

BOYAMIAN LAW, INC.
Michael H. Boyamian, SBN 256107
michael@boyamianlaw.com
Tamar Chobanian, SBN 343815
tamar@boyamianlaw.com
550 North Brand Boulevard, Suite 1500
Glendale, California 91203
Telephone: (818) 547-5300
Facsimile: (818) 547-5678

MAJARIAN LAW GROUP, APC
Sahag Majarian, SBN 146621
sahag@majarianlawgroup.com
Garen Majarian, SBN 334104
garen@majarianlawgroup.com
18250 Ventura Blvd,
Tarzana, CA 91356-4229
Telephone: (818) 609-0807
Facsimile: (818) 609-0892

Attorneys for Plaintiff ABRAHAM
SANDOVAL, on behalf of himself and all others
similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

ABRAHAM SANDOVAL, an Individual, on
Behalf of Himself and All Similarly Situated
Individuals,

Plaintiff,

v.

INSTACART, a Delaware Corporation;
MAPLEBEAR INC., d/b/a INSTACART a
Delaware Corporation; and DOES 1 through
25, Inclusive,

Defendants.

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

5/2/2024 10:38 AM

By: Michelle Gomez-Casillas, DEPUTY

Case No. CIVSB2415658

CLASS ACTION

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; AND
9. UNFAIR COMPETITION

JURY TRIAL DEMANDED

1 Plaintiff ABRAHAM SANDOVAL (“Plaintiff”), individually and on behalf of all similarly
2 situated individuals, alleges as follows:

3 **GENERAL ALLEGATIONS**

4 1. This is a proposed class action brought against Defendants INSTACART and
5 MAPLEBEAR INC., d/b/a INSTACART, and DOES 1 through 25, inclusive (collectively
6 hereinafter referred to as, “Defendants” and “INSTACART”), on behalf of Plaintiff and all other
7 non-employee workers who worked in California as Delivery Drivers (hereinafter collectively
8 referred to as “Delivery Drivers” or “Shoppers”) for Defendants at any time from October 16,
9 2019¹ and continuing while this action is pending (“Class Period”), who were denied the benefits
10 and protections required under the California Labor Code and other statutes and regulations
11 applicable to California employees.

12 2. During the Class Period, Defendants:

- 13 a. unlawfully misclassified Delivery Drivers as independent contractors;
- 14 b. failed to reimburse Delivery Drivers for necessary business expenditures;
- 15 c. failed to pay wages for all hours worked by Delivery Drivers;
- 16 d. failed to pay Delivery Drivers the applicable legal minimum wage;
- 17 e. failed to pay overtime wages due to Delivery Drivers;
- 18 f. failed to provide meal and rest periods due to Delivery Drivers;
- 19 g. failed to provide the Delivery Drivers with timely and accurate wage and hour
20 statements;
- 21 h. failed to pay the Delivery Drivers compensation in a timely manner upon their
22 termination or resignation;
- 23 i. failed to maintain complete and accurate payroll records for the Delivery Drivers;
- 24 j. wrongfully withheld wages and compensation due to the Delivery Drivers; and

25
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 k. committed unfair business practices in an effort to increase profits and to gain an
2 unfair business advantage at the expense of the Delivery Drivers and the public.

3 3. The foregoing acts and other acts by Defendants - committed throughout California and
4 Alameda County - violated provisions of the California Labor Code, including sections 201, 202,
5 203, 204, 226, 226.7, 226.8, 246, 510, 512, 515, 551, 552, 558, 1194, 1198, and 2802 (collectively,
6 “Employment Laws”), violated the applicable Wage Orders issued by California’s Industrial
7 Welfare Commission, including Wage Orders 9-2001 during the Class Period (“Regulations”),
8 violated California’s Unfair Business Practices Act, California Business & Professions Code
9 sections 17200 *et seq.*, and violated Plaintiff’s rights.

10 **JURISDICTION AND VENUE**

11 4. Venue is proper in this Judicial District and the County of San Bernardino because work
12 was performed by Plaintiff and other members of the Class for Defendants in the County of San
13 Bernardino, California, and Defendants’ obligations under the Employment Laws and Regulations
14 to pay overtime wages, to provide meal and rest periods and accurate wage statements to Plaintiff
15 and other members of the Class arose and were breached in California, including the County of San
16 Bernardino.

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

21 **THE PARTIES**

22 6. Plaintiff ABRAHAM SANDOVAL is, and at all relevant times was, a competent adult
23 residing in California. Plaintiff commenced work for INSTACART in or around March 2020 until
24 approximately December 2023.

