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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

GEORGE JONES, on behalf of himself and
all others similarly situated and aggrieved,

Plaintiff,

v.

PIGGYSHIP INC., a California
Corporation; WODEE INC., a California
Corporation; and DOES 1 Through 10,
inclusive,

Defendants.

Case No. 24CU008701C

**CLASS AND 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. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT ("PAGA")**

DEMAND FOR JURY TRIAL

NATURE OF CLAIM

1. Plaintiff GEORGE JONES (“Plaintiff”) brings this action on behalf of himself and a proposed Class of all California drivers working for Defendants PIGGYSHIP INC. and WODEE INC., and Does 1 through 10 (collectively, “Defendants”), alleging Defendants’ unlawful policies denied, and continue to deny, them the wages and benefits to which they are lawfully entitled.

2. Plaintiff seeks—for himself and the putative class—unpaid wages, liquidated damages, equitable relief, prejudgment interest, reasonable attorneys’ fees and costs, and any other relief this Court deems proper, pursuant to Labor Code sections 200-203, 218, 218.5, 218.6, 226, 226.7, 226.8, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and 2804; the “Hours and Days of Work,” “Minimum Wages,” “Meal Periods,” and “Rest Periods” sections of the applicable Industrial Welfare Commission (“IWC”) Wage Order(s); and Business and Professions Code sections 17200, *et seq.*

3. Plaintiff also brings a Representative Action under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, but solely on behalf of all other aggrieved employees employed by Defendants in the State of California, for civil penalties pursuant to the PAGA for Defendants’ misclassification of aggrieved employees as independent contractors resulting in the non-payment of minimum and overtime wages, failure to provide off-duty meal and rest periods, failure to provide reimbursement for costs and expenses, failure to provide compliant wage statements, and failure to timely pay all wages during and upon termination of employment. Plaintiff is not suing in his individual capacity, does not seek any redress or remedy for any of his individual claims including but not limited to his individual PAGA claims. Plaintiff is proceeding in this action solely under the PAGA, on behalf of the State of California for all aggrieved employees of Defendants, including himself. See *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533, 538.

PARTIES

4. Plaintiff GEORGE JONES is a resident of San Diego, California. Plaintiff worked for Defendants as a driver between approximately August, 2023 and July, 2024 in San Diego

County, California.

5. Defendant PIGGYSHIP INC. (“PiggyShip”) is a California corporation doing business in California, including within the County of San Diego. PiggyShip is a courier business which advertises itself as “the fastest, most affordable shipping...1-2 day California in-state shipping...Just shipping from Southern California to anywhere nationally at the best price.” <https://piggyship.com/> (last accessed August 23, 2024). Defendant WODEE INC. (“Wodee”) is a California corporation doing business in California, including within the County of San Diego.

6. 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 Defendant PiggyShip and/or Defendant Wodee, 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 PiggyShip and/or Wodee.

7. 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.

8. 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

9. Venue as to each Defendant is proper in this judicial district. Code of Civil Procedure § 395. Defendants conduct business in San Diego County, California and are 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 San Diego County. Plaintiff worked for Defendants as a driver within San Diego County. Defendants pay numerous drivers in San Diego County and in California generally.

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

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

13. Plaintiff worked for Defendants as a driver between approximately August, 2023 and July 2024 in San Diego County, California. Plaintiff applied to work for PiggyShip and/or Wodee as a driver and was accepted after meeting with a company representative in Chula Vista. Plaintiff was expected to, and would arrive, each morning at a warehouse in Chula Vista, California, where he would be assigned packages to deliver for that day. The packages originated mostly from China, or other out-of-state or foreign locations. Plaintiff could not anticipate the number of packages he was assigned each day, it varied. Defendants tracked Plaintiff's movement and deliveries on a PiggyShip or a similar electronic application.

14. Plaintiff used an application to track his mileage. Plaintiff and other drivers often drove over 200 hundred miles per day performing deliveries, or more, which could take them over 8 or 9 hours per day and/or over 40 hours per week. However, Plaintiff and other drivers were not paid for hours they worked, but were only paid per package delivered, in an amount of approximately \$1.80 for a single package, or if multiple packages were ordered by the same customer, Plaintiff and other drivers were paid approximately \$1.80 for the first package, and additional 50 cents per each additional package in the same order.

1 15. Defendants did not pay Plaintiff and other drivers for gasoline expenses (which
2 could be as high as approximately \$30 per day) and/or mileage incurred, nor for car insurance
3 expenses, which alone cost Plaintiff approximately \$180 a month. Further, in performance of his
4 work duties, Plaintiff used his personal cell phone. Defendants did not reimburse Plaintiff and
5 other drivers for any of these expenses.

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

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

20 18. Defendants failed to pay Plaintiff, Class Members, and aggrieved employees for
21 all time worked or subject to Defendants’ control. Defendants failed to record all hours Plaintiff
22 and Class Members worked. As a result, Plaintiff, Class Members, and aggrieved employees were
23 not paid at least minimum wages for all time worked or subject to Defendants’ control and
24 overtime wages for all such time over eight hours per day or forty per week.

