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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ASBERY RAINEY, on behalf of himself and
all others similarly situated and aggrieved,

Plaintiff,

v.

RAPIDUS, INC., a Delaware Corporation;
and DOES 1 Through 10, inclusive,

Defendants.

Case No. 24STCV16234

**FIRST AMENDED CLASS ACTION AND
PRIVATE ATTORNEYS GENERAL ACT
("PAGA") REPRESENTATIVE ACTION
COMPLAINT**

- 1. FAILURE TO PAY MINIMUM WAGES**
- 2. FAILURE TO PAY OVERTIME WAGES**
- 3. FAILURE TO PROVIDE MEAL PERIODS**
- 4. FAILURE TO AUTHORIZE AND
PERMIT PAID REST PERIODS**
- 5. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**
- 6. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION**
- 7. FAILURE TO REIMBURSE BUSINESS
EXPENSES**
- 8. VIOLATION OF THE UNFAIR
COMPETITION LAW**
- 9. PAGA CIVIL PENALTIES FOR FAILURE
TO PAY WAGES**

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- 10. PAGA CIVIL PENALTIES FOR
FAILURE TO PROVIDE MEAL
PERIODS**
 - 11. PAGA CIVIL PENALTIES FOR
FAILURE TO AUTHORIZE AND
PERMIT REST PERIODS**
 - 12. PAGA CIVIL PENALTIES FOR
FAILURE TO PROVIDE WAGE
STATEMENTS**
 - 13. PAGA CIVIL PENALTIES FOR
FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION FROM
EMPLOYMENT**
 - 14. PAGA CIVIL PENALTIES FOR
FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES**
 - 15. PAGA CIVIL PENALTIES FOR
WILLFUL MISCLASSIFICATION AS
INDEPENDENT CONTRACTOR**
- DEMAND FOR JURY TRIAL**

NATURE OF CLAIM

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2 1. Plaintiff ASBERY RAINEY (“Plaintiff”) brings this action on behalf of himself
3 and a proposed Class of all California drivers working for Defendant RAPIDUS, INC. and Does
4 1 through 10 (collectively, “Defendants”), alleging Defendants’ unlawful policies denied, and
5 continue to deny, them the wages and benefits to which they are lawfully entitled.

6 2. Plaintiff seeks—for himself and the putative class—unpaid wages, liquidated
7 damages, equitable relief, prejudgment interest, reasonable attorneys’ fees and costs, and any
8 other relief this Court deems proper, pursuant to Labor Code sections 200-203, 218.5, 226, 226.7,
9 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and 2804; the “Hours and Days of Work,”
10 “Minimum Wages,” “Meal Periods,” and “Rest Periods” sections of the applicable Industrial
11 Welfare Commission (“IWC”) Wage Order(s); and Business and Professions Code sections
12 17200, *et seq.*

13 3. Plaintiff also brings this Representative Action under the Private Attorneys
14 General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of himself and all
15 other aggrieved employees employed by Defendants in the State of California, for civil penalties
16 pursuant to the PAGA for Defendants’ misclassification of aggrieved employees as independent
17 contractors resulting in the non-payment of minimum and overtime wages, failure to provide
18 off-duty meal and rest periods, failure to provide reimbursement for costs and expenses, failure
19 to provide compliant wage statements, and failure to timely pay all wages during and upon
20 termination of employment.

21 4. Plaintiff gave written notice of these claims to the California Labor and
22 Workforce Development Agency (“LWDA”) on June 6 and June 20, 2024 pursuant to Labor
23 Code section 2699.3, and there has been no LWDA intervention within 65 days of either notice.
24 Plaintiff seeks civil penalties under the PAGA as a representative of the State of California and
25 has standing as an aggrieved employee. Plaintiff seeks to represent all current and former non-
26 exempt employees of Defendants who were misclassified as independent contractors and who
27 suffered one or more of the violations alleged (“aggrieved employees”) during the “PAGA
28 Period” (one year and 65 days before this complaint filing date until the start of trial). Labor

Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

PARTIES

5. Plaintiff ASBERY RAINEY is a resident of Beaverton, Oregon. Plaintiff worked for Defendants as a driver for certain periods from 2018 through 2024 in Los Angeles, California.

6. Defendant RAPIDUS, INC. (“RAPIDUS”) is a Delaware corporation doing business in California, including within the County of Los Angeles. RAPIDUS also operates in Colorado; Seattle, Washington; and Dallas, Texas. RAPIDUS is a courier business that pays drivers to make one-hour and same-day deliveries for businesses. RAPIDUS Local Delivery, <https://delivery.rapidus.com/>, Rapidus, Inc. (last accessed June 26, 2024).