25 7. Plaintiff brings suit on behalf of himself and all similarly situated individuals pursuant
26 California Code of Civil Procedure section 382, and California Business & Professions Code
27 sections 17200, *et seq.* Plaintiff was unlawfully classified by Defendants as an independent
28 contractor and worked as Delivery Driver using the INSTACART Application, controlled and

1 maintained by Defendants, making deliveries throughout San Bernardino, California and other parts
2 of the state.

3 8. Defendant INSTACART is, and at all relevant times was, a Delaware corporation registered
4 with the State of California's Secretary of State with a foreign name designation as "Maplebear
5 Inc.". At times relevant to the Class Period, Defendant MAPLEBEAR, INC., d/b/a. INSTACART
6 is, and was, a Delaware corporation registered with the State of California's Secretary of State.

7 9. INSTACART provides logistics and on-demand delivery services of grocery products to its
8 customers. INSTACART utilizes a fleet of Delivery Drivers referred to as "shoppers" who travel to
9 various grocery stores and retail chains, hand-pick the requested items for customers, and then
10 proceed to deliver the grocery products to INSTACART's customers' residences or places of
11 business. Through INSTACART's integrated mobile application, Delivery Drivers are notified of
12 orders of INSTACART's customers and satisfy INSTACART's core central directive to fulfill on-
13 demand grocery delivery services to its customers. INSTACART is therefore a provider of
14 managed transportation services including the planning and execution of delivery for its clients and
15 customers. INSTACART unlawfully classified Plaintiff and other Delivery Drivers as independent
16 contractors, when, in fact, they were heavily regulated through a series of work-related restrictions
17 and directives through Instacart.

18 10. Plaintiff is informed and believes and based thereon alleges that Defendants uniformly
19 apply their misclassification practices, payment procedures, and overtime policies to all Delivery
20 Drivers / Shoppers. Plaintiff is currently unaware of the true names and capacities of the defendants
21 sued in this action by the fictitious names DOES 1 through 25, inclusive, and therefore sue those
22 defendants by such fictitious names.

23 11. Plaintiff will amend this Complaint to alleges the true names and capacities of such
24 fictitiously named defendants when they are ascertained.

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

28 13. Plaintiff is informed and believes and based thereon alleges that DOES 1 through 25,

1 inclusive were the agents, servants and/or employees of Defendants and, in doing the things
2 hereinafter alleged and at all times, were acting within the scope of their authority as such agents,
3 servants and employees, and with the permission and consent of Defendants.

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

6 15. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of
7 them, were their employers under California law, that Defendants did acts consistent with the
8 existence of an employer-employee relationship with Plaintiff despite his unlawful classification
9 of Plaintiff as an independent contractor.

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

11 16. Defendants unlawfully classified Plaintiff and other similarly situated individuals as
12 independent contractors when, in fact, they were heavily regulated through a series of work-related
13 restrictions and directives through Defendants.

14 17. Plaintiff is a former Delivery Driver or Shopper for Defendant INSTACART. He
15 commenced work for INSTACART in or around March 2020 until approximately December 2023.
16 Plaintiff worked seven (7) days a week and usually from 11:00 a.m. to 8:00 p.m. Plaintiff mainly
17 drove throughout the Inland Empire and San Bernardino, primarily in the cities of Eastvale and
18 Chino Hills. Plaintiff and other similarly situated Delivery Drivers were paid by way of a piece-
19 rate basis and received a fixed amount of pay based on each delivery completed – this is of course
20 following the various expenses INSTACART unlawfully charged and deducted from Plaintiff's and
21 Class Members' pay.

22 18. Plaintiff's work for INSTACART came to an abrupt end following an altercation Plaintiff
23 had with an employee at a retail location in the course of completing an INSTACART order.
24 Following this incident, specifically the following day, Plaintiff was unable to log on to the
25 INSTACART mobile platform. When multiple attempts to log on failed, he contacted
26 INSTACART's customer service hotline and was informed then that the retail location lodged a
27 complaint of inappropriate behavior with Instacart, and INSTACART in turn made the immediate
28 decision to terminate Plaintiff's contract.