25 19. Defendants failed to provide Plaintiff, Class Members, and aggrieved employees
26 a first timely, thirty-minute, uninterrupted, off-duty meal period before the end of the fifth hour
27 of work, and a second such meal period before the end of the tenth hour of work. First, Defendants
28 did not provide or communicate any meal period policy to Plaintiff and never informed Plaintiff

1 he would be entitled to meal period premium wages for missed or non-compliant meal periods.
2 Second, Defendants failed to accurately record, or provide a method for recording, when Plaintiff
3 could not take a compliant meal period. Third, Plaintiff was regularly provided workloads that
4 prevented him from being able to take a compliant meal period, having to work straight through
5 during the times he should have taken a meal period. Should drivers like Plaintiff pause deliveries
6 to attempt to take a meal break, Defendants, who tracked every movement of Class Members,
7 would reprimand them and the drivers had to immediately resume deliveries. Finally, Defendants
8 never paid Plaintiff a meal period premium for a missed or non-compliant meal period.

9 20. Defendants failed to authorize and permit Plaintiff, Class Members, and aggrieved
10 employees to take 10-minute rest periods for every four hours or major fraction thereof worked.
11 First, Defendants did not provide or communicate any rest period policy to Plaintiff and never
12 informed Plaintiff he would be entitled to rest period premium wages for missed or non-compliant
13 rest periods. Second, Plaintiff was unable to take a compliant rest period due to his workload.
14 Should drivers like Plaintiff pause deliveries to attempt to take a rest break, Defendants, who
15 tracked every movement of Class Members, would reprimand them and the drivers had to
16 immediately resume deliveries. Finally, Defendants never paid Plaintiff a rest period premium for
17 a missed or non-compliant rest period.

18 21. As a result of the above violations, Defendants willfully failed to provide accurate,
19 itemized wage statements, and complete, accurate, and timely final wages, to Plaintiff, Class
20 Members, and aggrieved employees.

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

24 23. Plaintiff, on behalf of himself and Class Members, seeks injunctive relief,
25 restitution, and disgorgement of all benefits obtained by Defendants as a result of violations
26 alleged. Business and Professions Code §§ 17200, et seq.

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EXHAUSTION OF PAGA NOTICE REQUIREMENT

24. Plaintiff exhausted the notice requirement by filing a complaint with the Labor and Workforce Development Agency (“LWDA”) in his letters dated June 4, 2024 and June 18, 2024, respectively, as required under the California Labor Code Private Attorneys General Act (“PAGA”). A true and correct copy of Plaintiff’s letters is attached hereto as **Exhibit A** and **Exhibit B**, and are incorporated herein by reference. The LWDA did not assume jurisdiction over the applicable penalty claims alleged; therefore, Plaintiff has exhausted the procedural requirement under PAGA to pursue any and all penalty claims as provided under PAGA.

CLASS ACTION ALLEGATIONS

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. Plaintiff seeks to certify a subclass defined as:

“Rest Period Subclass”

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

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31. 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.

32. Plaintiff seeks to certify a subclass defined as:

“Waiting Time Subclass”

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

33. 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.

34. 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.

35. 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.

36. 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).

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

38. **Ascertainable Class**: The proposed Class and Subclasses are ascertainable because they can be identified and located using Defendants’ payroll and personnel records.

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

1 40. **Typicality**: The claims of Plaintiff are typical of the claims of all members of the
2 Class and Subclasses because all members of the Class and Subclasses sustained similar injuries
3 and damages caused by Defendants' common course of conduct in violation of law.

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

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

15 43. The predominating common questions of law and fact include:

- 16 a. Whether Defendants misclassified the Class and Subclass Members as
- 17 independent contractors.
- 18 b. Whether Defendants have a policy and practice of paying less than minimum
- 19 wages for all time worked or under Defendants' control;
- 20 c. Whether Defendants have a policy or practice of failing pay overtime
- 21 compensation for all overtime hours;
- 22 d. Whether Defendants have a policy or practice of failing to provide compliant
- 23 meal periods;
- 24 e. Whether Defendants have a policy or practice of failing to authorize or permit
- 25 compliant rest periods;
- 26 f. Whether Defendants have a policy or practice of failing to provide accurate
- 27 itemized wage statements;

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- 1 g. Whether Defendants have a policy or practice of failing to reimburse business
2 expenses;
- 3 h. Whether the Class and Waiting Time Subclass Members are entitled to waiting
4 time penalties under Section 203;
- 5 i. Whether Defendants violated Sections 17200, *et seq.* of the Business and
6 Professions Code; and
- 7 j. Whether the Class and Subclasses are entitled to equitable relief pursuant to
8 Business and Professions Code, sections 17200, *et seq.*

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **Failure to Pay Minimum Wages**

12 **Labor Code §§ 218, 218.5, 218.6, 1194 and 1194.2, 1197, 1197.1 and the “Minimum
13 Wages” section of applicable IWC Wage Order(s)
14 (By Plaintiff and each Minimum Wages Subclass Member)**

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

16 45. Labor Code section 218 provides, in pertinent part, that “[n]othing in this article
17 [California Labor Code, Division 2, Part 1, Chapter 1 – Payment of Wages, Article 1] shall limit
18 the right of any wage claimant to sue directly or through an assignee for any wages or penalty due
19 to them under this article.”

