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23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
24 **FOR THE COUNTY OF ALAMEDA**

25 LILIA GARCÍA-BROWER, in her official
26 capacity as Labor Commissioner for the State
27 of California,

28 Plaintiff,

v.

UBER TECHNOLOGIES, INC.; RASIER,
LLC; RASIER-CA, LLC; DOES 1-20,
inclusive,

Defendants.

CASE NO.

Unlimited Jurisdiction

**COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES AND PENALTIES FOR (1)
WILLFUL MISCLASSIFICATION OF
EMPLOYEES AS INDEPENDENT
CONTRACTORS, (2) FAILURE TO PAY
MINIMUM WAGE, (3) FAILURE TO PAY
OVERTIME WAGES, (4) FAILURE TO
PAY WAGES FOR REST PERIODS,
(5) FAILURE TO PAY REST PERIOD
PREMIUM PAY, (6) FAILURE TO
INDEMNIFY EMPLOYEES FOR
BUSINESS EXPENSES, (7) FAILURE TO
PROVIDE ITEMIZED WAGE
STATEMENTS, (8) FAILURE TO
COMPLY WITH PAID SICK LEAVE
REQUIREMENTS, (9) FAILURE TO
TIMELY PAY EARNED WAGES UPON
SEPARATION FROM EMPLOYMENT,
(10) FAILURE TO TIMELY PAY EARNED
WAGES DURING EMPLOYMENT,**

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**(11) FAILURE TO PROVIDE NOTICE OF
EMPLOYMENT INFORMATION**

(No fee per Labor Code §§ 101, 101.5 and
Government Code § 6103)

VERIFIED ANSWER REQUIRED
PURSUANT TO CCP § 446

6 Plaintiff, LILIA GARCÍA-BROWER, in her official capacity as Labor Commissioner for the
7 State of California, alleges as follows:

8 **THE PARTIES TO THIS ACTION**

9 1. Plaintiff is the Labor Commissioner for the State of California, and Chief of the
10 Division of Labor Standards Enforcement (“DLSE” or “Plaintiff”) of the Department of Industrial
11 Relations for the State of California. (Labor Code §§ 21, 79.)

12 2. Plaintiff is authorized to enforce all provisions of the Labor Code and Industrial
13 Welfare Commission (“IWC”) orders governing wages, hours and working conditions of California
14 employees. (Labor Code §§ 61, 90.5(b), and 95(a)). It is the policy of the State of California, and
15 the duty of the Labor Commissioner, to “vigorously enforce minimum labor standards in order to
16 ensure employees are not required or permitted to work under substandard unlawful conditions or for
17 employers that have not secured the payment of compensation, and to protect employers who
18 comply with the law from those who attempt to gain a competitive advantage at the expense of their
19 workers by failing to comply with minimum labor standards.” (Labor Code § 90.5.)

20 3. As part of her enforcement powers, Plaintiff is authorized, pursuant to Labor Code
21 § 98.3(b), to prosecute actions for the collection of wages and other moneys payable to employees or
22 to the State arising out of an employment relationship or order of the IWC. Labor Code § 217
23 expressly empowers the Labor Commissioner to enforce the provisions of Labor Code §§ 200-244,
24 which include the Code section requiring payment of premium pay for failure to comply with IWC
25 wage order meal and rest period requirements, and Code sections authorizing penalties for an
26 employer’s failure to timely pay wages due to employees during employment or upon separation of
27 employment, or for an employer’s failure to comply with requirements pertaining to itemized wage
28 statements. Plaintiff is expressly authorized, pursuant to Labor Code § 226.8, to enforce that Code

1 section which prohibits the willful misclassification of employees as independent contractors. Labor
2 Code § 248.5 expressly authorizes the Labor Commissioner to enforce the paid sick leave
3 requirements set out in Labor Code §§ 245-249. Labor Code § 1193.6 expressly authorizes the
4 Labor Commissioner to file and prosecute a civil action to recover unpaid minimum wages or unpaid
5 overtime compensation, owed to any employee under Labor Code §§ 1171-1206 or under any IWC
6 order. Furthermore, Plaintiff is authorized, pursuant to Labor Code § 1194.5, to seek injunctive
7 relief to prevent further violations of any of the laws, regulations or IWC orders governing wages,
8 hours of work, and working conditions for employees. Labor Code § 2802 expressly empowers the
9 Labor Commissioner to file a court action to recover amounts due under that section, which requires
10 employers to indemnify employees for business expenses.