1 19. Furthermore, INSTACART has established an elaborate system and scheme in an attempt to
2 conceal its true status as the employer of its Delivery Drivers. As part of this scheme, INSTACART
3 requires its Delivery Drivers to sign various agreements as a condition to obtain work through their
4 mobile application. Through INSTACART's app-based technology, INSTACART requires the
5 Delivery Drivers to acknowledge the "terms and conditions" which characterizes the Delivery
6 Driver as an independent contractor who will perform delivery services using his or her "own"
7 equipment – equipment that is the vehicle that Plaintiff and other Delivery Drivers utilize and their
8 own cellphone device. INSTACART also required Plaintiff to pass a background check, identify
9 the vehicle to be used to INSTACART's satisfaction, and adhere to a host of directives in fulfilling
10 INSTACART's orders for its customers. Notably, Mr. Sandoval did not establish a business entity
11 to secure payment nor did he hire any others to perform work on his behalf in an effort to increase
12 his revenues or profits. Mr. Sandoval instead spent 100 percent of his working hours making
13 deliveries for INSTACART at the express and explicit direction of INSTACART's dispatch
14 services through its mobile app.

15 20. Plaintiff was required to utilize INSTACART's mobile platform that would provide details
16 and instructions to Plaintiff for upcoming deliveries and assignments. INSTACART would also
17 utilize metrics and analytics to measure and grade Plaintiff's and Delivery Drivers' performance in
18 completing deliveries. Delivery Drivers, including Plaintiff, were evaluated based on their
19 interactions with customers, the timeliness or efficiency in completing shopping and delivery, and
20 on overall customer rating and score. Failure to meet INSTACART's idealized standards or
21 expectations could result in Delivery Drivers not receiving favorable assignments, less orders, or
22 even worse, termination or deactivation of their accounts.

23 21. On average, Plaintiff worked at least eight to ten hours per day, seven days a week in order
24 to accomplish the deliveries he performed pursuant to INSTACART's instructions. Plaintiff, and
25 other similarly situated individuals, were not paid the minimum wage and no overtime for the work
26 they performed as Plaintiff and Delivery Drivers were paid a flat rate based on the deliveries they
27 tendered irrespective of the number of hours they actually expended to effectuate the deliveries for
28 Instacart. Plaintiff, like other Delivery Drivers, also did not clock out for meal periods as

1 statutorily-mandated and compliant meal and rest periods were just not made available due to the
2 press of work and the nature of INSTACART's systemic misclassification of Delivery Drivers as
3 independent contractors.

4 22. The experiences of Plaintiff are consistent for other Delivery Drivers. Under the various
5 documents Delivery Drivers are required to sign, cloaked in the form of "agreements," the Delivery
6 Drivers are engaged to perform work for INSTACART as a "Shopper" and INSTACART controls
7 the manner in which that work is performed and distributed in virtually every way. These purported
8 agreements also result in the Delivery Driver, like Plaintiff, to pay numerous expenses incident to
9 the employment, and to assume various risks that ordinarily and by law are the responsibility of an
10 employer.

11 23. The various so-called agreement or "terms and conditions" that misclassifies
12 INSTACART's Delivery Drivers as "independent contractors" are a sham, when in fact and under
13 the law they are not. These supposed agreements specifically are designed and intended to conceal
14 the true nature of the employment relationship between INSTACART and its Delivery Drivers,
15 which is that of employer and employee, and to evade the provisions of California law that confer
16 protections on employees. In particular, INSTACART has devised and used its sham designation of
17 its Delivery Drivers as independent contractors, to transfer substantial costs and risks that are the
18 responsibility of INSTACART as a matter of law to its employees, in violation of California Labor
19 Code §2802 and other provisions of California law.

20 24. Despite INSTACART's control over virtually all aspects of the employment relationship,
21 and despite the unequivocal command of applicable statutes and case law that workers such that
22 Plaintiff is entitled to all of the protections due to employees under California law, INSTACART
23 mischaracterized its Delivery Drivers as independent contractors, and to evade and ignore the
24 provisions of California law.

25 25. As a result, these Delivery Drivers must pay substantial sums of their own money for work-
26 related costs and expenses, including without limitation, those related to the purchase and/or lease
27 of car, truck and other equipment; those incidental to the operation and maintenance of the vehicles
28 and other equipment; for fuel, oil, tires, and repairs; the cost of insurance and maintenance; a fee for

1 accounting services; charges for INSTACART's services; and the cost of workers' compensation
2 and liability insurance. These costs and expenses that INSTACART's Delivery Drivers are
3 required to pay amount to hundreds, if not thousands, of dollars per month for each delivery driver.
4 The internal charges charged by INSTACART are calculated entirely by INSTACART and are
5 deducted by INSTACART before any pay is issued to INSTACART's Delivery Drivers, including
6 to Plaintiff, each week. For example, if Delivery Drivers, like Plaintiff, elect to receive their pay
7 the same day, INSTACART charges a higher processing fee compared to those payment schedules
8 that are paid at the end of the week.