7. Does 1 through 10, inclusive, are persons or entities whose true names and identities are now unknown to Plaintiff, and who are sued by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when known. Plaintiff is informed and believes each Doe defendant is the agent, representative, or parent or subsidiary corporation of RAPIDUS, is responsible in some manner for the occurrences, events, transactions, and injuries alleged, and that harm suffered by Plaintiff and the proposed Class was proximately caused by them in addition to RAPIDUS.

8. Plaintiff alleges each of the Defendants, including the Doe defendants, acted in concert with each and every other Defendant, intended to and did participate in the events, acts, practices, and courses of conduct alleged, and was a proximate cause of damage and injury to Plaintiff.

9. At all relevant times each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment.

JURISDICTION AND VENUE

10. Venue as to each Defendant is proper in this judicial district. Code of Civil Procedure § 395. RAPIDUS conducts business in Los Angeles County, California and is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged have a direct effect on Plaintiff and other similarly-situated employees within the State of California and Los Angeles County. Defendants pay numerous drivers in Los Angeles County and in California

generally.

11. No federal question is raised as the issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage Orders, and the Code of Civil Procedure. The Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), does not apply, or in the alternative, exceptions for local case or controversy under the CAFA do apply and prohibit removal of this action to federal court. Based on his rate of pay, Plaintiff’s individual claims do not meet the necessary amount in controversy to implicate traditional jurisdiction under 28 U.S.C. § 1332(a) or jurisdiction under the CAFA.

12. Further, as a representative action under the PAGA, the matter is not subject to removal under 28 U.S.C. §§ 1332(a)-(d) as PAGA civil penalty actions are not subject to federal jurisdiction.

CLASS ACTION ALLEGATIONS

13. Plaintiff seeks to represent a Class defined as:

Class

All Defendants’ California drivers at any time during the four years before the filing of this Complaint through the date of trial.

14. Plaintiff seeks to certify a subclass defined as:

“Minimum Wages Subclass”

All Class Members who were not paid at least minimum wages for some time worked or spent under Defendants’ control.

15. Plaintiff seeks to certify a subclass defined as:

“Overtime Wages Subclass”

All Class Members who worked in excess of eight (8) hours in one day or forty (40) hours in one week.

16. Plaintiff seeks to certify a subclass defined as:

“First Meal Period Subclass”

All Class Members who worked one or more period(s) in excess of five (5) hours.

17. Plaintiff seeks to certify a subclass defined as:

“Second Meal Period Subclass”

All Class Members who worked one or more period(s) in excess of ten (10) hours.

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18. Plaintiff seeks to certify a subclass defined as:

“First Rest Period Subclass”

All Class Members who worked one or more period(s) in excess of three and one-half (3.5) hours.

19. Plaintiff seeks to certify a subclass defined as:

“Second Rest Period Subclass”

All Class Members who worked one or more period(s) in excess of six hours (6.0) hours.

20. Plaintiff seeks to certify a subclass defined as:

“Third Rest Period Subclass”

All Class Members who worked one or more period(s) in excess of ten hours (10.0) hours.

21. Plaintiff seeks to certify a subclass defined as:

“Wage Statement Subclass”

All Class Members who received one or more itemized wage statements during the one year preceding the filing of this Complaint.

22. Plaintiff seeks to certify a subclass defined as:

“Waiting Time Subclass”

All Class Members whose working relationship with RAPIDUS ended at any time during the three years preceding the filing of this Complaint.

23. Plaintiff seeks to certify a subclass defined as:

“First Expense Reimbursement Subclass”

All Class Members who used their personal cell phones for work-related purposes for Defendants.

24. Plaintiff seeks to certify a subclass of employees defined as:

“Second Expense Reimbursement Subclass”

All Class Members who used personal vehicles for work-related purposes for Defendants.

25. Plaintiff seeks to certify a subclass defined as:

“UCL Subclass”

All Class and Subclass Members who were subject to Defendants’ unlawful or unfair business acts or practices.

26. Plaintiff reserves the right to amend or modify the Class description, including by division into subclasses or limitation to particular issues. California Rule of Court 3.765(b).

27. **Commonality**: This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined common

1 interest of many persons and it is impractical to bring them all before the court.

2 28. **Ascertainable Class**: The proposed Class and Subclasses are ascertainable
3 because they can be identified and located using Defendants' payroll and personnel records.