20 46. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1
21 provide for payment of not less than a minimum wage to employees, and the payment of a lesser
22 wage than the minimum so fixed is unlawful.

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

28 48. In committing the violations of California law as herein alleged, Defendants have
knowingly and willfully refused to perform their obligations to compensate Plaintiff and Class
Members for all wages earned and all hours worked. As a direct result, Plaintiff and Class

Members have suffered and continue to suffer, substantial losses related to the use and enjoyment of such compensation, wages and lost interest on such monies and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdiction of this Court.

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

50. 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 damages to the fullest extent permissible pursuant to Labor Code sections 218, 218.5, 218.6, and 1194(a).

SECOND CAUSE OF ACTION

Failure to Pay Overtime Wages

Labor Code §§ 510 and 1194, 1198 and the "Overtime Wages" section of applicable IWC Wage Order(s)

(By Plaintiff and each Overtime Wages Subclass Member)

51. Plaintiff incorporates the preceding paragraphs of this Complaint.

52. Labor Code § 510 and the applicable Wage Order provide that employees in California shall not be employed more than eight hours in any workday or forty hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law. Specifically, Labor Code § 510(a) requires that: Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

53. Labor Code § 1194 establishes an employee's right to recover unpaid overtime compensation, and interest thereon, together with the costs of suit, and attorneys' fees. Labor Code §1198 makes employment of an employee for longer hours than the IWC set or under conditions the IWC prohibits unlawful.

54. During the class period, Plaintiff and other Class Members have worked more than eight hours in a workday, and/or more than forty hours in a workweek.

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1 55. During the class period, Defendants have failed to pay Plaintiff and other Class
2 Members the overtime compensation premium for those unpaid hours they have worked in excess
3 of the maximum hours permissible by law as required by Labor Code § 510 and 1198, and the
4 applicable Wage Order.

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

7 57. Defendants’ unlawful acts deprived Plaintiff and the Overtime Wages Subclass of
8 overtime wages in amounts to be determined at trial, and they are entitled to recover these wages,
9 interest, attorneys’ fees, and costs to the fullest extent permissible pursuant to Labor Code § 218,
10 218.5, 218.6, and 1194(a).

11 **THIRD CAUSE OF ACTION**

12 **Failure to Provide Required Meal Periods**

13 **Labor Code §§ 226.7 and 512, and the “Meal Periods” section of applicable
IWC Wage Order(s)**

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

15 58. Plaintiff incorporates the preceding paragraphs of this Complaint.

16 59. The applicable Wage Order provides, in pertinent part: “[n]o employer shall
17 employ any person for a work period of more than five (5) hours without a meal period of not
18 less than 30 minutes, except that when a work period of not more than six (6) hours will complete
19 the day’s work the meal period may be waived by mutual consent of the employer and the
employee.”

20 60. Labor Code section 512(a) provides, in pertinent part: “[a]n employer may not
21 employ an employee for a work period of more than five hours per day without providing the
22 employee with a meal period of not less than 30 minutes, except that if the total work period per
23 day of the employee is no more than six hours, the meal period may be waived by mutual consent
24 of both the employer and employee. An employer may not employ an employee for a work period
25 of more than 10 hours per day without providing the employee with a second meal period of not
26 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second
27 meal period may be waived by mutual consent of the employer and the employee only if the first
28 meal period was not waived.”

61. 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).

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

FOURTH CAUSE OF ACTION
Failure to Provide Required Rest Periods
Labor Code § 226.7 and the "Rest Periods" section of applicable IWC Wage Order(s)
(By Plaintiff and each Rest Period Subclass Member)

63. Plaintiff incorporates the preceding paragraphs of this Complaint.

64. California Labor Code section 226.7(b) provides, "An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable order of the Industrial Welfare Commission."

65. The applicable Wage Order provides, in pertinent part: "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

66. The applicable Wage Order further provides: "[i]f an employer fails to provide an employee with a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

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

68. Defendants’ unlawful acts deprived Plaintiff and the Rest Period Subclass of premium wages in amounts to be determined at trial, and they are entitled to recover these amounts, along with interest, attorneys’ fees, and costs.

FIFTH CAUSE OF ACTION
Failure to Provide Accurate Wage Statements
Labor Code § 226
(By Plaintiff and each Wage Statement Subclass Member)

69. Plaintiff incorporates the preceding paragraphs of this Complaint.

70. California Labor Code section 226(a) provides: “[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [...], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number, [...], (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee....”

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

1 statements. Labor Code § 226.

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

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

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

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

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

18 76. Waiting Time Subclass Members are no longer employed by Defendants.

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

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

27 78. Plaintiff incorporates the preceding paragraphs of this Complaint.

28 79. 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

1 reimbursement may not be waived. Labor Code § 2804.

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

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

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

12 82. Plaintiff incorporates the preceding paragraphs of this Complaint.

13 83. The California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code sections
14 17200, *et seq.*, defines unfair competition to include any "unlawful," "unfair," or "fraudulent"
15 business act or practice. Cal. Bus. & Prof. Code § 17200.