9 26. In addition, INSTACART's Delivery Drivers are also denied the protections of
10 unemployment insurance, because INSTACART has unlawfully failed to register as an employer
11 and/or has failed to report its employment of these Delivery Drivers. INSTACART's Delivery
12 Drivers are also denied meal and rest breaks, itemized wage statements, and other protections to
13 which they are entitled under the California Labor Code and its implementing regulations by virtue
14 of INSTACART's scheme to misclassify Delivery Drivers as independent contractors.

15 27. INSTACART's mischaracterization of its Delivery Drivers as independent contractors, and
16 its attendant requirement that Delivery Drivers pay for costs and expenses necessarily incurred in
17 the performance of their work for Instacart, are in violation of California law.

18 28. The Delivery Drivers are economically dependent for their financial livelihood on Instacart,
19 and INSTACART is entirely dependent on the Delivery Drivers for the on-demand delivery
20 service INSTACART advertises and promises to deliver to its customers and the general public.
21 As illustrated above when considering Plaintiff's experience, the Delivery Drivers are terminable
22 at will. They may be terminated without cause or immediately for alleged breaches of the broadly-
23 worded standards and obligations described in the "terms and conditions" they are required to sign
24 and acknowledge.

25 29. Most of the Delivery Drivers have worked, or did work, for INSTACART for several years.
26 Despite INSTACART's pervasive control over all aspects of its delivery service operation,
27 including the details of the Delivery Drivers' work, INSTACART has classified and treated the
28 Delivery Drivers as "independent contractors." INSTACART's classification and treatment of the

1 Delivery Drivers as “independent contractors” rather than as “employees” is and during all relevant
2 times has been unlawful.

3 **CLASS ACTION ALLEGATIONS**

4 30. Plaintiff brings these claims as a class action pursuant to Code of Civil Procedure § 382 and
5 Business and Professions Code §§ 17203 & 17204. Plaintiff brings this action on their own behalf
6 and on behalf of the following class of individuals (the “Class” or “Class Members”):

7 **All individuals who were classified as an independent contractor or non-**
8 **employee and performed delivery services for Defendants as Delivery**
9 **Drivers or Shoppers and worked in the State of California from October 16,**
10 **2019, and continuing while this action is pending.**

11 31. All Delivery Drivers, i.e., Shoppers, including Plaintiff, are putative class members.

12 32. During the Class Period, by virtue of unlawfully classifying Plaintiff and Class
13 Members as independent contractors and compensating Class Members with a “flat rate”
14 Defendants have routinely failed to compensate Delivery Drivers all of the wages they are due
15 (“off-the-clock” work).

16 33. During the Class Period, Plaintiff and Delivery Drivers were subject to Defendants’
17 unlawful company practice of classifying them as independent contractors and paying them a daily
18 flat sum of money when in fact they were subjected to the pervasive control of Defendants. All
19 who were subject to this unlawful classification and compensation scheme suffered damages.
20 Defendants applied this illegal wage device uniformly to all Delivery Drivers to the disadvantage of
21 Class Members.

22 34. As a result, during the Class Period, Defendants have failed to provide Delivery Drivers
23 with accurate wage and hour statements since the daily “flat rate” did not fully compensate Delivery
24 Drivers for all hours worked. Defendants have failed to provide Delivery Drivers with accurate
25 wage and hour statements since the gross hours earned, total hours worked, all deductions made, net
26 wages earned, and all applicable hourly rates in effect during each pay period and the corresponding
27 number of hours worked at each hourly rate.

28 35. During the Class Period, Plaintiff and Delivery Drivers have been required to

1 work more than eight hours per day and more than forty hours per workweek. Defendants have
2 routinely failed to compensate Delivery Drivers all of the overtime wages they are due.

3 36. During the Class Period, Defendants have failed to pay accrued wages and other
4 compensation due immediately to Delivery Drivers who were terminated, and Defendants have
5 failed to pay accrued wages and other compensation due within seventy-two hours to Delivery
6 Drivers who ended their employment.

7 37. The proposed class is ascertainable in that its members can be identified using
8 information contained in Defendants' payroll and personnel records.

9 38. Numerosity. The Delivery Drivers are so numerous, conservatively estimated
10 to include over 500 Delivery Drivers, that joinder of each individual Class Member would be
11 impracticable, and the disposition of their claims in a class action, rather than numerous individual
12 actions, will benefit the parties, the Court and the interests of justice.