4 29. **Numerosity**: The potential members of the Class and Subclasses as defined are
5 so numerous that joinder of all members would be unfeasible and impractical. The disposition of
6 their claims through this class action will benefit the parties and this Court. The number of
7 members of the Class and Subclasses is unknown to Plaintiff, but is estimated to be at least 100
8 individuals. The number and identity of members can be readily ascertained using Defendants'
9 records.

10 30. **Typicality**: The claims of Plaintiff are typical of the claims of all members of the
11 Class and Subclasses because all members of the Class and Subclasses sustained similar injuries
12 and damages caused by Defendants' common course of conduct in violation of law.

13 31. **Adequacy**: Plaintiff is an adequate representative of the Class and Subclasses,
14 will fairly protect the interests of the Class and Subclass Members and has no interests
15 antagonistic to them, and will vigorously pursue this suit. Plaintiff's attorneys are competent,
16 skilled, and experienced in litigating large employment law class actions.

17 32. **Superiority**: A class action is superior to other available means for the fair and
18 efficient adjudication of this controversy. Individual joinder of all Class Members is not
19 practicable, and questions of law and fact common to the Class predominate over questions
20 affecting only individual Class Members. A Class action will allow those similarly situated to
21 litigate their claims in the most efficient and economical manner for the parties and the judicial
22 system. Plaintiff is unaware of any difficulties likely to be encountered in the management of this
23 action that precludes its maintenance as a class action.

24 33. The predominating common questions of law and fact include:

- 25 a. Whether Defendants misclassified the Class and Subclass Members as
26 independent contractors;
27 b. Whether Defendants have a policy and practice of paying less than minimum
28 wages for all time worked or under Defendants' control;

- c. Whether Defendants have a policy or practice of failing pay overtime compensation for all overtime hours;
- d. Whether Defendants have a policy or practice of failing to provide compliant meal periods;
- e. Whether Defendants have a policy or practice of failing to authorize or permit compliant rest periods;
- f. Whether Defendants have a policy or practice of failing to provide accurate itemized wage statements;
- g. Whether Defendants have a policy or practice of failing to reimburse business expenses;
- h. Whether the Class and Waiting Time Subclass Members are entitled to waiting time penalties under Section 203;
- i. Whether Defendants violated Sections 17200, *et seq.* of the Business and Professions Code; and
- j. Whether the Class and Subclasses are entitled to equitable relief pursuant to Business and Professions Code, sections 17200, *et seq.*

FACTUAL ALLEGATIONS

34. At all relevant times, Plaintiff, Class Members, and aggrieved employees worked for Defendants in California, and Defendants conducted business in California.

35. Plaintiff worked for Defendants as a driver for certain periods from 2018 through 2024 in Los Angeles, California. Plaintiff applied to work for Rapidus as a driver and was accepted. Plaintiff used the Rapidus application to select jobs. Plaintiff would either open the application to look for jobs or would receive a notification that a job was available. If he was the first to click the job, he would receive it. Jobs in the application contained information and instructions needed complete the jobs, including delivery pickup and drop-off instructions. Defendants paid Plaintiff by the job. Plaintiff delivered packages for Defendants using his personal vehicle, often driving all over Los Angeles, from Hollywood to Lakeside, or from Los Angeles to Newport. Plaintiff sometimes worked over eight hours per day or forty hours per week

1 making these deliveries.

2 36. Defendants willfully misclassified Plaintiff, Class Members, and aggrieved
3 employees as independent contractors, when they were actually employees under the “ABC Test”
4 of AB 5, codified at Labor Code section 2750.3. Specifically, under the ABC Test, Plaintiff,
5 Class Members, and aggrieved employees: under prong A, were not free from Defendants’
6 control, as Defendants instructed them where and how to pick up and drop off packages; under
7 prong B, did work for Defendants in Defendants’ usual course of business, as they delivered
8 packages for a package delivery company; and, under prong C, were not engaged in an
9 independently established business of the same nature as Defendants’ business. As a result of
10 Defendants’ misclassification, Defendants failed to afford Plaintiff, Class Members, and
11 aggrieved employees all protections to which they were entitled, as specified below.

12 37. Defendants failed to withhold wages for employee-side taxes, and pay required
13 employer-side taxes, including those for Social Security, Medicare, Federal Unemployment,
14 California Unemployment, and Employment Tax Training, as a result of misclassifying Plaintiff,
15 Class Members, and aggrieved employees.

16 38. Defendants failed to pay Plaintiff, Class Members, and aggrieved employees for
17 all time worked or subject to Defendants’ control. Defendants failed to accurately record all hours
18 worked, and sometimes changed or edited hours worked to inaccurately show no overtime hours
19 worked. As a result, Plaintiff Class Members, and aggrieved employees were not paid at least
20 minimum wages for all time worked or subject to Defendants’ control and overtime wages for
21 all such time over eight hours per day or forty per week.