16 84. Defendants' conduct as described above constitutes unlawful business practices
17 because Defendants violated: the California Labor Code, including but not limited to Sections
18 226.7 (meal and rest periods), 510 and 1194 (minimum and overtime wages), 226.8
19 (misclassification) and 2802 (expense reimbursement); and sections of the applicable IWC Wage
20 Order(s).

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

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

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

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

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

5 **NINTH CAUSE OF ACTION**
6 **Violation of Private Attorneys General Act (PAGA) Claim**
7 **(Cal. Lab. Code §§2698 and 2699, *et. seq.*)**

8 90. Plaintiff incorporates the preceding paragraphs of this Complaint.

9 91. “Labor Code §§ 2698 and 2699 (The California Private Attorneys General Act of
10 2004, or “PAGA”), expressly establish that any provision of the California Labor Code which
11 provides for a civil penalty to be assessed and collected by The Labor and Workforce
12 Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards,
13 agencies or employees for a violation of the California Labor Code, may be recovered through a
14 civil action brought by an aggrieved employee on behalf of other current or former employees.

15 92. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
16 agencies or employees has discretion to assess a civil penalty, a fact-finder in a civil action is
17 authorized to exercise the same discretion, subject to the same limitations and conditions, to assess
18 a civil penalty.

19 93. Plaintiff is an “aggrieved employee” as defined by Labor Code § 2699, because he
20 is an employee of Defendant, and one or more of the Labor Code violations was committed
21 against him.

22 94. Plaintiff brings this PAGA action solely on behalf of all other aggrieved
23 employees employed by Defendants in the State of California, for civil penalties pursuant to the
24 PAGA for Defendants’ misclassification of aggrieved employees as independent contractors
25 resulting in the non-payment of minimum and overtime wages, failure to provide off-duty meal
26 and rest periods, failure to provide reimbursement for costs and expenses, failure to provide
27 compliant wage statements, and failure to timely pay all wages during and upon termination of
28 employment, as described in detail in the preceding paragraphs of this Complaint. Plaintiff is not
suing in his individual capacity, he is proceeding in this action solely under the PAGA, on behalf

1 of the State of California for all aggrieved employees of Defendants, which include himself, but
2 does not seek any redress or remedy for any of his individual claims including but not limited to
3 his PAGA individual claims. See *Balderas*, supra, 101 Cal.App.5th at 538.

4 95. Plaintiff asserts his representative claims against Defendants for Defendants'
5 violations of PAGA on behalf of the LWDA and all aggrieved employees, in his capacity as
6 "private attorney general", and seeks all statutory penalties available under the Labor Code.

7 96. By reason of the above and pursuant to Labor Code § 2699, Plaintiff, on behalf of
8 the LWDA and all aggrieved employees, is entitled to payment of a penalty of \$100 per pay
9 period for each employee for the initial violation, and \$200 per pay period for each employee for
10 each subsequent violation, plus interest.

11 97. In addition, Plaintiff, on behalf of the LWDA and all aggrieved employees, seeks
12 and is entitled to have 75% of all recovered penalties and interest allocated to the LWDA and
13 25% to the aggrieved employees. Further, Plaintiff is entitled to seek and recover reasonable
14 attorneys' fees, expenses and costs pursuant to Labor Code § 2699, and any other applicable
15 statutes.

16 98. Plaintiff complied with the notice requirements of Labor Code § 2699.3(a)(1) prior
17 to commencing this action. A copy of the letters submitted to the California LWDA on June 4,
18 2024, and June 18, 2024, via online filing, and copied to Defendants' Agent for Service of Process
19 in California on the same date, via certified mail, in accordance with section 2699.3(a)(1), is
20 attached hereto as **Exhibit A** and **Exhibit B**, and by reference incorporated herein.

21 99. As of today's date, the LWDA has not responded to Plaintiff's notices.

22 100. Plaintiff and the aggrieved employees are also entitled to reasonable attorneys'
23 fees and costs, pursuant to California Labor Code § 2699(g)(1).

24 **PRAYER FOR RELIEF**

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

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

2. Provision of class notice to Class Members as defined above;
3. A declaratory judgment that Defendants knowingly and intentionally violated:
 - a. California Labor Law by Misclassifying Class and Subclass Members as independent contractors.
 - b. California Labor Code sections 510 and 1194 by failing to pay minimum and overtime wages;
 - c. California Labor Code sections 226.7 and 512 by failing to provide meal and rest periods;
 - d. California Labor Code section 226 by failing to provide accurate, itemized wage statements;
 - e. California Labor Code section 203 by failing to pay waiting time penalties;
 - f. California Labor Code section 2802 by failing to reimburse business expenses; and
 - g. California Business and Professions Code sections 17200, *et seq.* by engaging in unlawful or unfair business practices.
4. That Defendants be permanently enjoined from engaging in the unlawful or unfair acts and practices alleged;
5. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff and Class Members, in an amount according to proof, pursuant to California Business and Professions Code section 17203;
6. That this action be maintained as a Representative Action under the PAGA, and Plaintiff and his counsel be provided with all enforcement capability as if the action were brought by the California Division of Labor Standards Enforcement;
7. For recovery of all civil penalties as permitted by Labor Code section 2699 for unpaid minimum and overtime wages owed pursuant to Labor Code section 1194, according to proof;
8. For recovery of civil penalties as permitted by Labor Code section 2699 for unpaid meal period premiums earned pursuant to Labor Code section 226.7, according to proof;