13 39. Commonality. There is a well-defined community of interest in the questions of
14 law and fact involved in this action, because Defendants' failure to pay Delivery Drivers their
15 wages or afford them the protections required under the Employment Laws and Regulations affects
16 all Class Members. Common questions of law and fact predominate over questions that affect only
17 individual Delivery Drivers, because all Delivery Drivers were subject to the uniform, unlawful pay
18 practices and policies. The predominate questions of law and fact include, but are not limited to:

- 19 a. Whether Defendants devised a scheme and/or plan to circumvent California
20 wage and hour laws;
- 21 b. Whether Defendants' conduct was fraudulent and/or deceitful;
- 22 c. Whether Defendants' conduct violated the Employment Laws and
23 Regulations; and
 - 24 (i) misclassified Plaintiff and Class Members as independent
25 contractors in contravention of the Employment Laws and
26 Regulations;
 - 27 (ii) failed to compensate Plaintiff and the Class Members
28 for all hours worked;

- (ii) failed to compensate Plaintiff and the Class Members at the applicable and legally-mandated minimum hourly rate then in effect;
- (iii) failed to provide Plaintiff and the Class Members with timely and accurate wage and hour statements; and
- (iv) failed to maintain complete and accurate payroll records for Plaintiff and the Class Members;

d. Whether Defendants' systematic acts and practices violate, *inter alia*, California Business & Professions Code section 17200, *et seq.*

40. Typicality. Plaintiff's claims are typical of those of the other Delivery Drivers because all Delivery Drivers share the same or similar employment duties and activities, all are automatically classified as independent contractors, and all have been denied the benefits and protections of the Employment Laws and Regulations in the same manner. Since Defendants have uniformly applied the same classification practices, payment procedures and work policies to each Delivery Driver, Plaintiff's claims are typical of the claims of all Delivery Drivers. Plaintiff's claims are also typical because Plaintiff have suffered the same damages as those suffered by all Class Members.

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

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

1 43. Superiority of Class Action. The nature of this action and the nature of laws available to
2 Plaintiff and the other Delivery Drivers in the putative Class make use of the class action a
3 particularly efficient and effective procedure because:

- 4 a. For many of the Delivery Drivers, individual actions or other
5 individual remedies would be impracticable and litigating individual
6 actions would be too costly;
- 7 b. The action involves a large corporate employer or employers (INSTACART)
8 and a large number of individual employees (Plaintiff and the other Class
9 Members), many with relatively small claims and all with common issues of
10 law and fact;
- 11 c. If the Delivery Drivers are forced to bring individual lawsuits, the
12 corporate defendants would necessarily gain an unfair advantage, the
13 ability to exploit and overwhelm the limited resources of individual
14 Class Members with vastly superior financial and legal resources;
- 15 d. The costs of individual suits would likely consume the amounts
16 recovered;
- 17 e. Requiring each Class Member to pursue an individual remedy would
18 also discourage the assertion of lawful claims by current Delivery Drivers
19 of Defendants, who would be disinclined to pursue an action against
20 their present and/or former de facto employer due to an appreciable and
21 justified fear of retaliation and permanent damage to their immediate
22 and/or future employment; and
- 23 f. Common business practices Plaintiff experienced is representative of those
24 experienced by all Delivery Drivers and can establish the right of all Delivery
25 Drivers to recover on the alleged claims.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGE**

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

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

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

15 46. Defendants failed to pay Plaintiff and putative class members for all hours worked
16 at the statutory minimum wage rate, as required by law. Additionally, since Delivery Drivers,
17 including Plaintiff, are paid by the piece, they must be separately compensated for rest breaks at
18 their regular rate of pay which Defendants failed to do so.

19 47. At various times throughout the relevant statutory period, Defendants have caused
20 Plaintiff and putative class members to incur expenses and deductions that contributed to
21 Defendants' failing to pay minimum wages for all hours worked, as required by law.

22 48. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff
23 and putative class members have been deprived of minimum wages due in amounts to be
24 determined at trial, and to additional amounts as liquidated damages, pursuant to Cal. Labor Code
25 §§ 1194 and 1194.2.

26 49. By violating Cal. Labor Code §§ 1182.11, 1182.12, and 1197, IWC wage order No.
27 9, § 4, and the Minimum Wage Order, Defendants are also liable for civil penalties, interest and
28 reasonable attorneys' fees and costs under Cal. Labor Code §§ 558, 1194, 1197.1.

1 50. Plaintiff request relief as described below.

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PAY OVERTIME COMPENSATION**

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

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

7 52. Defendants have been required, pursuant to Cal. Labor Code § 510 and IWC wage order No.
8 9, § 3, to pay Plaintiff and putative class members overtime compensation at a rate of 1.5 times
9 their regular rates of pay for all hours worked in excess of eight in a day and in excess of 40 in a
10 week, and at a rate of two times their regular rates of pay for all hours worked in excess of 12 in a
11 day.

