. Labor Code § 226.7(b) and IWC wage order No. 9, § 12(B).

22 79. By violating Cal. Labor Code §§ 226.7 and 512, and IWC wage order No. 9, §11,
23 Defendants are also liable for penalties, reasonable attorneys' fees, and costs under Cal. Labor Code
24 §§ 218.5 and 1194.

25 80. Plaintiff requests relief as described below.

26 ///

27 ///

28 ///

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

3 **(CAL. LABOR CODE §§ 226, 226.3; IWC WAGE ORDER NO. 9)**

4 81. The allegations of each of the preceding paragraphs are realleged and incorporated
5 herein by reference, and Plaintiffs allege as follows a claim of relief.

6 82. Cal. Labor Code § 226(a) and IWC wage order No. 9, § 7(B) require employers semi-
7 monthly or at the time of each payment of wages to furnish each California employee with a
8 statement itemizing, among other things, the total hours worked by the employee. Cal. Labor Code
9 § 226(b) provides that if an employer knowingly and intentionally fails to provide a statement
10 itemizing, among other things, the total hours worked by the employee, then the employee is
11 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial violation
12 and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

13 83. Defendants knowingly and intentionally failed to furnish Plaintiff and putative class
14 members with timely, itemized statements that accurately report the total hours worked, as required
15 by Cal. Labor Code § 226(a) and IWC wage order No. 9, § 7(B). As a result, Defendants are liable
16 to Plaintiff and putative class members for the amounts provided by Cal. Labor Code § 226(b),
17 including an award of costs and reasonable attorneys' fees.

18 84. Plaintiff requests relief as described below.

19 **EIGHTH CAUSE OF ACTION**

20 **WAITING TIME PENALTIES**

21 **(CAL. LABOR CODE §§ 201, 202, 203)**

22 85. The allegations of each of the preceding paragraphs are realleged and incorporated
23 herein by reference, and Plaintiff alleges as follows a claim of relief.

24 86. Cal. Labor Code § 201 requires an employer who discharges a California employee to pay
25 all compensation due and owing to that employee immediately upon discharge.

26 87. Cal. Labor Code § 202 requires an employer to pay all compensation due and owing
27 to a California employee who quits within 72 hours of that employee's quitting, unless the
28 employee provides at least 72 hours' notice of quitting, in which case all compensation is due at the

1 end of the employee's final day of work.

2 88. Cal. Labor Code § 203 provides that if an employer willfully fails to pay compensation
3 promptly upon discharge, as required by § 201 or § 202, then the employer is liable for waiting time
4 penalties in the form of continued compensation of up to 30 work days.

5 89. Defendants willfully failed to timely pay compensation and wages, including unpaid
6 minimum wage, unpaid overtime pay, unreimbursed expenses and unreimbursed reserve accounts,
7 unpaid premium pay for missed meal periods, and unpaid premium pay for missed rest periods to
8 Plaintiffs and similarly situated putative class members no longer in Defendants' employ, upon
9 termination of their employment. As a result, Defendants are liable to Plaintiffs and similarly
10 situated putative class members for waiting time penalties, together with interest thereon and
11 reasonable attorneys' fees and costs, under Cal. Labor Code §§ 203 and 256.

12 90. Plaintiff requests relief as described below.

13 **NINTH CAUSE OF ACTION**

14 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION ACT**
15 **(CAL. BUSINESS & PROFESSIONS CODE §§ 17200-17209)**

16 91. The allegations of each of the preceding paragraphs are realleged and incorporated
17 herein by reference, and Plaintiff alleges as follows a claim of relief.

18 92. California Business & Professions Code § 17200 prohibits unfair competition in the
19 form of any unlawful, unfair, or fraudulent business act or practice.

20 93. California Business & Professions Code § 17204 allows "any person acting for the
21 interests of itself, its members or the general public" to prosecute a civil action for violation of the
22 Unfair Competition Law.