9. For recovery of civil penalties as permitted by Labor Code section 2699 for unpaid rest period premiums earned pursuant to Labor Code section 226.7, according to proof;
10. For recovery of civil penalties as permitted by Labor Code section 2699, for inaccurate itemized wage statements pursuant to Labor Code sections 226 and 226.3, according to proof;
11. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to timely pay all final wages due pursuant to Labor Code sections 201-202;
12. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to pay statutory waiting time penalties due pursuant to Labor Code section 203;
13. For recovery of civil penalties as permitted by Labor Code section 2699 for unreimbursed business expenses pursuant to Labor Code section 2802, according to proof;
14. For recovery of civil penalties under Labor Code section 226.8 for engaging in a pattern and practice of intentionally classifying employees as independent contractors;
15. Compensatory damages according to proof;
16. Statutory damages under the Labor Code;
17. Liquidated damages under the Labor Code;
18. Pre-judgment interest on all sums collected;
19. Reasonable attorneys' fees and costs, pursuant to California Code of Civil Procedure section 1021.5, the California Labor Code, the PAGA, or other applicable law;
20. Costs of suit; and,
21. Such other relief as the Court may deem appropriate.

COHELAN KHOURY & SINGER
HAMNER LAW OFFICES, APLC

Dated: August 28, 2024

By: _____



Michael D. Singer, Esq.

Isam C. Khoury, Esq.

Maggie Realin, Esq.

Attorneys for Plaintiff GEORGE JONES, on behalf of
himself and all others similarly situated and aggrieved

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 28, 2024

By: 

Michael D. Singer, Esq.

Isam C. Khoury, Esq.

Maggie Realin, Esq.

Attorneys for Plaintiff GEORGE JONES, on behalf of
himself and all others similarly situated and aggrieved

EXHIBIT A



HAMNER LAW OFFICES
A Professional Law Corporation

26565 West Agoura Road
Suite 200
Calabasas, California 91302
Telephone: (888) 416-6654
Website: www.hamnerlaw.com

June 4, 2024

Filed online with LWDA:

California Labor and Workforce
Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Sent via certified mail to:

Jianting Zhang
Agent for service for PiggyShip, Inc.
8715 Innovation St.
Chino, CA 91708

**Re: Written Notice Pursuant to Labor Code, sections 2698, *et seq.*
by George Jones**

To whom it may concern:

Pursuant to California Labor Code § 2698, *et seq.*, **George Jones** (“Claimant”) submits this written notice of Labor Code and Industrial Welfare Commission Wage Order violations by his former employer, **PiggyShip**, Inc., a subsidiary of WeShip SA de CV (“Employer” or “PiggyShip”). Pursuant to Labor Code § 2698, *et seq.*, Claimant, a misclassified “exempt” for Employer, seeks to represent himself and other aggrieved employees in a PAGA action against Employer as set forth below. For purposes of this notice, Claimant contends “aggrieved employees” also include all individuals who worked for Employer as “independent contractors.”

Written Notice of Claims

Labor Code, § 2699.3(a) requires employees seeking to file a claim under PAGA to provide written notice to the Labor and Workforce Development Agency and the employer identifying violations of Labor Codes. Section 2699.5 provides:

- (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of section 2699 alleging a violation of any provision listed in section 699.5 shall commence only after the following requirements have been met: (1) the aggrieved employee or representative shall give written notice by certified mail to the labor and workforce development agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

Legal Claims Applicable to Labor Code §2699.3(a) Written Notice Requirement

Claimant alleges Employer has violated the following Labor Codes, all of which appear in Section 2699.5, and thus require written notice consistent with Section 2699.3(a):

- Labor Code § 226 – Knowing and Intentional Failure to Provide Accurate, Itemized Wage Statements;
- Labor Code § 226.7 – Failure to Provide Lunch Breaks;
- Labor Code § 226.7 – Failure to Provide Rest Breaks;
- Labor Code § 1174 – Failure to Keep Accurate Records;
- Labor Code §§ 226, 510, 1194 and 1197 – Failure to Pay Overtime and Minimum Wages
- Labor Code § 2802 – Failure to Reimburse Business Expenses
- Labor Code § 226.8 – Willful Misclassification
- Violation of AB 5, codified as Labor Code § 2750.3

Legal and Factual Basis to Support Claims

Wage Statement Violations

Labor Code section 226 states:

(a) Every employer shall, semi-monthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

(e) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys fees.

Employer did not provide the required information to its workers like Claimant and has knowingly and intentionally failed to comply with subsection Labor Code section 226(a).

Meal Periods

Claimant contends Employer instituted policies and practices that did not comply with Labor Code §§ 512, 226.7 and Industrial Welfare Commission Wage Order 5-2001(11) (meal periods).