11 4. At all relevant times herein, Defendant Uber Technologies, Inc. (“Uber”) has been
12 registered with the Secretary of State as a Delaware corporation, engaged in the business of
13 transportation as a ride hailing service, with its principal business office located in the City and
14 County of San Francisco. Uber provides on-demand transportation services throughout all counties
15 in California. Uber makes use of an on-demand transportation mobile application (hereinafter
16 “app”) to engage the services of its drivers, to receive orders from passenger customers, to assign
17 and schedule its drivers to provide transportation services to those passenger customers, to collect
18 the amounts owed by those customers (based on prices largely set by defendants) for those
19 transportation services, and to pay its drivers for the services they provided to these passenger
20 customers. The work performed by these drivers – driving – constitutes the very core of
21 defendants’ business. Moreover, defendants retain and/or exercise substantial control over their
22 drivers, with restrictions on when, where and how the work may be performed.

23 5. At all relevant times herein, Plaintiff is informed and believes Defendant Rasier, LLC
24 is Uber’s wholly owned subsidiary, and is the parent company of Defendant Rasier-CA, LLC. Both
25 are Delaware limited liability companies. Rasier, LLC (“Rasier”) and Rasier-CA, LLC (“Rasier-
26 CA”) (collectively “Rasier defendants”) have their principal places of business in San Francisco,
27 California and conduct business throughout the State of California. Rasier operates under California
28 Entity Number 201323810228. Rasier-CA operates under California Entity Number 201326310085.

1 by defendants to their customers, defendants solicit and employ a massive workforce of over
2 100,000 drivers throughout California for the purpose of driving Uber’s customers. This driver
3 workforce performs the service for which customers pay Uber—transportation.

4 12. In an effort to obfuscate the basic and evident employment relationship between Uber
5 and its drivers, Uber created subsidiaries Rasier and Rasier-CA to act as intermediaries between
6 Uber and its drivers. Rasier-CA is a geographic-specific entity that operates only in the State of
7 California.

8 13. The Rasier defendants “license” the smartphone technology from Uber, and then
9 “hire” the drivers on Uber’s behalf for the transportation services. Uber incorrectly claims that,
10 because of this scheme, it is the drivers alone who are providing the on-demand transportation
11 services. Uber’s claim is specious because Uber and/or its subsidiaries, the Rasier defendants,
12 organize and control all of the activities necessary to Uber’s business. The Rasier defendants further
13 the misclassification scheme by adding an additional layer to superficially distance Uber from its
14 drivers in an effort to obfuscate the evident conclusion that Uber’s drivers are its employees, as a
15 matter of law.

16 14. The Rasier defendants manage drivers’ contracts and tax forms, and act as
17 intermediary “straw men” to issue payments from Uber to its drivers under the name Rasier or
18 Rasier-CA. Despite the purported division between Uber and the Rasier defendants, Uber and the
19 Rasier defendants are a single business enterprise. The Rasier defendants are undercapitalized and
20 act only as shell companies to absorb Uber’s liabilities. Uber controls the operations of Rasier and
21 Rasier-CA to such an extent that the Rasier defendants are mere instrumentalities of Uber.

22 15. Drivers have no ability to contact Rasier or Rasier-CA for basic issues like incorrect
23 compensation or technology issues with the app. Instead, if drivers have questions or problems, they
24 must contact Uber; Uber’s support team handles driver issues.