22 39. Defendants failed to provide Plaintiff Class Members, and aggrieved employees
23 a first timely, thirty-minute, uninterrupted, off-duty meal period before the end of the fifth hour
24 of work, and a second such meal period before the end of the tenth hour of work. First, Defendants
25 did not provide or communicate any meal period policy to Plaintiff and never informed Plaintiff
26 he would be entitled to meal period premium wages for missed or non-compliant meal periods.
27 Second, Defendants failed to accurately record, or provide a method for recording, when Plaintiff
28 could not take a compliant meal period. Third, Plaintiff was regularly provided workloads that

1 prevented him from being able to take a compliant meal period, having to work straight through
2 during the times he should have taken a meal period. Finally, Defendants never paid Plaintiff a
3 meal period premium for a missed or non-compliant meal period.

4 40. Defendants failed to authorize and permit Plaintiff Class Members, and aggrieved
5 employees to take 10-minute rest periods for every four hours or major fraction thereof worked.
6 First, Defendants did not provide or communicate any rest period policy to Plaintiff and never
7 informed Plaintiff he would be entitled to rest period premium wages for missed or non-
8 compliant rest periods. Second, Plaintiff was sometimes unable to take a compliant rest period
9 due to his workload. Finally, Defendants never paid Plaintiff a rest period premium for a missed
10 or non-compliant rest period.

11 41. As a result of the above violations, Defendants willfully failed to provide accurate,
12 itemized wage statements, and complete, accurate, and timely final wages, to Plaintiff, Class
13 Members, and aggrieved employees.

14 42. Defendants failed to reimburse Plaintiff, Class Members, and aggrieved
15 employees for reasonable business expenses they incurred or paid while working for Defendants,
16 including personal cell phone, mileage-related, and car insurance expenses.

17 43. Plaintiff, on behalf of himself and Class Members, seeks injunctive relief,
18 restitution, and disgorgement of all benefits obtained by Defendants as a result of violations
19 alleged. Business and Professions Code §§ 17200, *et seq.*

20 CAUSES OF ACTION

21 FIRST CAUSE OF ACTION

22 **Failure to Pay Minimum Wages**

23 **Labor Code §§ 1194 and 1194.2, and the “Minimum Wages” section of applicable IWC Wage Order(s)**

24 **(By Plaintiff and each Minimum Wages Subclass Member)**

25 44. Plaintiff incorporates the preceding paragraphs of this Complaint.

26 45. By failing to pay at least minimum wages for all hours worked or under
27 Defendants’ control, Defendants violated Labor Code section 1194 and the “Minimum Wages”
28 section of applicable IWC Wage Order(s). Further, to the extent Defendants’ failure to pay
employer-side taxes resulted in Plaintiff and Class Members being required to pay these taxes,

Defendants deprived Plaintiff and similarly-situated employees of minimum wages.

46. Labor Code section 1194.2 provides for liquidated damages equal to unlawfully unpaid minimum wages, with interest.

47. Defendants' unlawful acts deprived Plaintiff and the Minimum Wages Subclass of minimum wages in amounts to be determined at trial, and they are entitled to recover these wages, and liquidated damages, interest, attorneys' fees, and costs.

SECOND CAUSE OF ACTION

Failure to Pay Overtime Wages

Labor Code §§ 510 and 1194, and the "Overtime Wages" section of applicable IWC Wage Order(s)

(By Plaintiff and each Overtime Wages Subclass Member)

48. Plaintiff incorporates the preceding paragraphs of this Complaint.

49. By failing to pay overtime wages, Defendants violated Labor Code sections 510 and 1194 and the "Hours and Days of Work" section of applicable IWC Wage Order(s).

50. Defendants' unlawful acts deprived Plaintiff and the Overtime Wages Subclass of overtime wages in amounts to be determined at trial, and they are entitled to recover these wages, interest, attorneys' fees, and costs.

THIRD CAUSE OF ACTION

Failure to Provide Required Meal Periods

Labor Code §§ 226.7 and 512, and the "Meal Periods" section of applicable IWC Wage Order(s)

(By Plaintiff and each First and Second Meal Period Subclass Member)

51. Plaintiff incorporates the preceding paragraphs of this Complaint.

52. By failing to: provide duty-free meal periods of at least thirty (30) minutes for shifts of five hours or more, which began before the end of the fifth hour of work; provide second duty-free meal periods of at least thirty (30) minutes for shifts of ten hours or more, which began before the tenth hour of work; and pay premium wages of one (1) hour of pay at employees' regular rate of compensation for each workday a meal period was not provided, Defendants willfully violated the provisions of Labor Code sections 226.7 and 512, and the "Meal Periods" section of applicable IWC Wage Order(s).