23 94. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the
24 filing of this action, Defendants committed unlawful, unfair, and/or fraudulent business acts and
25 practices as defined by California Business & Professions Code § 17200, by engaging in the
26 following:

- 27 a. Failing to pay California minimum wage and overtime compensation to
28 Plaintiff and putative class members;

- 1 b. Failing to provide adequate off-duty meal periods to Plaintiff and putative
2 class members, and failing to pay them premium pay for missed meal periods;
- 3 c. Failing to authorize and permit adequate rest periods to Plaintiff and
4 putative class members, and failing to pay them premium pay for missed rest
5 periods;
- 6 d. Failing to indemnify Plaintiff and putative class members for employment-
7 related business expenses and losses;
- 8 e. Improperly and unlawfully making deductions from Plaintiff's and
9 putative class members' compensation to cover certain ordinary business expenses
10 and losses of Defendants, which were not attributable to Plaintiffs' and putative class
11 members' dishonest or willful act, or to their gross negligence, as described above;
- 12 f. Improperly and unlawfully demanding a cash bond from Plaintiff and
13 putative class members, and making deductions from such bonds in violation of the
14 Employee Bond Law, Cal. Labor Code §§ 400-410;
- 15 g. Coercing or compelling Plaintiff and putative class members to patronize
16 Defendants' clients by requiring Delivery Drivers to purchase or rent certain tools
17 and equipment from Defendant;
- 18 h. Failing to maintain workers' compensation insurance covering Plaintiff and
19 putative class members, requiring Plaintiff and putative class members to purchase
20 workers' compensation insurance for themselves, and failing to pay compensation to
21 Plaintiff and putative class members injured on the job;
- 22 i. Failing to contribute to the Unemployment Trust Fund on behalf of Plaintiff and
23 putative class members;
- 24 j. Failing to pay all wages due upon termination of employment to Plaintiff
25 and similarly situated putative class members no longer in Defendants' employ;
- 26 k. Failing to provide accurate itemized wage statements to Plaintiff and
27 putative class members;
- 28 l. Failing to keep accurate payroll records noting the actual hours worked by

1 Plaintiffs and putative class members, in violation of Cal. Labor Code § 1174 and
2 IWC wage order No. 9, § 7(A);

3 m. Failing to pay all wages for labor performed between the 1st and 15th days of
4 the month between the 16th and the 26th day of the month during which the labor
5 was performed, and failing to pay all wages for labor performed between the 16th
6 and the last day of the month between the 1st and 10th day of the following month,
7 as required by Cal. Labor Code § 204;

8 n. Willfully misclassifying Plaintiff and putative class members as
9 “independent contractors” in violation of the California Employee Misclassification
10 Act, Cal. Labor Code § 226.8;

11 o. Failing to provide Plaintiff and putative class members paid sick leave as required by
12 Cal. Labor Code § 246; and

13 P. Intentionally, recklessly and/or negligently misrepresenting to Plaintiff and
14 putative class members the true nature of their employment status.

15 95. The violations of these laws serve as unlawful, unfair, and/or fraudulent predicate
16 acts and practices for purposes of Business & Professions Code § 17200.

17 96. As a direct and proximate result of Defendants’ unlawful, unfair, and/or fraudulent
18 acts and practices described herein, Defendants have received and continue to hold ill-gotten gains
19 belonging to Plaintiff and putative class members. As a direct and proximate result of
20 Defendants’ unlawful business practices, Plaintiff and putative class members have suffered
21 economic injuries including, but not limited to out-of-pocket business expenses, unlawful
22 deductions from compensation, loss of minimum wage and overtime wages, compensation for
23 missed meal periods, compensation for missed rest periods, loss of unemployment insurance
24 benefits, loss of amounts paid into cash bonds and interest thereon, waiting time penalties, and
25 attorneys’ fees and costs incurred to enforce their rights, including their rights under Cal. Labor
26 Code § 2802. Defendants have profited from its unlawful, unfair, and/or fraudulent acts and
27 practices in the amount of those business expenses, improper deductions from compensation,
28 unpaid minimum wage and overtime, unpaid compensation for missed meal periods and missed rest

1 periods, unpaid unemployment insurance and workers' compensation premiums, cash bond
2 payments, and interest accrued.