Labor Code § 512 and Wage Order 5-2001 require employers to provide their employees with 30 minutes meal periods in which the employee is free of all work duties and free to leave the premises for any shifts six hours or more. The meal period must take place within the first five hours worked and can only be waived by mutual consent. If an employer implements practices and procedures that prevent the employee from a meaningful choice for a meal period, then the employer must pay one hour of pay to the employee for each day in which the meal period is not provided. See Wage Order 5-2001(11); see also *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040 (“On the other hand, an employer may not undermine a policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.”); see also, *Jamiez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1304-1305 (violation can be proved by showing a common scheduling policy that made taking breaks extremely difficult.)

Claimant contends that Claimant was regularly provided workloads that prevented Claimant from having the ability to take a timely 30 minute meal period within the first five hours of any shift greater than six hours. In order to meet time deadlines, it was often necessary to work straight through without a timely 30 minute meal period. Claimant contends Employer failed to accurately record when Claimant was not able to take a timely meal period.

Employer apparently did not have any policy or practice to follow if there was a meal period violation. Claimant was never paid one hour of pay for each day Claimant was denied a meal period. Claimant suffered injury by being required to work through Claimant’s meal periods without being appropriately compensated for doing so.

Rest Breaks

Claimant contends Employer instituted policies and practices that did not comply with Labor Code § 226.7 and Industrial Welfare Commission Wage Order 5-2001(12) (rest breaks).

Labor Code § 226.7 requires employers to provide employees with rest breaks consistent with the IWC Wage Orders. Wage Order 5-2001 requires employers to authorize and permit employees to take rest breaks of 10 minutes net rest time per every four (4) hours worked. For each day in which an employer fails to authorize or permit a rest break, the employer owes the employee one hour of pay.

Employer did not have any policy or practice to follow if there was a rest period violation. Claimant was never paid one hour of pay for each day Claimant was denied a rest period. Claimant suffered injury by being required to work through Claimant's rest periods or receiving late rest periods without being appropriately compensated for doing so.

Labor Code Section 1174 Pay Records

Labor Code § 1174 requires employers to keep "payroll records showing the hours worked daily by and the wages paid to the employee". An employer may be liable under § 1174 if it fails to record when employees report to work, the start and end times of their shifts, and the total hours worked or meal periods. See *Carrillo v. Schneider Logistics, Inc.*, (2011) 823 F. Supp.2d 1040, 1044.

Claimant contends Employer failed to keep accurate records of the hours employees worked each day. Employer did not record the actual hours its hourly, non-exempt employees worked each day and failed to accurately record regular hours, overtime, meal periods, or shifts less than two hours. Claimant contends Claimant's pay records did not show an hour's pay for any days in which he was not free to take a 30 minutes meal period or 10 minute rest break.

Unpaid Wages and Overtime

Employer failed to all hourly wages due and failed to pay overtime wages to Claimant and other similarly situated workers, and in so doing, Employer willfully violated the provisions of Labor Code sections 226, 510, 1194, 1198, 1199, IWC Wage Orders, and California Code of regulations, Title 8, section 11160(3). Labor Code §§ 510, 1194 and 1197 require employers to pay employees for minimum wage and overtime wages for hours worked over 8 per day and/or over 40 hours per week.

California law requires employers to pay overtime compensation to all non-exempt employees for all hours worked over 8 in a day or 40 per week for overtime pay, and over 12 in a day at double-time pay.

Employer failed to accurately record overtime hours and / or changed or edited hours recorded to show no overtime worked by Claimant and Employer's similarly situated workers.

Because these hours were not recorded and / or were changed or edited by Employer, Claimant and all similarly situated workers for Employer were at times compensated at an amount below California's minimum wage requirements. Claimant contends that he and other similarly situated workers for Employer were not paid for all overtime hours worked, and as a result, were also not paid minimum wage as required by law. Claimant and other workers like Claimant did not receive the legal minimum wage for all hours worked. Claimant and other workers like her for Employer have not been paid all wages, and overtime compensation, including interest thereon.

Failure to Reimburse Business Expenses

Cal. Labor Code section 2802 requires Employer to reimburse Claimant and Claimant's fellow aggrieved employees for reasonable business expenses. Claimant alleges that Employer's workers are not, and have not been, reimbursed for business expenses, including but not limited to, mileage reimbursement. Claimant alleges the failure to reimburse these business expenses is a violation of section 2802.

Willful Misclassification

Claimant alleges that Employer improperly classifies its drivers as independent contractors in violation of Labor Code section 226.8. Employer drivers do not and cannot be classified as exempt independent contractors based on AB 5 (as discussed below). "Willful misclassification" is defined as "avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor." Labor Code section 226.8(i)(4). Claimant alleges a pattern and practice of willful misclassification. Claimant, all of Employer's drivers, and the LWDA or owed full and maximum damages penalties set forth in section 226.8.

Violation of AB 5, codified as Labor Code § 2750.3

Assembly Bill 5 (AB 5) is a California law that went into effect on January 1, 2020. It codifies the ABC test, which came from the California Supreme Court's decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, (2018) 4 Cal.5th 903. This decision determines whether workers are employees or independent contractors.

Under the ABC test, codified in § 2750.3 of the Labor Code, a worker is considered an employee and not an independent contractor unless the hiring entity demonstrates that all three of the following conditions are satisfied:

A) The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

B) The worker performs work that is outside the usual course of the hiring entity's business.