53. Defendants' unlawful acts deprived Plaintiff and the First and Second Meal Period Subclasses of premium wages in amounts to be determined at trial, and they are entitled to

1 recover these amounts, along with interest, attorneys' fees, and costs.

2 **FOURTH CAUSE OF ACTION**

3 **Failure to Provide Required Rest Periods**

4 **Labor Code § 226.7 and the "Rest Periods" section of applicable IWC Wage Order(s)
(By Plaintiff and each First, Second, and Third Rest Period Subclass Member)**

5 54. Plaintiff incorporates the preceding paragraphs of this Complaint.

6 55. By failing to authorize and permit Plaintiff and Class Members a paid rest period
7 of at least 10 minutes for every four hours or major fraction worked per day, and by failing to
8 provide premium wages at the regular rate of compensation when not permitted or authorized,
9 Defendants willfully violated the provisions of Labor Code section 226.7 and the "Rest Period"
10 section of applicable IWC Wage Order(s).

11 56. Defendants' unlawful acts deprived Plaintiff and the First, Second, and Third Rest
12 Period Subclasses of premium wages in amounts to be determined at trial, and they are entitled
13 to recover these amounts, along with interest, attorneys' fees, and costs.

14 **FIFTH CAUSE OF ACTION**

15 **Failure to Provide Accurate Wage Statements**

16 **Labor Code § 226**

17 **(By Plaintiff and each Wage Statement Subclass Member)**

18 57. Plaintiff incorporates the preceding paragraphs of this Complaint.

19 58. Any employee suffering injury due to a willful violation of Labor Code section
20 226(a) may, under Labor Code section 226(e), collect the greater of actual damages or \$50 for
21 the first inadequate pay statement and \$100 for each inadequate statement thereafter, up to
22 \$4,000. Defendants willfully failed to provide Plaintiff and Class Members with required
adequate wage statements. Labor Code § 226.

23 59. As a consequence of Defendants' knowing and intentional failure to comply with
24 Labor Code section 226(a), Plaintiff and the Wage Statement Subclass are entitled to recover the
25 greater of actual damages or penalties not to exceed \$4,000 for each employee with interest and
26 attorneys' fees and costs.

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SIXTH CAUSE OF ACTION
Failure to Timely Pay Wages Due at Separation
Labor Code §§ 201-203
(By Plaintiff and each Waiting Time Subclass Member)

60. Plaintiff incorporates the preceding paragraphs of this Complaint.

61. An employer who discharges an employee must pay all compensation due and to that employee immediately upon discharge. Labor Code § 201. An employer must pay all compensation due to an employee who quits within 72 hours. Labor Code § 202.

62. Defendants willfully failed to timely pay earned wages to former drivers. If an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until paid or until an action is commenced. Labor Code § 203. The penalty cannot exceed 30 days of wages.

63. Waiting Time Subclass Members are no longer employed by Defendants.

64. Defendants willfully failed to pay Waiting Time Subclass Members the sum due at the time of their termination or within seventy-two (72) hours of their resignation, and failed to pay those sums for thirty (30) days thereafter. Defendants' unlawful acts deprived Plaintiff and Class Members of these wages, and they are entitled to recover waiting time penalties.

SEVENTH CAUSE OF ACTION
Failure to Reimburse Business Expenses
Labor Code §§ 2802 and 2804
(By Plaintiff and each First and Second Expense Reimbursement Subclass Member)

65. Plaintiff incorporates the preceding paragraphs of this Complaint.

66. An employer must reimburse its employees for "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...." Labor Code § 2802. This right to reimbursement may not be waived. Labor Code § 2804.

67. By failing to reimburse Plaintiff and Class Members for their reasonable business expenses, including for personal cell phones, mileage-related expenses, and car insurance, Defendants violated Labor Code section 2802.

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68. Defendants' unlawful acts deprived Plaintiff and the First and Second Expense Reimbursement Subclasses of expense reimbursements in amounts to be determined at trial, and they are entitled to recover these amounts, along with interest, attorneys' fees, and costs.