25 16. Uber has been classified by the California Public Utilities Commission (CPUC) as a
26 transportation network company (TNC). The CPUC defines a TNC as “a company or organization
27 operating in California that provides transportation services using an online-enabled platform to
28 connect passengers with drivers using their personal vehicles.” The CPUC has also classified Uber

1 as a charter-party carrier (TCP), which includes passenger transportation. The CPUC has authorized
2 Uber and the Rasier defendants to provide services for “the transportation of persons by motor
3 vehicle for compensation, whether in common or contract carriage, over any public highway in this
4 state.” (Pub. Util. Code § 5360.) The transportation of passengers for compensation within
5 California requires operating authority from the CPUC, unless limited exemptions apply—such as
6 taxicab service (which is subject to local city and county regulation) and medical transportation
7 vehicles. (Public Utilities Code §§ 226 and 5353.)

8 17. On June 9, 2020, the CPUC issued a Scoping Memo and Ruling in Rulemaking 12-
9 12-001 and stated that, based upon the enactment of AB 5 (Labor Code § 2750.5, codification of the
10 “ABC” test), “for now, TNC drivers are presumed to be employees...” The CPUC’s public
11 comment period on the AB 5 question closes on August 7, 2020.

12 18. Plaintiff is informed and believes, and on the basis of said information and belief
13 alleges, that there is a unity of interest and operation between Uber, Rasier, and Rasier-CA and Does
14 1-20 such that their separate and independent classification is but a fiction and that each is the alter-
15 ego of the other.

16 19. By setting up the Rasier defendants as shell companies, and by misclassifying their
17 drivers as independent contractors, defendants have engaged in a deliberate scheme to evade their
18 obligations under California law – including, but not limited to the obligation to pay their drivers no
19 less than the applicable minimum wage for all hours worked, to pay overtime compensation for
20 overtime hours worked, to provide paid, duty-free rest periods during the workday, to reimburse the
21 drivers for the cost of all equipment and supplies needed to perform their work and for work-related
22 personal vehicle mileage, to provide paid sick leave, to provide accurate itemized wage deduction
23 statements and other required notices containing required employment-related information, and to
24 timely pay all wages owed during each driver’s period of employment and upon separation of
25 employment.

26 20. Defendants’ unlawful business model, premised upon misclassification of employees
27 as independent contractors, is built upon the misconception that employees can be designated as
28 independent contractors and deprived of the benefits and security of the employment relationship if

1 certain words are used to misclassify the relationship in a contract between the worker and the hiring
2 entity.

3 21. In an opinion piece in the San Francisco Chronicle titled “Open Forum: Uber, Lyft
4 ready to do our part for drivers” dated June 12, 2019, Uber acknowledged its drivers face serious
5 concerns because of their misclassification as independent contractors and not employees, including
6 “earnings stability [and] protections on the job...” Uber, however, decried the possibility of
7 properly classifying its drivers as employees, claiming that “a change to the employment
8 classification of ride-share drivers would pose a risk to our business.”

9 22. Recognizing the serious problem of misclassification and the harms it inflicts on
10 workers, law-abiding businesses, taxpayers, and society as a whole, the California Legislature
11 enacted Assembly Bill 5, which took effect on January 1, 2020. (Assem. Bill No. 5, 2019-2020 Reg.
12 Sess. (“A.B. 5”).) A.B. 5 codified and extended the California Supreme Court’s unanimous decision
13 in *Dynamex Operations W., Inc. v. Superior Court* (2018) 4 Cal.4th 903 (“*Dynamex*”). California
14 law is clear: for the full range of protections afforded by the Industrial Welfare Commission
15 (“IWC”) wage orders, the Labor Code, and the Unemployment Insurance Code, workers are
16 generally presumed to be employees unless the hiring entity can overcome this presumption by
17 establishing *each* of the three factors in the strict “ABC” test: (A) the worker is free from the control
18 and direction of the hiring entity in connection with the performance of the work, both under the
19 contract for the performance of the work and in fact; (B) the worker performs work that is outside
20 the usual course of the hiring entity’s business; and (C) the worker is customarily engaged in an
21 independently established trade, occupation or business of the same nature as the work performed.
22 (Lab. Code § 2750.3(a)(1); *Dynamex, supra*, 4 Cal.5th at 957.)