C) The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

A violation of AB 5 would occur if a company is treating a worker as an independent contractor, but the relationship fails to meet all three of these criteria. Claimant alleges Employer has misclassified its drivers and cannot successfully meet the ABC test because, among other reasons, Employer's drivers, like most gig economy delivery drivers, are not free from the control and direction of the employer and do not satisfy any of the three prongs set out in AB 5. As such, Employer's drivers cannot reasonably be classified as exempt under AB 5.

Conclusion

Claimant expressly reserves the right to pursue her PAGA claims individually or on behalf of only the alleged aggrieved employees including or not including Claimant. Pursuant to Labor Code, section 2699(a), if the LWDA does not respond to this notice in 60 days, Claimant will move forward with his PAGA claims in court.

Very truly yours,

HAMNER LAW OFFICES, APLC

Chris Hamner

Christopher J. Hamner, Esq.

CJH/vv

EXHIBIT B

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC•

(*Also admitted in the District of Columbia)
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JEFF GERACI
MARTA MANUS
MAGGIE REALIN
ROSEMARY C. KHOURY

June 18, 2024

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency ("LWDA")

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Wodee Inc
c/o Yi Zheng, Registered Agent for Service
4555 Glen St.
La Mesa, CA 91941

Wodee Inc
4555 Glen St.
La Mesa, CA 91941

Re: Notice by George Jones, on behalf of himself and all other aggrieved California employees of Wodee Inc, as an individual and as a Representative of the State of California

Dear PAGA Administrator and Wodee Inc Representative:

Pursuant to California Labor Code § 2698, *et seq.*, **George Jones** ("Claimant") submits this written notice of Labor Code and Industrial Welfare Commission Wage Order violations by his former employer, Wodee Inc ("Employer" or "Wodee"). Pursuant to Labor Code § 2698, *et seq.*, Claimant, a misclassified "exempt" for Employer, seeks to represent himself and other aggrieved employees in a PAGA action against Employer as set forth below. For purposes of this notice, Claimant contends "aggrieved employees" also include all individuals who worked for Employer as "independent contractors."

Written Notice of Claims

Labor Code, § 2699.3(a) requires employees seeking to file a claim under PAGA to provide written notice to the Labor and Workforce Development Agency and the employer identifying violations of Labor Codes. Section 2699.5 provides: (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of section 2699 alleging a violation of any provision listed in section 699.5 shall commence only after the following requirements have been met: (1) the aggrieved employee or representative shall give written notice by certified mail to the labor and workforce development agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

Legal Claims Applicable to Labor Code §2699.3(a) Written Notice Requirement

Claimant alleges Employer has violated the following Labor Codes, all of which appear in Section 2699.5, and thus require written notice consistent with Section 2699.3(a):

- Labor Code § 226 – Knowing and Intentional Failure to Provide Accurate, Itemized Wage Statements;

- Labor Code § 226.7 – Failure to Provide Lunch Breaks;
- Labor Code § 226.7 – Failure to Provide Rest Breaks;
- Labor Code § 1174 – Failure to Keep Accurate Records;
- Labor Code §§ 226, 510, 1194 and 1197 – Failure to Pay Overtime and Minimum Wages
- Labor Code § 2802 – Failure to Reimburse Business Expenses
- Labor Code § 226.8 – Willful Misclassification
- Violation of AB 5, codified as Labor Code § 2750.3

Legal and Factual Basis to Support Claims

Wage Statement Violations

Labor Code section 226 states:

(a) Every employer shall, semi-monthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

(e) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

Employer did not provide the required information to its workers like Claimant and has knowingly and intentionally failed to comply with subsection Labor Code section 226(a).

Meal Periods

Claimant contends Employer instituted policies and practices that did not comply with Labor Code §§ 512, 226.7 and Industrial Welfare Commission Wage Order 5-2001(11) (meal periods).

Labor Code § 512 and Wage Order 5-2001 require employers to provide their employees with 30 minutes meal periods in which the employee is free of all work duties and free to leave the premises for any shifts six hours or more. The meal period must take place within the first five hours worked and can only be waived by mutual consent. If an employer implements practices and procedures that prevent the employee from a meaningful choice for a meal period, then the employer must pay one hour of pay to the employee for each day in which the meal period is not provided. See Wage Order 5-2001(11); see also *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040 (“On the other hand, an employer may not undermine a policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.”); see also, *Jamiez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1304-1305 (violation can be proved by showing a common scheduling policy that made taking breaks extremely difficult.)

Claimant contends that Claimant was regularly provided workloads that prevented Claimant from having the ability to take a timely 30-minute meal period within the first five hours of any shift greater than six hours. In order to meet time deadlines, it was often necessary to work straight through without a timely 30-minute meal period. Claimant contends Employer failed to accurately record when Claimant was not able to take a timely meal period.

Employer apparently did not have any policy or practice to follow if there was a meal period violation. Claimant was never paid one hour of pay for each day Claimant was denied a meal period. Claimant suffered injury by being required to work through Claimant’s meal periods without being appropriately compensated for doing so.

Rest Breaks

Claimant contends Employer instituted policies and practices that did not comply with Labor Code § 226.7 and Industrial Welfare Commission Wage Order 5-2001(12) (rest breaks).