3 97. Plaintiff and putative class members are entitled to restitution pursuant to Cal.
4 Business & Professions Code §§ 17203 and 17208 for all unpaid business expenses, unlawful
5 deductions from compensation, minimum wage, overtime, meal period and rest period
6 compensation, unemployment insurance and workers' compensation premiums, cash bond
7 payments, unpaid waiting time penalties, interest since four years prior to the filing of this action,
8 and attorney's fees and costs Plaintiff has incurred to enforce these rights, including their rights
9 under Cal. Labor Code § 2802.

10 98. Plaintiff and putative class members are entitled to enforce all applicable penalty
11 provisions of the California Labor Code pursuant to Business & Professions Code § 17202.

12 99. By all of the foregoing alleged conduct, Defendants have committed, and are
13 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the
14 meaning of Cal. Business & Professions Code §17200 *et seq.*

15 100. As a direct and proximate result of the unfair business practices described above,
16 Plaintiff and putative class members have suffered significant losses and Defendants have been
17 unjustly enriched.

18 101. Pursuant to Cal. Business & Prof. Code §17203, Plaintiff is entitled to: (a) restitution
19 of money acquired by means of its unfair business practices, in amounts not yet ascertained but to
20 be ascertained at trial; (b) injunctive relief against Defendants' continuation of its unfair and
21 unlawful business practices; and (c) a declaration that Defendants' business practices are unfair and
22 unlawful within the meaning of the statute.

23 102. Plaintiff assumed the responsibility of enforcement of the laws and lawful claims
24 specified herein. There is a financial burden incurred in pursuing this action which is in the public
25 interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Cal. Code of Civil
26 Procedure § 1021.5.

27 103. Plaintiff requests relief as described below.

28 ////

TENTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(CAL. LABOR CODE §§ 2698 ET SEQ.)

104. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a claim of relief.

105. Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

106. Plaintiff is an aggrieved employee as defined in Labor Code § 2699 (a). Plaintiff brings this cause on behalf of himself and other current or former Delivery Drivers affected by the labor law violations alleged in this Complaint.

107. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer who violated Plaintiff's rights by violating relevant sections of the California Labor Code and are subject to civil penalties.

108. Defendants committed the following violations of the Labor Code against Plaintiff, and, on information and belief, against other current or former Delivery Drivers while they were employed by Defendants:

(a) Defendants violated Labor Code §§ 201-203 by failing to pay all wages due on the date of the employee's involuntary termination or within 72 hours of the employee's voluntary termination.

(b) Defendants violated Labor Code §§ 204 and 210 by failing to pay all wages due at least twice during each calendar month, in compliance with those provisions.

(c) Defendants violated Labor Code §§ 216 and 225.5 by having the ability to pay, yet willfully refusing to pay, wages due and payable after demand has been made.

(d) Defendants violated Labor Code §§ 226 and 226.3 by failing to provide accurate itemized wage statements.

(e) Defendants violated Labor Code § 1174 by failing to maintain payroll records showing the daily hours worked.

1 (f) Defendants violated Labor Code §§ 204, 221, 225.5, 558, 1194-1197.1, and 1198 by
2 failing to pay minimum wages when those wages came due as required by California law.

3 (g) Defendants violated Labor Code § 204, 221, 510, 511, 551, 552, 558, 1194-1197.1,
4 and 1198 by failing to pay overtime wages when those wages came due as required by California
5 law.

6 (h) Defendants violated Labor Code §§ 210, 226.7, and 512 by failing to provide meal
7 periods compliant with California law.

8 (i) Defendants violated Labor Code §§ 210 by failing to provide rest periods compliant
9 with California law.

10 (j) Defendants violated Labor Code § 246 by failing to provide paid sick days in
11 compliance with California law.

12 (k) Defendants violated Labor Code § 2802 by failing to indemnify aggrieved
13 employees, including Plaintiff, for all necessary expenditures or losses incurred in direct
14 consequence of the discharge of their duties, or of their obedience to the directions of Defendants.