EIGHTH CAUSE OF ACTION
Violation of the Unfair Competition Law
Bus. & Prof. Code §§ 17200, *et seq.*
(By Plaintiff and each UCL Subclass Member)

69. Plaintiff incorporates the preceding paragraphs of this Complaint.

70. The California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code sections 17200, *et seq.*, defines unfair competition to include any "unlawful," "unfair," or "fraudulent" business act or practice. Cal. Bus. & Prof. Code § 17200.

71. Defendants' conduct as described above constitutes unlawful business practices because Defendants violated: the California Labor Code, including but not limited to Sections 226.7 (meal and rest periods), 510 and 1194 (minimum and overtime wages), and 2802 (expense reimbursement); and sections of the applicable IWC Wage Order(s).

72. Defendants' conduct as described above constitutes unfair business practices because their denial of lawfully earned wages outweighs any utility of such practices.

73. As a result of Defendants' unlawful and unfair conduct, Plaintiff and Class Members suffered injury in fact.

74. Plaintiff and Class Members seek declaratory and injunctive relief, restitution, and other appropriate equitable relief. Cal. Bus. & Prof. Code §§ 17203, 17204.

75. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiff and Class Members are entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

76. This cause of action is brought as a cumulative remedy and is intended as an alternative remedy for restitution for Plaintiff, and each Subclass Member, for the four (4)-year period before the filing of this Complaint, and as the primary remedy during the fourth year before the filing of this Complaint. Business and Professions Code § 17205.

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NINTH CAUSE OF ACTION
PAGA Civil Penalties for Failure to Pay Wages
(By Plaintiff and each Aggrieved Employee)

77. Plaintiff incorporates the preceding paragraphs of this Complaint.

78. “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Labor Code § 1194(a).

79. “[A]ny provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Labor Code § 2699(a).

80. “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions [] (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” Labor Code § 2699(f)(2).

81. Section 2699.3(a) applies to any alleged violation of Labor Code §§ 510, 1194, and 1194.1 and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

82. By failing to pay minimum and overtime wages for all hours worked or under Defendants’ control during the PAGA Period, Defendants violated Labor Code sections 510 and 1194 and the “Minimum Wages” section of applicable IWC Wage Order(s). Further, to the extent Defendants’ failure to pay employer-side taxes resulted in Plaintiff and aggrieved employees being required to pay these taxes, Defendants deprived Plaintiff and aggrieved employees of minimum wages.

83. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation.

84. Defendants' conduct violates Wage Order No. 9-2001 by failing to pay minimum and overtime wages to employees. Plaintiff will also seek penalties of \$50 for the initial pay period an employee was underpaid, and \$100 for each subsequent violation.

85. Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California.

TENTH CAUSE OF ACTION
PAGA Civil Penalties for Failure to Provide Meal Periods
(By Plaintiff and each Aggrieved Employee)

86. Plaintiff incorporates the preceding paragraphs of this Complaint.

87. Defendants classified Plaintiff and all aggrieved employees as exempt from the requirement to provide meal periods. By failing to provide duty-free meal periods of at least 30 minutes for shifts of five hours or more, which began before the end of the fifth hour of work, Defendants willfully violated Labor Code section 226.7, and Wage Order No. 9-2001.

88. By failing to pay employees one hour of pay at their regular rate of compensation for each workday a meal period was not provided, Defendants willfully violated Labor Code section 226.7, and Wage Order No. 9-2001.

89. During the PAGA Period, Defendants failed to provide meal periods. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2).

90. Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California.

ELEVENTH CAUSE OF ACTION
PAGA Civil Penalties for Failure to Provide Rest Periods
(By Plaintiff and each Aggrieved Employee)

91. Plaintiff incorporates the preceding paragraphs of this Complaint.

92. Defendants classified Plaintiff and all aggrieved employees as exempt from the requirement to authorize and permit rest periods. By failing to provide rest periods of at least 10 minutes for shifts of four hours, or a major fraction thereof, Defendants willfully violated Labor

1 Code section 226.7, and Wage Order No. 9-2001.

2 93. By failing to authorize and permit Plaintiff a rest period of at least 10 minutes for
3 every four (4) hours or major fraction thereof worked per day, Defendants willfully violated
4 provisions of Labor Code section 226.7, and Wage Order No. 9-2001.

5 94. By failing to provide one hour of pay at their regular rate of compensation when
6 paid periods were not permitted or authorized, Defendants willfully violated the provisions of
7 Labor Code section 226.7, and Wage Order No. 9-2001.

8 95. During the applicable statutory period, Defendants failed to provide meal periods.
9 Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and
10 \$200 for each subsequent violation. Labor Code § 2699(f)(2).

11 96. Funds recovered will be distributed in accordance with the PAGA, with 75% of
12 the civil penalties provided to the LWDA on behalf of the State of California.