Labor Code § 226.7 requires employers to provide employees with rest breaks consistent with the IWC Wage Orders. Wage Order 5-2001 requires employers to authorize and permit employees to take rest breaks of 10 minutes net rest time per every four (4) hours worked. For each day in which an employer fails to authorize or permit a rest break, the employer owes the employee one hour of pay.

Employer did not have any policy or practice to follow if there was a rest period violation. Claimant was never paid one hour of pay for each day Claimant was denied a rest period. Claimant suffered injury by being required to work through Claimant’s rest periods or receiving late rest periods without being appropriately compensated for doing so.

Labor Code Section 1174 Pay Records

Labor Code § 1174 requires employers to keep “payroll records showing the hours worked daily by and the wages paid to the employee”. An employer may be liable under § 1174 if it fails to record when employees report to work, the start and end times of their shifts, and the total hours worked or meal periods. See *Carrillo v. Schneider Logistics, Inc.*, (2011) 823 F. Supp.2d 1040, 1044.

Claimant contends Employer failed to keep accurate records of the hours employees worked each day. Employer did not record the actual hours its hourly, non-exempt employees worked each day and failed to accurately record regular hours, overtime, meal periods, or shifts less than two hours. Claimant contends Claimant’s pay records did not show an hour’s pay for any days in which he was not free to take a 30 minutes meal period or 10-minute rest break.

Unpaid Wages and Overtime

Employer failed to all hourly wages due and failed to pay overtime wages to Claimant and other similarly situated workers, and in so doing, Employer willfully violated the provisions of Labor Code sections 226, 510, 1194, 1198, 1199, IWC Wage Orders, and California Code of regulations, Title 8, section 11160(3). Labor Code §§ 510, 1194 and 1197 require employers to pay employees for minimum wage and overtime wages for hours worked over 8 per day and/or over 40 hours per week.

California law requires employers to pay overtime compensation to all non-exempt employees for all hours worked over 8 in a day or 40 per week for overtime pay, and over 12 in a day at double-time pay.

Employer failed to accurately record overtime hours, and / or changed or edited hours recorded to show no overtime worked by Claimant and Employer’s similarly situated workers.

Because these hours were not recorded and / or were changed or edited by Employer, Claimant and all similarly situated workers for Employer were at times compensated at an amount below California’s minimum wage requirements. Claimant contends that he and other similarly situated workers for Employer were not paid for all overtime hours worked, and as a result, were also not paid minimum wage as required by law. Claimant and other workers like Claimant did not receive the legal minimum wage for all hours worked. Claimant and other workers like him for Employer have not been paid all wages, and overtime compensation, including interest thereon.

Failure to Reimburse Business Expenses

Cal. Labor Code section 2802 requires Employer to reimburse Claimant and Claimant’s fellow aggrieved employees for reasonable business expenses. Claimant alleges that Employer’s workers are not, and have not been, reimbursed for business expenses, including but not limited to, mileage reimbursement. Claimant alleges the failure to reimburse these business expenses is a violation of section 2802.

Willful Misclassification

Claimant alleges that Employer improperly classifies its drivers as independent contractors in violation of Labor Code section 226.8. Employer drivers do not and cannot be classified as exempt independent contractors based on AB 5 (as discussed below). “Willful misclassification” is defined as “avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” Labor Code section 226.8(i)(4). Claimant alleges a pattern and practice of willful misclassification. Claimant, all of Employer’s drivers, and the LWDA or owed full and maximum damages penalties set forth in section 226.8.

Violation of AB 5, codified as Labor Code § 2750.3

Assembly Bill 5 (AB 5) is a California law that went into effect on January 1, 2020. It codifies the ABC test, which came from the California Supreme Court's decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, (2018) 4 Cal.5th 903. This decision determines whether workers are employees or independent contractors.

Under the ABC test, codified in § 2750.3 of the Labor Code, a worker is considered an employee and not an independent contractor unless the hiring entity demonstrates that all three of the following conditions are satisfied:

- A) The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- B) The worker performs work that is outside the usual course of the hiring entity’s business.
- C) The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

A violation of AB 5 would occur if a company is treating a worker as an independent contractor, but the relationship fails to meet all three of these criteria. Claimant alleges Employer has misclassified its drivers and cannot successfully meet the ABC test because, among other reasons, Employer’s drivers, like most gig economy delivery drivers, are not free from the control and direction of the employer and do not satisfy any of the three prongs set out in AB 5. As such, Employer’s drivers cannot reasonably be classified as exempt under AB 5.

CA Labor & Workforce Development Agency

Wodee Inc

Re: George Jones

June 18, 2024

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Conclusion

Claimant expressly reserves the right to pursue his PAGA claims individually or on behalf of only the alleged aggrieved employees including or not including Claimant. Pursuant to Labor Code, section 2699(a), if the LWDA does not respond to this notice in 60 days, Claimant will move forward with his PAGA claims in court.

Sincerely,

COHELAN KHOURY & SINGER

A handwritten signature in blue ink, appearing to read 'Marta Manus', with a long horizontal flourish extending to the right.

Marta Manus, Esq.