15 (l) Defendants violated Labor Code § 226.8 by misclassifying Plaintiff and the other
16 aggrieved employees as independent contractors and depriving them of the benefits and protections
17 of the California Labor Code and rights customarily afforded to employees in the state of
18 California.

19 109. Pursuant to California Labor Code § 2699, Plaintiff and the aggrieved employees
20 should be awarded twenty-five percent (25%) of all penalties due under California law, as well as
21 attorneys' fees and costs.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, individually and on behalf of all Delivery Drivers, prays that the
24 Court enter judgment in his favor and against Defendants as follows:

- 25 1. For an Order requiring and certifying this action as a class action;
- 26 2. For an Order appointing Plaintiff's counsel as Class Counsel;
- 27 3. For compensatory damages in an amount to be ascertained at trial;
- 28 4. For restitution in an amount to be ascertained at trial;

- 1 5. For punitive damages in an amount to be ascertained at trial;
2 6. For penalties as required by the applicable Wage Order or otherwise by law;
3 7. For prejudgment interest at the legal rate pursuant to California Labor Code section
4 218.6 and other applicable sections;
5 8. For reasonable attorney's fees pursuant to California Labor Code § 1194;
6 9. For cost of suit incurred herein;
7 10. For disgorgement of profits garnered as a result of Defendants' unlawful failure to
8 reimburse necessary business expenditures and costs, to pay overtime premium compensation and
9 for meal and rest period compensation; and
10 11. For such further relief as the Court may deem appropriate.

11 DATED: December 29, 2023

BOYAMIAN LAW, INC.

12
13
14 By: 
15 Michael H. Boyamian
16 Armand R. Kizirian
17 Attorneys for Plaintiff JUAN JOSE LOPEZ
18 and All Others Similarly Situated
19

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff JUAN JOSE LOPEZ, individually and on behalf of all similarly situated
22 individuals, demands a jury trial of this matter.

23 DATED: December 29, 2023

BOYAMIAN LAW, INC.

24
25
26 By: 
27 Michael H. Boyamian
28 Armand R. Kizirian
Attorneys for Plaintiff JUAN JOSE LOPEZ
and All Others Similarly Situated

Exhibit “1”



BOYAMIAN LAW

August 8, 2023

SUBMITTED VIA ONLINE SUBMISSION

Labor and Workforce Development Agency
Attention: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

Re: *Lopez v. Ardwin Inc. d/b/a Ardwin Freight*
Notice of PAGA Claims Pursuant to Labor Code § 2699.3

To Whom It May Concern:

My office represents Juan Jose Lopez (hereinafter “Claimant”), with respect to claims on behalf of himself and other similarly situated current and former Delivery Truck Drivers of Ardwin, Inc. d/b/a Ardwin Freight (“Ardwin”) who worked in California from August 3, 2022 and continuing to the present (“Relevant Time Period”). The purpose of this letter is to satisfy the notice requirements of Labor Code § 2699.3(a).

Below we set forth the facts and theories which we believe support our contention that Ardwin has violated and continues to violate various provisions of the California Labor Code including, but not limited to, the misclassification of Delivery Truck Drivers, and the resulting failures by Ardwin to pay minimum wages and overtime wages, to provide meal and rest periods, and to reimburse for necessary business expenditures.

The purpose of this letter is to provide the required notice to the Labor Workforce and Development Agency and the Ardwin of the specific the facts and theories which we believe support our contention that Ardwin has also violated and continues to violate the California Labor Code, as set forth herein.

Facts & Theories About the Case

Ardwin provides logistics and delivery services to its retail merchants to deliver products and services to their clients and/or clients’ customers. Ardwin utilizes Delivery Truck Drivers to pick up the merchandise at the merchants’ stores or warehouses and to deliver them at the customers’ businesses. Ardwin is therefore a provider of managed transportation services including the planning and execution for delivery of its merchant clients. Ardwin unlawfully classified Claimant and other Delivery Truck Drivers as independent contractors, when, in fact, they were heavily regulated through a series of work-related restrictions and directives through Ardwin.