12 53. Defendants failed to pay Plaintiff and putative class members daily or weekly overtime
13 compensation in violation of Cal. Labor Code § 510 and IWC wage order No. 9, § 3.

14 54. As a result of Defendants' unlawful acts, Plaintiff and putative class members have
15 been deprived of overtime compensation in an amount to be determined at trial, and are entitled to
16 recovery of such amounts, plus interest thereon, and attorneys' fees and costs, under Cal. Labor
17 Code § 1194.

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

20 56. Plaintiff request relief as described below.

21 **THIRD CAUSE OF ACTION**

22 **REIMBURSEMENT OF EMPLOYMENT EXPENSES**

23 **(CAL. LABOR CODE § 2802)**

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

26 58. Cal. Labor Code § 2802 provides: "An employer shall indemnify his or her
27 employee for all necessary expenditures or losses incurred by the employee in direct consequence
28 of the discharge of his or her duties, or of his or her obedience to the directions of the employer . . .

1 . [which includes] all reasonable costs, including, but not limited to, attorney's fees incurred by the
2 employee enforcing the rights granted by this section."

3 59. As a direct consequence of discharging their duties for Defendants and/or obeying
4 Defendants' directions, Plaintiff and putative class members have necessarily incurred expenses
5 for which they have not been indemnified by Defendants, including the purchase and/or lease and
6 depreciation of vehicles, fuel, maintenance, and other vehicle operating costs; various forms of
7 insurance; costs associated with lost or damaged merchandise and other property damage; certain
8 tools and equipment Defendants have required Plaintiff and class members to purchase or utilize in
9 discharging work or completing their duties for Instacart, i.e., cellphones; other miscellaneous
10 equipment including GPS navigational equipment; fees for payroll administration services; and the
11 attorneys' fees incurred to enforce Plaintiff's and putative class members' rights under Cal. Labor
12 Code § 2802.

13 60. Defendants have failed to indemnify or in any manner reimburse Plaintiff and putative
14 class members for these expenditures and losses.

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

19 62. As a direct and proximate result of Defendants' conduct, Plaintiff and putative
20 class members have suffered substantial losses according to proof, as well as pre-judgment interest,
21 costs, and attorneys' fees for the prosecution of this action, which losses are compensable under
22 Cal. Labor Code §2802.

23 63. Plaintiff request relief as described below.

24 **FOURTH CAUSE OF ACTION**

25 **UNLAWFUL DEDUCTIONS FROM WAGES**

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

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

1 65. Cal. Labor Code § 221 provides: “It shall be unlawful for any employer to collect
2 or receive from an employee any part of wages theretofore paid by said employer to said
3 employee.”

4 66. Cal. Labor Code § 223 provides: “Where any statute or contract requires an employer to
5 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
6 purporting to pay the wage designated by statute or by contract.”

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

11 68. These and related statutes, along with California’s fundamental public policy protecting
12 wages and wage scales, prohibit employers from subjecting employees to unanticipated or
13 unpredicted reductions in their wages; making employees the insurers of their employer’s business
14 losses; otherwise passing the ordinary business losses of the employer onto the employee; taking
15 deductions from wages for business losses in any form unless the employer can establish that the
16 loss was caused by a dishonest or willful act, or gross negligence of the employee; or taking other
17 unpredictable deductions that may impose a special hardship on employees.

18 69. Defendants have violated Cal. Labor Code §§ 221 and 223 and IWC wage order No. 9, § 8
19 by unlawfully taking deductions from Plaintiff’s and putative class members’ compensation to
20 cover certain ordinary business expenses of Defendants, including various forms of insurance;
21 uniforms; payment services; equipment and tools; losses associated with lost or damaged
22 merchandise and other property damage; gift cards and other payments given or reimbursed to
23 customers who complain or are dissatisfied with service they received; and “charge-back” items
24 Defendants claim to reserve the right to deduct from Plaintiff’s and putative class members’ pay.

25 70. Defendants have further violated Cal. Labor Code §§ 221 and 223 and IWC wage
26 order No. 9, § 8 by unlawfully taking deductions from Plaintiff’s and putative class members’
27 compensation for the purpose of establishing a reserve account to draw upon to cover ordinary
28 business expenses, including compensation to customers complaining of damages to their

merchandise or to their homes.

71. Because Defendants made unlawful deductions from Plaintiff's and putative class members' compensation, they are liable to Plaintiff and putative class members for the compensation that should have been paid but for the unlawful deductions, pursuant to Cal. Labor Code §§ 221 and 223 and IWC wage order No. 9, § 8.