23 23. Because the hiring entity must establish each of the three factors in the ABC test in
24 order to lawfully classify a worker as an independent contractor, the hiring entity’s failure to
25 establish any one part of the ABC test results in the classification of the worker as an employee
26 rather than an independent contractor. (*Dynamex, supra*, 4 Cal.5th at 963.)

27 24. Uber is a transportation company in the business of providing on-demand
28 transportation services to customer passengers to their destination of choice at a price largely

1 controlled by Uber. The drivers who perform this work are employees of Uber. The drivers provide
2 Uber's customer passengers with the transportation services that Uber sells. Uber publicly holds
3 itself out to the public as providing transportation services in the form of on-demand rides.

4 25. As noted by federal district court Judge Edward Chen in an order issued in 2015,
5 Uber's claim that it is not a transportation company is "fatally flawed." "Uber does not sell software;
6 it sells rides. Uber is no more a 'technology company' than Yellow Cab is a 'technology company'
7 because it uses CB radios to dispatch taxi cabs." (*O'Connor v. Uber Technologies, Inc.* (N.D. Cal.
8 2015) 82 F.Supp.3d 1133, 1141.)

9 26. The work that these drivers perform is central to the very purpose of Uber's business.
10 The fact that Uber uses a cell phone or computer app as the instrumentality by which it hires its
11 drivers, secures orders from customer passengers, communicates with its drivers regarding customer
12 passenger orders, assigns work to its drivers, collects payments from customer passengers, and pays
13 its drivers, does not transform Uber from a transportation business into anything else. Without the
14 drivers, Uber's transportation business would not exist. Uber cannot overcome the presumption that
15 all of its drivers are employees because it cannot establish that any of its drivers "perform work that
16 is outside the usual course of [Uber's] business," as required under the "B prong" of the ABC test.

17 27. Each of the Rasier defendants is a transportation company in the business of
18 providing customers with on-demand rides to a location designated by the customer at a price
19 controlled by defendants. The drivers who perform this work are employees of the Rasier
20 defendants. The drivers provide the Rasier defendants' customer passengers with the transportation
21 services that defendants sell. The Rasier defendants publicly hold themselves out to the public as
22 providing transportation services in the form of on-demand rides.

23 28. The work that these drivers perform is central to the very purpose of the Rasier
24 defendants' business. The fact that the Rasier defendants use a cell phone or computer app as the
25 instrumentality by which they hire drivers, secure orders from customer passengers, communicate
26 with drivers regarding customer passenger orders, assign work to drivers, collect payments from
27 customer passengers, and pay drivers, does not transform them from a transportation business into
28 anything else. Without the drivers, the Rasier defendants' transportation business would not exist.

1 The Rasier defendants cannot overcome the presumption that all of their drivers are employees
2 because they cannot establish that any of their drivers “perform work that is outside the usual course
3 of [their] business,” as required under the “B prong” of the ABC test.

4 29. At all times relevant herein, defendants require their drivers, as a condition of
5 employment, to enter into written agreements that, inter alia, restrict the manner in which the drivers
6 are to perform their work. These agreements, drafted by defendants, include standardized terms and
7 conditions concerning the drivers’ work and terms of compensation.

8 30. Defendants determine which drivers are eligible to provide transportation services.

9 31. Defendants set the types of vehicles the drivers may drive and the standards drivers
10 must meet.

11 32. Defendants retain the right to terminate drivers or pause their ability to pick up
12 customer passengers at any time based upon terms, conditions and policies unilaterally set by
13 defendants.

14 33. Defendants collect fare payments directly from customer passengers. Defendants
15 reserve the right to substantially increase the “service fee” charged to drivers during times of high
16 customer passenger demand

17 34. At least through December 2019, defendants set the fares passengers must pay for
18 transportation services provided by drivers. Drivers were prohibited from charging a passenger
19 customer any more than the fare set by defendants.

20 35. Beginning in January 2020, Uber began testing a new feature in certain parts of
21 California that allowed drivers transporting passengers to or from airports to increase fares in 10%
22 increments, up to five times Uber’s base fare. This supposed freedom to charge higher fares was
23 largely illusory, in that customers had the ability to decline rides from drivers charging more than the
24 rate established by Uber, and Uber retained and exercised the right to assign a passenger pickup to
25 whatever driver Uber deemed to be appropriate.