13 **TWELFTH CAUSE OF ACTION**
14 **PAGA Civil Penalties for Failure to Provide Accurate Wage Statements**
15 **(By Plaintiff and each Aggrieved Employee)**

16 97. Plaintiff incorporates the preceding paragraphs of this Complaint.

17 98. Every employer shall, semimonthly or at the time of each payment of wages,
18 furnish each of his or her employees "...an accurate itemized statement in writing showing,"
19 among other things, gross wages earned, total hours worked, net wages earned, and "all
20 applicable hourly rates in effect during the pay period and the corresponding number of hours
21 worked at each hourly rate by the employee..." Labor Code § 226.

22 99. Defendants violated Labor Code section 226 by failing to provide wage
23 statements, and failed to provide the information called for in Labor Code sections 226(a)(1),
24 (2), (5) and (9). Their actions were intentional and willful.

25 100. Aggrieved employees are entitled to pursue civil penalties under the PAGA for
26 violations of Labor Code section 226. Labor Code § 2699.5.

27 101. Labor Code section 226.3 provides for civil penalties for violations of Section
28 226. Plaintiff seeks civil penalties of \$250 for the initial violation and \$1,000 for each subsequent
violation.

102. Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California.

THIRTEENTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Timely Pay Wages Due At Separation
(By Plaintiff and each Aggrieved Employee)**

103. Plaintiff incorporates the preceding paragraphs of this Complaint.

104. Labor Code sections 201-202 require employers to pay wages earned by employees within certain times. Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to pay the earned wages of Defendants' former employees. An employer that willfully fails to timely pay all final wages must, as a statutory penalty, pay an employee's wages for 30 days, or until back wages are paid in full. Labor Code § 203.

105. Defendants failed to pay Plaintiff and other aggrieved employees who ended their employment with the Defendants all final wages, including minimum, overtime, and meal and rest period premium wages, as required by Labor Code sections 201-202.

106. Defendants failed to pay Plaintiff and other aggrieved employees penalties due them based on Defendants' failure to pay all final wages in a timely manner as required by Labor Code section 203. Plaintiff will seek penalties of \$100 for the initial pay period an employee was not reimbursed, and \$200 for each subsequent violation.

107. Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California.

FOURTEENTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Reimburse Business Expenses
(By Plaintiff and each Aggrieved Employee)**

108. Plaintiff incorporates the preceding paragraphs of this Complaint.

109. "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, obedience to the directions of the employer...[]." Labor Code section 2802.

110. Aggrieved employees are entitled to pursue civil penalties under the PAGA for violations of Labor Code section 2802. Labor Code § 2699.5.

111. During the applicable statutory period, Defendants failed to fully reimburse

1 Plaintiff and other aggrieved employees for necessary expenses incurred in direct consequence
2 of discharging their duties, such as usage of personal cell phones, mileage-related expenses, and
3 car insurance. Plaintiff will seek penalties of \$100 for the initial pay period an employee was not
4 reimbursed, and \$200 for each subsequent violation. Labor Code § 2699(f)(2).

5 112. Funds recovered will be distributed in accordance with the PAGA, with 75% of
6 the civil penalties provided to the LWDA on behalf of the State of California.

7 **FIFTEENTH CAUSE OF ACTION**
8 **PAGA Civil Penalties for Willful Misclassification as Independent Contractor**
9 **(By Plaintiff and each Aggrieved Employee)**

10 113. Plaintiff incorporates the preceding paragraphs of this Complaint.

11 114. It is unlawful for any person or employer to willfully misclassify an individual as
12 an independent contractor. Labor Code § 226.8(a)(1).

13 115. Defendants violated Labor Code section 226.8(a) by engaging in a pattern and
14 practice of intentionally classifying drivers as independent contractors.

15 116. Plaintiff seeks civil penalties of not less than \$10,000 and not more than \$25,000
16 for each violation. Labor Code § 226.8(c).

17 117. Funds recovered will be distributed in accordance with the PAGA, with 75% of
18 the civil penalties provided to the LWDA on behalf of the State of California.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff prays for the following relief on behalf of himself and the
21 Class against Defendants:

22 1. Certification of this action as a class action and appointment of Plaintiff and
23 Plaintiff's counsel to represent the Class;

24 2. Provision of class notice to Class Members as defined above;

25 3. A declaratory judgment that Defendants knowingly and intentionally violated:

26 a. California Labor Law by Misclassifying Class and Subclass Members as
27 independent contractors.