Claimant is a former Delivery Truck Driver for Ardwin. He commenced work for Ardwin in or around 2005 to approximately February 2023. For the vast majority of his tenure with Ardwin, Claimant was misclassified as an independent contractor. However,

in the approximately last three months of his employment with Ardwin, Claimant was recategorized and reclassified as a W-2 employee but continued to perform the same core responsibilities and essential functions as when he was misclassified as an independent contractor.

Our investigation has uncovered that Ardwin has established an elaborate system and scheme in an attempt to conceal its true status as the employer of its Drivers. As part of this scheme, Ardwin requires its Delivery Truck Drivers to sign various agreements as a condition of employment. Among these agreements is a purported “Commercial Trucking Services and Lease Agreement (Independent Contractor/Owner Operator),” (hereinafter the “CTSLA”) whereby Ardwin purports to lease the driver a truck. Ardwin then requires the Delivery Truck Driver to execute the CTSLA, and the enclosed appendixes, which characterizes the Delivery Truck Driver as an independent contractor who will perform delivery services using his or her “own” equipment (that equipment, in reality, is the truck and trailer that Ardwin leases to the Delivery Truck Driver under a separate agreement). The CTSLA Ardwin required Claimant to sign purported to characterize him as an independent contractor who had agreed to provide his own equipment to perform transportation services for Ardwin. In fact, however, Ardwin supplied the truck and the trailer that Claimant used to perform delivery services for Ardwin, which Ardwin purported to lease to Claimant: \$300 for the truck and another \$300 for the trailer. Mr. Lopez spent 100 percent of his working hours making deliveries for Ardwin at the express and explicit direction of Ardwin’s dispatch supervisors.

Claimant drove routes originating in Burbank, California to Ontario, California to pick up cargo, and then drove out to Ardwin’s customers, sometimes as far as north to Washington state and east to Florida to complete deliveries. Claimant was required to contact Ardwin’s dispatch team in Burbank, California for instructions as to the deliveries he was required to perform. Mr. Lopez was also directed to utilize a dispatching software application and equipment that was termed “Load Connex” for Ardwin to monitor the movement and progress of his deliveries. Load Connex LLC is, in fact, an affiliate of Ardwin and has designed and implemented software and devices in conjunction with the delivery of cargo. In addition to Ardwin’s dispatching team, the Load Connex platform would also provide details and instructions to Claimant for upcoming deliveries and assignments. Claimant was also required to submit paperwork concerning his deliveries to Ardwin’s Burbank office in connection with his assignments. On average, Claimant worked at least eight to ten hours per day, six days a week in order to accomplish the deliveries he performed pursuant to Ardwin’s instructions. Claimant was not paid the minimum wage and no overtime for the work he performed as he was paid a flat rate or by the load for the deliveries he tendered irrespective of the number of hours he actually expended to effectuate the deliveries for Ardwin. Mr. Lopez, like other aggrieved Delivery Truck Drivers, also did not clock out for meal periods as statutorily-mandated and compliant meal and rest periods were just not made available due to the press of work and the nature of Ardwin’s systemic misclassification of Delivery Truck Drivers as independent contractors.

The experiences of Claimant are consistent for other Delivery Truck Drivers. Under the CTSLA, cloaked in the form of “agreements,” the Delivery Truck Driver is engaged to perform work for Ardwin as a delivery truck driver and Ardwin controls the manner in which that work is performed in virtually every way. The CTSLA also requires the Delivery Truck Driver, like Claimant, to “agree” to pay numerous expenses incident to the employment, and to assume various risks that ordinarily and by law are the responsibility of an employer.