26 36. Beginning in July 2020, Uber implemented a new policy, applicable to certain parts
27 of the State, allowing all drivers (not just those transporting passengers to or from airports) to
28 increase Uber’s established base fare in 10% increments, up to five times above the base fare, and to

1 decrease the base fare in 10% increments down to one-half the base fare. Uber announced that this
2 policy will be extended to all of its drivers in California. Customers continue to have the right to
3 refuse to accept rides at above-base rates, and Uber continues to exercise complete control over the
4 assignment of drivers for passenger pickups. If anything, this change will likely result in a “race to
5 the bottom,” as drivers desperate for passenger customer fares are forced to reduce the amounts
6 charged to customers (and thus, the amounts received by the drivers from Uber as payment for the
7 rides). These changes are little more than cosmetic window-dressing by defendants to advance their
8 meritless claims that the drivers are running “independent businesses.”

9 37. Drivers’ compensation is generally the base fare plus a distance factor and/or a time
10 factor plus any promotions or surge fees, minus the “service fee” and “booking fee” defendants
11 charge, tolls, taxes and ancillary fees. Defendants’ unilateral rights to change fares at any time
12 create and maintain their right to control drivers’ compensation.

13 38. Defendants set the compensation that they pay their drivers for transportation services
14 provided to defendants’ customer passengers.

15 39. Defendants handle claim and fare reconciliation, invoices and resolution of customer
16 passenger and driver complaints.

17 40. Defendants retain all control to resolve conflicts between drivers and customer
18 passengers, driver complaints, and compensation disputes.

19 41. Defendants monitor drivers’ work hours and log off drivers if they have been
20 providing transportation services for 12 hours, prohibiting drivers from providing transportation
21 services for six hours following the 12-hour period.

22 42. Defendants retain the right to dock a driver’s pay if a customer passenger complains
23 about the transportation service provided by the driver, such as an inefficient route.

24 43. Defendants track drivers through their app. Drivers are required to notify defendants
25 of the status of the transportation service, including accepting the customer passenger’s request,
26 arrival to pick up at the customer passenger’s location, start of the trip and end of the trip.
27 Defendants monitor and control the driver’s behavior while using the app.

28 44. Defendants set and enforce specific rules for drivers to control customer passengers’

1 ride experience. Defendants' detailed rules are designed to protect, build and enhance the Uber
2 reputation, brand and value. For example, drivers are given instructions on vehicle cleanliness,
3 music, and prohibited topics of conversation with customer passengers.

4 45. Drivers may be suspended or terminated at defendants' sole discretion. Defendants
5 may stop dispatching rides to a driver through the app if they decide, again at their sole discretion,
6 that a driver has acted inappropriately or violated one of its rules or standards. Such consequences
7 may be issued for driver behavior that defendants consider undesirable, such as refusing to accept or
8 cancelling too many rides, inadequate passenger satisfaction ratings, and using trip routes defendants
9 deem inefficient.

10 46. Defendants monitor and control their drivers through their customer passengers rating
11 system, which assesses drivers' performance. Defendants use these ratings to discipline or terminate
12 drivers.

13 47. Uber develops and makes use of algorithms to direct driver behavior. For example,
14 Uber periodically and unilaterally implements "surge pricing" to mobilize drivers to drive in
15 geographic areas and during times as needed to provide transportation services to Uber customer
16 passengers, and upon securing the services of a sufficient number of drivers to respond to customer
17 needs, Uber unilaterally cancels the "surge."

18 48. Defendants control driver behavior to deliver transportation services to Uber's
19 customer passengers through the mobile app technology.

20 49. Defendants instruct their drivers on the character and quality of on-demand
21 transportation services to be provided to customer passengers.

22 50. Defendants enforce their quality standards by controlling compensation and
23 threatening deactivation to achieve the on-demand transportation service that Uber has promised its
24 customer passengers.

25 51. In the event of noncompliance or customer complaints, defendants may exercise their
26 right to terminate the driver.

