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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

ANDREW TAN, on behalf of himself and all others similarly situated,

Plaintiff,

v.

GRUBHUB, INC.,

Defendant.

Case No. _____

CLASS ACTION COMPLAINT

1. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES IN VIOLATION OF CAL. LAB. CODE §2802
2. FAILURE TO PROVIDE PROPER ITEMIZED WAGE STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226(a)
3. UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES (CAL. BUS. & PROF. CODE §§17200-17208)
4. FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF CAL. LAB. CODE §§ 1197 AND 1194
5. FAILURE TO PAY OVERTIME IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1198, 510, AND 554

I. INTRODUCTION

1. This case is a class action brought on behalf of individuals who have worked for GrubHub, Inc. ("GrubHub") as delivery drivers in California. GrubHub is a food delivery service that provides delivery drivers who can be scheduled and dispatched through a mobile phone application or through its website and who will deliver food orders from restaurants to customers at their homes and businesses.

2. As described further below, GrubHub has misclassified Plaintiff and other similarly situated delivery drivers as independent contractors and, in so doing, has violated the California Labor Code, including: (1) Cal. Lab. Code §2802 by requiring its drivers to pay various expenses that should have been borne by the employer; (2) Cal. Lab. Code § 226(a) by failing to provide proper itemized wage statements; (3) Cal. Lab. Code §§ 1197 and 1194 by failing to pay minimum wage for all weeks worked; (4) Cal. Lab. Code § 1194, 1194, 510, and 554 by failing to pay overtime wages; (5) Cal. Bus. & Prof. Code §17200, *et seq*. by engaging in unfair competition. Pursuant to California Code of Civil Procedure § 382, Plaintiff, on behalf of himself and all similarly situated GrubHub drivers, seeks damages for these violations.

II. PARTIES

3. Plaintiff Andrew Tan is an adult resident of San Francisco, California, where he has worked as a GrubHub driver since June 2015.

4. Defendant GrubHub, Inc. ("GrubHub") is a Delaware corporation with its principal place of business in Chicago, Illinois. Defendant does business in California, including in Los Angeles, San Diego, and San Francisco.

III. JURISDICTION

5. This Court has jurisdiction over Plaintiff's claims under Cal. Lab. Code §§ 2802, 226, 1194, 1197, 1198, 510, and 554, as well as under Cal. Bus. & Prof. Code §17200 *et seq.* pursuant to California Code of Civil Procedure § 410.10.

IV. STATEMENT OF FACTS

6. GrubHub is a food delivery service, which provides food delivery to customers in cities throughout the country via an on demand dispatch system.

7. GrubHub offers customers the ability to request a driver on a mobile phone application or online through its website, who will go to the restaurant and pick up their food, then deliver it to the customer at their home or business.

8. GrubHub's website advertises that "GrubHub is the nation's leading online and mobile food ordering company dedicated to connecting hungry diners with local takeout restaurants."

9. GrubHub drivers receive a flat fee for each delivery completed plus gratuities added by customers. GrubHub does not provide proper itemized wage statements to its drivers.

10. Although classified as independent contractors, GrubHub drivers like Plaintiff are actually employees. Drivers are required to sign up for shifts in advance. GrubHub directs drivers' work in detail, instructing drivers where to report for their shifts, how to dress, and where to go to pick up or await deliveries. Drivers are required to follow requirements imposed on them by GrubHub regarding handling of the food and timeliness of the deliveries or risk termination.

11. In addition, GrubHub is in the business of providing food delivery services to customers, and this is the very service its drivers provide. The drivers' services are fully integrated into GrubHub's business, and without the drivers, GrubHub's business would not exist.

12. However, based on their misclassification as independent contractors, GrubHub has required Plaintiff and other GrubHub drivers to bear many of the expenses of their employment, including expenses for their vehicles, gas, parking, phone data, and other expenses.

13. Because Plaintiff and other GrubHub drivers are paid by the delivery, and have been required to bear many of the expenses of their employment, their weekly pay rates have fallen below California's minimum wage in many weeks. For example, Plaintiff Tan recalls that in several weeks since he began working for GrubHub in June 2015, his pay fell below minimum wage as a result of his fuel and vehicle maintenance costs.

14. Plaintiff and other GrubHub drivers have regularly worked more than eight (8) and even twelve (12) hours per day and forty (40) hours per week, but GrubHub has not paid overtime wages for these hours. For example, Plaintiff Tan recalls that since he has started working for GrubHub in June 2015, he has regularly worked in excess of forty hours per week, and GrubHub did not pay time-and-a-half for the hours he worked in excess of forty each week. Moreover, he routinely worked more than twelve (12) hours in a day, and GrubHub did not pay him at twice his regularly hourly rate.