This CTSLA is a sham agreement that misclassifies Ardwin’s Delivery Truck Drivers as “independent contractors,” when in fact and under the law they are not. The CTSLA is specifically designed and intended to conceal the true nature of the employment relationship between Ardwin and its Delivery Truck Drivers, which is that of employer and employee, and to evade the provisions of California law that confer protections on employees. In particular, Ardwin has devised and used the CTSLA, and its sham designation of its Delivery Truck Drivers as independent contractors, to transfer substantial costs and risks that are the responsibility of Ardwin as a matter of law to its employees, in violation of California Labor Code §2802 and other provisions of California law.

Despite Ardwin’s control over virtually all aspects of the employment relationship, and despite the unequivocal command of applicable statutes and case law that workers such that Plaintiff is entitled to all of the protections due to employees under California law, Ardwin mischaracterized its Delivery Truck Drivers as independent contractors, and to evade and ignore the provisions of California law. As a result, these Delivery Truck Drivers must pay substantial sums of their own money for work-related costs and expenses, including without limitation, those related to the “lease” of trucks and other equipment provided by Ardwin; those incidental to the operation and maintenance of the trucks and other equipment, in the manner dictated by Ardwin (on Ardwin’s own equipment), for fuel, oil, tires, and repairs; the cost of insurance (obtained by Ardwin); a fee for accounting services (provided by Ardwin); charges for purchased equipment or services, fuel cards, cargo claims (provided and required by Ardwin); and the cost of workers’ compensation and liability insurance (obtained by Ardwin). These costs and expenses that Ardwin’s Delivery Truck Drivers are required to pay amount to hundreds, if not thousands, of dollars per month for each driver. They are calculated entirely by Ardwin and are deducted by Ardwin before any pay is issued to Ardwin’s Delivery Truck Drivers, including to Claimant, each week. Ardwin’s practice of misclassifying its Delivery Truck Drivers as independent contractors, and forcing them to pay for numerous and substantial expenses that are necessarily incurred by Delivery Truck Drivers in connection with the work performed for Ardwin, violates Labor Code §2802.

In addition, Ardwin deducts the cost of workers’ compensation insurance from each Driver’s pay, a practice that is specifically prohibited by Labor Code §3751, and that constitutes a misdemeanor. Ardwin’s Delivery Truck Drivers are also denied the protections of unemployment insurance, because Ardwin has unlawfully failed to

register as an employer and/or has failed to report its employment of these Delivery Truck Drivers. Ardwin's Delivery Truck Drivers are also denied meal and rest breaks, itemized wage statements, and other protections to which they are entitled under the California Labor Code and its implementing regulations by virtue of Ardwin's scheme to misclassify Delivery Truck Drivers as independent contractors.

Ardwin's mischaracterization of its Delivery Truck Drivers as independent contractors, and its attendant requirement that Delivery Truck Drivers pay for costs and expenses necessarily incurred in the performance of their work for Ardwin, are in violation of California law.

The Delivery Drivers are economically dependent for their financial livelihood on Ardwin, and Ardwin is entirely dependent on the Delivery Truck Drivers for the retail merchandise delivery service provided by Ardwin to its customers. The Delivery Truck Drivers are terminable at will. They may be terminated upon fifteen- or thirty-days written notice without cause or immediately for alleged breaches of the broadly-worded standards and obligations described in the Agreement.

The Agreements typically remain in effect for one year and are automatically renewed at the end of that period for another one-year term, unless either party gives notice of termination. Most of the Delivery Truck Drivers have worked, or did work, for Ardwin for several years. Despite Ardwin's pervasive control over all aspects of its delivery service operation, including the details of the Delivery Truck Drivers' work, Ardwin has classified and treated the Delivery Drivers as "independent contractors." Ardwin's classification and treatment of the Delivery Truck Drivers as "independent contractors" rather than as "employees" is and during all relevant times has been unlawful.