28 ///

b. California Labor Code sections 510 and 1194 by failing to pay minimum

1 and overtime wages;

2 c. California Labor Code sections 226.7 and 512 by failing to provide meal
3 and rest periods;

4 d. California Labor Code section 226 by failing to provide accurate,
5 itemized wage statements;

6 e. California Labor Code section 203 by failing to pay waiting time
7 penalties;

8 f. California Labor Code section 2802 by failing to reimburse business
9 expenses; and

10 g. California Business and Professions Code sections 17200, *et seq.* by
11 engaging in unlawful or unfair business practices.

12 4. That Defendants be permanently enjoined from engaging in the unlawful or unfair
13 acts and practices alleged;

14 5. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff
15 and Class Members, in an amount according to proof, pursuant to California Business and
16 Professions Code section 17203;

17 6. That this action be maintained as a Representative Action under the PAGA, and
18 Plaintiff and his counsel be provided with all enforcement capability as if the action were brought
19 by the California Division of Labor Standards Enforcement;

20 7. For recovery of all civil penalties as permitted by Labor Code section 2699 for
21 unpaid minimum and overtime wages owed pursuant to Labor Code section 1194, according to
22 proof;

23 8. For recovery of civil penalties as permitted by Labor Code section 2699 for
24 unpaid meal period premiums earned pursuant to Labor Code section 226.7, according to proof;

25 9. For recovery of civil penalties as permitted by Labor Code section 2699 for
26 unpaid rest period premiums earned pursuant to Labor Code section 226.7, according to proof;

27 ///

28 10. For recovery of civil penalties as permitted by Labor Code section 2699, for

1 inaccurate itemized wage statements pursuant to Labor Code sections 226 and 226.3, according
2 to proof;

3 11. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to
4 timely pay all final wages due pursuant to Labor Code sections 201-202;

5 12. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to
6 pay statutory waiting time penalties due pursuant to Labor Code section 203;

7 13. For recovery of civil penalties as permitted by Labor Code section 2699 for
8 unreimbursed business expenses pursuant to Labor Code section 2802, according to proof;

9 14. For recovery of civil penalties under Labor Code section 226.8 for engaging in a
10 pattern and practice of intentionally classifying employees as independent contractors;

11 15. Compensatory damages according to proof;

12 16. Statutory damages under the Labor Code;

13 17. Liquidated damages under the Labor Code;

14 18. Pre-judgment interest on all sums collected;

15 19. Reasonable attorneys' fees and costs, pursuant to California Code of Civil
16 Procedure section 1021.5, the California Labor Code, the PAGA, or other applicable law;

17 20. Costs of suit; and,

18 21. Such other relief as the Court may deem appropriate.

19 COHELAN KHOURY & SINGER
20 HAMNER LAW OFFICES, APLC

21
22 Dated: August 26, 2024

By: 

Michael D. Singer, Esq.

Isam C. Khoury, Esq.

Rosemary C. Khoury, Esq.

Attorneys for Plaintiff ASBERY RAINEY, on behalf of
himself and all others similarly situated and aggrieved

26 ///

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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all claims triable as of right by jury.

COHELAN KHOURY & SINGER
HAMNER LAW OFFICES, APLC

Dated: August 26, 2024

By: 

Michael D. Singer, Esq.

Isam C. Khoury, Esq.

Rosemary C. Khoury, Esq.

Attorneys for Plaintiff ASBERY RAINEY, on behalf of
himself and all others similarly situated and aggrieved

PROOF OF SERVICE

Rainey v. Rapidus, Inc.

Los Angeles Superior Court Case No. 24STCV16234

I, Karla Sousa, declare as follows:

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to this action. My business address is 605 “C” Street, Suite 200, San Diego, California 92101.

On August 26, 2024, I instituted service of the forgoing document(s) described as:

**FIRST AMENDED CLASS ACTION AND PRIVATE ATTORNEYS GENERAL ACT
 (“PAGA”) REPRESENTATIVE ACTION COMPLAINT**

on the following interested parties:

Counsel for Defendant

James C. Stevens, Esq.
Attorney At Law
2402 W. Broadway, Suite 400
San Diego, CA 92101
james.c.stevens@outlook.com

Co-Counsel for Plaintiff

Christopher J. Hamner, Esq.
HAMNER LAW OFFICES, APLC
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in the manner described below:

[XX] BY ELECTRONIC SERVICE – ONE LEGAL: Pursuant to Cal. Rules of Court, Rule 2.251(c)(3), I submitted an electronic version of the document(s) through the user interface of the e-filing vendor at www.onelegal.com.

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

Executed August 26, 2024, at San Diego, California.



Karla Sousa