V. CLASS ALLEGATIONS

15. Plaintiff Andrew Tan brings this case as a class action pursuant to California Code of Civil Procedure § 382 on behalf of all GrubHub drivers who have worked in California.

16. Plaintiff and other class members have uniformly been deprived reimbursement of their necessary business expenditures as well, as of proper minimum wage and overtime, and they also have not received proper itemized pay statements from GrubHub.

17. The members of the class are so numerous that joinder of all class members is impracticable.

18. Common questions of law and fact regarding GrubHub's conduct in classifying drivers as independent contractors, failing to reimburse them for business expenditures, failing to pay minimum and proper overtime, and failing to provide them with proper pay statements, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

a. Whether class members have been required to follow uniform procedures and policies regarding their work for GrubHub;

b. Whether class members have been subject to termination by GrubHub in its discretion;

c. Whether the work performed by class members—providing food delivery services to customers—is within GrubHub's usual course of business, and whether such service is fully integrated into GrubHub's business;

d. Whether these class members have been required to bear the expenses of their employment, such as expenses for vehicles, gas, bikes, and other expenses.

e. Whether GrubHub has failed to ensure payment of minimum wage for all weeks these class members worked.

f. Whether GrubHub has failed to pay overtime wages for the overtime hours that the class members worked.

g. Whether GrubHub failed to provide proper itemized pay statements to its drivers.

19. Named Plaintiff Andrew Tan is a class member, who suffered damages as a result of Defendant's conduct and actions alleged herein.

20. Plaintiff Tan's claims are typical of the claims of the class, and he has the same interests as the other members of the class.

21. Plaintiff Tan will fairly and adequately represent and protect the interests of the class. He has retained able counsel experienced in class action litigation and independent contractor misclassification in particular. His interests are coincident with, and not antagonistic to, the interests of the other class members.

22. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

23. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. The class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitive litigation. There will be no difficulty in the management of this action as a class action.

COUNT I

Violation of Cal. Lab. Code § 2802

Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. GrubHub's conduct, as set forth above, in misclassifying Plaintiff and other GrubHub drivers as independent contractors, and failing to reimburse them for expenses they paid that should have been borne by their employer, constitutes a violation of California Labor Code § 2802.

COUNT II

Violation of Cal. Lab. Code § 226(a)

Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. GrubHub's conduct, as set forth above, in misclassifying Plaintiff and other GrubHub drivers as independent contractors, and failing to provide proper itemized wage statements constitutes a violation of California Labor Code § 226(a).

COUNT III

Violation of Cal. Lab. Code §§ 1197 and 1194 – Minimum Wage

Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. GrubHub's conduct, as set forth above, in misclassifying Plaintiff and other GrubHub drivers as independent contractors, and failing to pay the drivers the California minimum wage each week worked constitutes a violation of California Labor Code §§ 1197 and 1194.

COUNT IV

Violation of Lab. Code §§ 1194, 1198, 510, and 554 – Overtime

Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. GrubHub's conduct, as set forth above, in misclassifying Plaintiff and other GrubHub drivers as independent contractors, and failing to pay the drivers the appropriate overtime premium overtime hours they worked constitutes a violation of California Labor Code §§ 1194, 1198, 510, and 554.

COUNT V

Violation of Cal. Bus. & Prof. Code §17200, *et seq*.

Defendant's conduct, as set forth above, violates the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq*. ("UCL"). Defendant's conduct constitutes unlawful business acts or practices, in that Defendant has violated California Labor Code Section 2802. As a result of Defendant's unlawful conduct, Plaintiff and class members suffered injury in fact and lost money and property, including, but not limited to business expenses that drivers were required to pay. Pursuant to California Business and Professions Code § 17203, Plaintiff and class members seek declaratory and injunctive relief for Defendant's unlawful conduct and to

recover restitution. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff and class members are entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

WHEREFORE, Plaintiff requests that this Court enter the following relief:

a. Certify a class action pursuant California Code of Civil Procedure § 382 and appoint Plaintiff and his counsel to represent the class;
b. Declare and find that the Defendant violated Cal. Lab. Code §§ 2802, 226(a), 510, 554, 1197, and 1198, and Cal. Bus. & Prof. Code §17200, *et seq*.;
c. Award compensatory damages, including all expenses owed, underpaid wages, and liquidated damages in an amount according to proof;
d. Award all costs and attorney's fees incurred prosecuting this claim;
e. Interest and costs;
f. Injunctive relief in the form of an order directing Defendant to comply with Cal. Lab. Code;
g. Such other relief as in law or equity may pertain.

Respectfully submitted,

ANDREW TAN, on behalf of himself and all others similarly situated,

By his attorneys,

_____

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Dated: September 23, 2015