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

73. Plaintiff request relief as described below.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

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

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

75. Plaintiff and putative class members have regularly worked in excess of five (5) hours in a workday without being provided at least a half-hour meal period in which they were relieved of all duties, as required by Cal. Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9, § 11(A).

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

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

78. Plaintiff request relief as described below.

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1 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

13 82. By violating Cal. Labor Code §§ 226.7 and 512, and IWC wage order No. 9, § 11,
14 Defendants are also liable for penalties, reasonable attorneys' fees, and costs under Cal. Labor Code
15 §§ 218.5 and 1194.

16 83. Plaintiff request relief as described below.

17 **SEVENTH CAUSE OF ACTION**

18 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

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

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

22 85. Cal. Labor Code § 226(a) and IWC wage order No. 9, § 7(B) require employers semi-
23 monthly or at the time of each payment of wages to furnish each California employee with a
24 statement itemizing, among other things, the total hours worked by the employee. Cal. Labor Code
25 § 226(b) provides that if an employer knowingly and intentionally fails to provide a statement
26 itemizing, among other things, the total hours worked by the employee, then the employee is
27 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial violation
28 and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

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

6 87. Plaintiff request relief as described below.

7 **EIGHTH CAUSE OF ACTION**

8 **WAITING TIME PENALTIES**

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

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

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

14 90. Cal. Labor Code § 202 requires an employer to pay all compensation due and owing
15 to a California employee who quits within 72 hours of that employee's quitting, unless the
16 employee provides at least 72 hours' notice of quitting, in which case all compensation is due at the
17 end of the employee's final day of work.

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

21 92. Defendants willfully failed to timely pay compensation and wages, including unpaid
22 minimum wage, unpaid overtime pay, unreimbursed expenses and unreimbursed reserve accounts,
23 unpaid premium pay for missed meal periods, and unpaid premium pay for missed rest periods to
24 Plaintiff and similarly situated putative class members no longer in Defendants' employ, upon
25 termination of their employment. As a result, Defendants are liable to Plaintiff and similarly
26 situated putative class members for waiting time penalties, together with interest thereon and
27 reasonable attorneys' fees and costs, under Cal. Labor Code §§ 203 and 256.

28 93. Plaintiff request relief as described below.

1 **NINTH CAUSE OF ACTION**

2 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION ACT**

3 **(CAL. BUSINESS & PROFESSIONS CODE §§ 17200-17209)**

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

6 95. California Business & Professions Code § 17200 prohibits unfair competition in the
7 form of any unlawful, unfair, or fraudulent business act or practice.

8 96. California Business & Professions Code § 17204 allows “any person acting for the
9 interests of itself, its members or the general public” to prosecute a civil action for violation of the
10 Unfair Competition Law.

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

- 15 a. Failing to pay California minimum wage and overtime compensation to
16 Plaintiff and putative class members;
- 17 b. Failing to provide adequate off-duty meal periods to Plaintiff and putative
18 class members, and failing to pay them premium pay for missed meal periods;
- 19 c. Failing to authorize and permit adequate rest periods to Plaintiff and
20 putative class members, and failing to pay them premium pay for missed rest
21 periods;
- 22 d. Failing to indemnify Plaintiff and putative class members for employment-
23 related business expenses and losses;
- 24 e. Improperly and unlawfully making deductions from Plaintiff’s and
25 putative class members’ compensation to cover certain ordinary business expenses
26 and losses of Defendants, which were not attributable to Plaintiff’s and putative class
27 members’ dishonest or willful act, or to their gross negligence, as described above;
- 28 f. Improperly and unlawfully demanding a cash bond from Plaintiff and

- 1 putative class members, and making deductions from such bonds in violation of the
2 Employee Bond Law, Cal. Labor Code §§ 400-410;
- 3 g. Coercing or compelling Plaintiff and putative class members to patronize
4 Defendants' clients by requiring Delivery Drivers to purchase or rent certain tools
5 and equipment from Defendants' clients;
- 6 h. Failing to maintain workers' compensation insurance covering Plaintiff and
7 putative class members, requiring Plaintiff and putative class members to purchase
8 workers' compensation insurance for themselves, and failing to pay compensation to
9 Plaintiff and putative class members injured on the job;
- 10 i. Failing to contribute to the Unemployment Trust Fund on behalf of Plaintiff and
11 putative class members;
- 12 j. Failing to pay all wages due upon termination of employment to Plaintiff
13 and similarly situated putative class members no longer in Defendants' employ;
- 14 k. Failing to provide accurate itemized wage statements to Plaintiff and
15 putative class members;
- 16 l. Failing to keep accurate payroll records noting the actual hours worked by
17 Plaintiff and putative class members, in violation of Cal. Labor Code § 1174 and
18 IWC wage order No. 9, § 7(A);
- 19 m. Failing to pay all wages for labor performed between the 1st and 15th days of
20 the month between the 16th and the 26th day of the month during which the labor
21 was performed, and failing to pay all wages for labor performed between the 16th
22 and the last day of the month between the 1st and 10th day of the following month,
23 as required by Cal. Labor Code § 204;
- 24 n. Willfully misclassifying Plaintiff and putative class members as
25 "independent contractors" in violation of the California Employee Misclassification
26 Act, Cal. Labor Code § 226.8;
- 27 o. Failing to provide Plaintiff and putative class members paid sick leave as required by
28 Cal. Labor Code § 246; and