As a result of Ardwin's misclassification of the Delivery Truck Drivers as "independent contractors," Ardwin has:

- (1) required and/or knowingly permitted Delivery Truck Drivers to work hours considerably in excess of eight hours per day, 12 hours per day, and/or 40 hours per week. Claimant is informed and believes, and on that basis alleges, that it has been Ardwin's policy and practice to require and/or knowingly and willfully permit Delivery Truck Drivers to work such overtime hours without paying them overtime compensation required by the California Labor Code;
- (2) failed to indemnify them – specifically as to the Delivery Truck Drivers - for the employment expenses they necessarily incur in performing their assigned job duties for Ardwin, such as lease payments, the costs of providing and operating a Ardwin-approved delivery vehicle or truck and trailer, including fuel, maintenance, repair, cleaning, marking, and licensing; wages paid to helpers and assistant drivers; insurance, including workers' compensation and employer's liability insurance, automobile liability insurance, general liability insurance, umbrella insurance, and cargo insurance; certain tools and equipment Ardwin

requires the Delivery Truck Drivers to purchase or rent from its clients; losses associated with lost or damaged merchandise and other property damage; payroll administration services; and the equipment required to perform their duties, including moving pads, dollies, hand tools, and cellular telephones. Ardwin has taken deductions from Delivery Drivers' compensation to cover many of these, and other, employment-related expenses;

- (3) failed to provide a 30 minute off-duty meal period to the Delivery Truck Drivers who worked more than five hours in a day. As a result of Ardwin's misclassification of the Delivery Truck Drivers as "independent contractors," Ardwin has failed to provide a second 30 minute off-duty meal period to the Delivery Truck Drivers who worked more than 10 hours in a day;
- (4) failed to authorize and permit a rest period of ten minutes per every four hours, or major fraction thereof, worked. As a result of Ardwin's misclassification of the Delivery Truck Drivers as "independent contractors," Ardwin has failed to pay federal and California minimum wage compensation to the Delivery Truck Drivers for all hours worked;
- (5) failed to pay to the Delivery Truck Drivers all wages due and owing twice per month at the times prescribed by Cal. Labor Code § 204;
- (6) failed to itemize the total hours worked on wage statements furnished to the Delivery Truck Drivers as required by Cal. Labor Code §§ 226, 226.3, and Wage Order 9;
- (7) not properly maintained payroll records showing the actual hours the Delivery Truck Drivers worked each day as required by Cal. Labor Code § 1174 and IWC wage order No. 9, § 7(A);
- (8) willfully and knowingly failed to pay Delivery Truck Drivers upon termination of employment, all accrued compensation, including reimbursement of all unlawful deductions from wages, payment of missed meal and rest period compensation, and payment of minimum wage and overtime compensation;
- (9) failed to maintain workers' compensation insurance covering the Delivery Truck Drivers and instead has required the Delivery Truck Drivers to purchase their own workers' compensation insurance coverage and failed to contribute to the Unemployment Trust Fund on their behalf; and
- (10) failed to provide Delivery Truck Drivers with paid sick time off in accordance with Cal. Labor Code § 246.

Claimants seek to recover the unpaid compensation for all hours worked as defined by the Labor Code and the applicable Industrial Welfare Commission wage order as to the time during which an employee is subject to the control of an employer, and includes all the time the employee is engaged, suffered or permitted to work, whether or not required to do so, or as otherwise set forth in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, 4 Cal.5th 903 (2018). California law requires that all hours worked over 8 in a day or 40 in a week or worked on the 7th consecutive day of a work week be paid 1.5 times an employee's regular rate of pay. *See, e.g.*, Lab. Code §§ 510, 1194; Cal. Code Regs., tit. 8, § 11090, *et seq.* In addition, hours worked over 12 in a day or hours over 8 worked on the 7th consecutive day in a week are paid at 2 times an employee's regular rate of pay.

Likewise, the pre-arranged delivery schedule, for which Delivery Truck Drivers, have no discretion to change or alter, does not account for meal or break time. California law also requires that an employer provide an employee who works more than five hours a meal break that is no less than 30 minutes in duration. 8 CCR 11090(11)(A). Unless an employee is relieved of all duty during the 30-minute meal period, the meal period is considered an on-duty meal period and counted as time worked. However, an on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-the-job paid meal period. *Id.* If an employer fails to provide an employee a lawful meal period, the employer must pay the employee one hour of pay for each violation. 8 CCR 11090(11)(D). Additionally, California law mandates that an employer must "authorize and permit" an employee to take a duty-free rest period not less than 10 minutes in duration for every four hours of work. 8 CCR 11090(12)(A). Violation of the rest break provisions requires the employer pay the employee one hour of pay for each workday a rest period was not provided. 8 CCR 11090(12)(B). Lastly, in California, the employer is required to keep records of all hours worked. Labor Code § 1174(d).

Additionally, Labor Code §226.8 states: (a) It is unlawful for any person or employer to engage in any of the following activities;

- (1) Willful misclassification of an individual as an independent contractor,
- (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose ... arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified."

Claimants will likewise establish that Ardwin willfully misclassified them and all other similarly situated Delivery Drivers, including assistant drivers and helpers, as independent contractors based on the numerous practices and policies in place during the Relevant Time Period. Furthermore, Ardwin did charge these people and make deductions from compensation for damages and charges they chose to impose on these

individuals. The penalty for this wrongdoing by any *de facto* employer appears in Labor Code §226.8 (b), to wit,

“If ... a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or the employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.”

Because Claimant and other similarly situated Delivery Truck Drivers were misclassified as “independent contractors,” and therefore not fully compensated for all hours worked, were deprived of overtime compensation, Ardwin also failed to provide accurate wage statements in a violation of Labor Code Section 226, and failed to fully compensate former employees in a timely manner when their employment ended, in violation of Labor Code Section 201 *et seq.*

Accordingly, we believe that Ardwin has violated, and continues to violate, numerous provisions of California law, including, without limitation Labor Code Sections §§ 201, 202, 203, 204, 210, 216, 221, 225.5, 226, 226.3, 226.7, 226.8, 246, 510, 511, 512, 551, 552, 558, 1194-1197.1, 1198, 2802, and 2698, *et seq.*, as well as the relevant IWC orders and regulations, and that Claimants and other similarly situated Delivery Truck Drivers are entitled to all statutory penalties allowed by law. Our investigation is continuing, and there may be more violations uncovered.

We respectfully request that the Labor Workforce Development Agency notify this office within thirty (60) days if it wishes to investigate this matter further. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned.

Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned. If Ardwin wishes to resolve these claims without resorting to protracted litigation, please contact the undersigned forthwith to discuss this matter further.

Thank you for your immediate attention to this matter.

Very truly yours,



Michael H. Boyamian

Cc: Ardwin Inc. (*Sent via Certified U.S. Mail*)
Edwin Sahakian (Agent of Service of Process)
589 Americana Way, Unit 233
Glendale, California 91210

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 550 North Brand Boulevard, 15th Floor, Glendale, California 91203. On December 29, 2023, I served, in the manner indicated below, the foregoing document described as:

1. FIRST AMENDED COMPLAINT

on the interested parties in this action as follows:

Christopher C. McNatt, Jr. (SBN 174559) cmcnett@scopelitis.com SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, LLP 2 North Lake Avenue, Suite 560 Pasadena, California 91101 Telephone: (626) 795-4700 Facsimile: (626) 795-4790	Attorneys for Defendant ARDWIN INC. d/b/a ARDWIN FREIGHT
Adam Carl Smedstad (SBN 303591) asmedstad@scopelitis.com SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C. 5470 Shilshole Ave NW, Suite 520 Seattle, WA 98107 Telephone: (206) 288-6193 Facsimile: (206) 299-9375	Attorneys for Defendant ARDWIN INC. d/b/a ARDWIN FREIGHT

X BY ELECTRONIC SERVICE: I served said document(s) to be transmitted electronically on counsel of record by transmission through Case Anywhere. Said service was made pursuant to the Court's Order on the parties' agreement to receive service in this manner and pursuant to Rule 2.251 of the California Rules of Court. When available, a true and correct copy of the Case Anywhere Receipt will be attached to this declaration with court filed copy of said document(s) or, in the case of any discovery related document(s), retained by the undersigned.

X STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 29, 2023 at Glendale, California.



Armand R. Kizirian