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

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

5 99. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent
6 acts and practices described herein, Defendants have received and continue to hold ill-gotten gains
7 belonging to Plaintiff and putative class members. As a direct and proximate result of
8 Defendants' unlawful business practices, Plaintiff and putative class members have suffered
9 economic injuries including, but not limited to out-of-pocket business expenses, unlawful
10 deductions from compensation, loss of minimum wage and overtime wages, compensation for
11 missed meal periods, compensation for missed rest periods, loss of unemployment insurance
12 benefits, waiting time penalties, and attorneys' fees and costs incurred to enforce their rights,
13 including their rights under Cal. Labor Code § 2802. Defendants have profited from its unlawful,
14 unfair, and/or fraudulent acts and practices in the amount of those business expenses, improper
15 deductions from compensation, unpaid minimum wage and overtime, unpaid compensation for
16 missed meal periods and missed rest periods, unpaid unemployment insurance and workers'
17 compensation premiums, cash bond payments, and interest accrued.

18 100. Plaintiff and putative class members are entitled to restitution pursuant to Cal.
19 Business & Professions Code §§ 17203 and 17208 for all unpaid business expenses, unlawful
20 deductions from compensation, minimum wage, overtime, meal period and rest period
21 compensation, unemployment insurance and workers' compensation premiums, cash bond
22 payments, unpaid waiting time penalties, interest since four years prior to the filing of this action,
23 and attorney's fees and costs Plaintiff have incurred to enforce these rights, including their rights
24 under Cal. Labor Code § 2802.

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

27 102. By all of the foregoing alleged conduct, Defendants have committed, and are
28

1 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the
2 meaning of Cal. Business & Professions Code §17200 *et seq.*

3 103. As a direct and proximate result of the unfair business practices described above,
4 Plaintiff and putative class members have suffered significant losses and Defendants have been
5 unjustly enriched.

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

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

15 106. Plaintiff request relief as described below.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, individually and on behalf of all Delivery Drivers, pray that the
18 Court enter judgment in their favor and against Defendants as follows:

- 19 1. For an Order requiring and certifying this action as a class action;
- 20 2. For an Order appointing Plaintiff's counsel as Class Counsel;
- 21 3. For compensatory damages in an amount to be ascertained at trial;
- 22 4. For restitution in an amount to be ascertained at trial;
- 23 5. For punitive damages in an amount to be ascertained at trial;
- 24 6. For penalties as required by the applicable Wage Order or otherwise by law;
- 25 7. For prejudgment interest at the legal rate pursuant to California Labor Code section
26 218.6 and other applicable sections;
- 27 8. For reasonable attorney's fees pursuant to California Labor Code § 1194;
- 28 9. For cost of suit incurred herein;

1 10. For disgorgement of profits garnered as a result of Defendants' unlawful failure to
2 reimburse necessary business expenditures and costs, to pay overtime premium compensation and
3 for meal and rest period compensation; and

4 11. For such further relief as the Court may deem appropriate.

5 DATED: April 11, 2024

BOYAMIAN LAW, INC.
MAJARIAN LAW GROUP, APC

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9 By:



Michael H. Boyamian
Armand R. Kizirian
Attorneys for Plaintiff ABRAHAM
SANDOVAL and All Others Similarly
Situated

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14 **DEMAND FOR JURY TRIAL**

15 Plaintiff ABRAHAM SANDOVAL, individually and on behalf of all similarly situated
16 individuals, demand jury trial of this matter.

17 DATED: April 11, 2024

BOYAMIAN LAW, INC.
MAJARIAN LAW GROUP, APC

18
19
20
21 By:



Michael H. Boyamian
Armand R. Kizirian
Attorneys for Plaintiff ABRAHAM
SANDOVAL and All Others Similarly
Situated