27 52. Defendants constantly monitor, surveil and review drivers' performances.
28 Defendants track drivers' hours, locations, movements, quality of service and other information

1 while drivers are logged on to the Uber app. Defendants use this data for their own business
2 purposes, in addition to the purpose of controlling their drivers.

3 53. Defendants' agreements require drivers to acknowledge that a driver's failure to
4 accept Uber customer passenger requests for transportation creates a negative experience for those
5 customer passengers' use of Uber's mobile app, thereby discouraging drivers from declining
6 assignments to pick up customer passengers.

7 54. Defendants' agreements further require that drivers possess the appropriate and
8 current level of training, expertise and experience to provide transportation services in a professional
9 manner with due skill, care and diligence; and maintain high standards of professionalism, service
10 and courtesy. However, all such training is provided to drivers by defendants, and defendants do not
11 require drivers to possess any experience or expertise upon commencing employment.

12 55. Defendants' drivers are subject to background and driving record checks in order to
13 remain eligible to provide transportation services to Uber passenger customers.

14 56. Both under their contracts with defendants and in practice, none of defendants'
15 drivers have ever been free from the control and direction of defendants in connection with the
16 performance of their work for defendants. As such, defendants cannot meet the requirements of the
17 "A prong" of the ABC test, and therefore cannot overcome the presumption that all of their drivers
18 are employees, not independent contractors.

19 57. Defendants' drivers are not engaged in an independently established trade,
20 occupation, or business of the same nature as the work they perform for each defendant. Instead,
21 drivers are transporting defendants' customer passengers to generate income for defendants.

22 58. There is no specialized skill required to transport Uber's passenger customers by
23 driving a vehicle.

24 59. Defendants do not require drivers to hold a special license, only a driver's license is
25 required.

26 60. Defendants' drivers are not required to hold the necessary licenses and permits to
27 operate an independent on-demand transportation trade, occupation or business, including but not
28 limited to operating authority from the CPUC or a local taxi authority for the transportation of

1 passengers for compensation within California.

2 61. Both under their contracts with Uber, Rasier and/or Rasier-CA and in practice, none
3 of defendants' transportation drivers are engaged in an independently established trade, occupation,
4 or business, and as such, defendants cannot meet the requirements of the "C prong" of the ABC test,
5 and therefore cannot overcome the presumption that all of their drivers are employees, not
6 independent contractors.

7 62. Defendants are subject to IWC Wage Order 9-2001, which applies to the
8 "transportation industry." The transportation industry is defined in the order as "any industry,
9 business, or establishment operated for the purpose of conveying persons or property from one place
10 to another whether by rail, highway, air, or water, and all operations and services in connection
11 therewith; and also includes storing or warehousing of goods or property, and the repairing, parking,
12 rental, maintenance, or cleaning of vehicles."

13 63. IWC Wage Order 9-2001 has been in effect since January 1, 2001, and provides
14 various substantive employee protections, including requirements for payment of no less than the
15 minimum wage for all hours worked, payment of overtime compensation for overtime hours worked,
16 paid rest periods, premium pay for failure to provide required paid rest periods, and a provision that
17 employers must provide employees with tools or equipment required by the employer or necessary
18 for the performance of the job. These IWC wage order requirements are valid, operative and
19 enforceable as state law. (Labor Code §§ 1185, 1197, 1198, 1200.)

20 64. The California Supreme Court issued its decision in *Dynamex* on April 30, 2018,
21 construing IWC Order 9-2001, and holding that all of the protections of that wage order are available
22 to employees employed by employers covered by the wage order, and that the hiring entity must
23 establish all three factors of the ABC test in order to overcome the presumption of employee status.
24 As this decision merely construed existing provisions of the IWC wage order, it applies retroactively
25 with respect to the enforcement of requirements under the IWC orders and Labor Code provisions
26 related to IWC wage order requirements.

27 65. Labor Code requirements that are wholly unrelated to IWC wage order requirements
28 did not become subject to the ABC test until the effective date of AB 5, on January 1, 2020. Prior to

1 January 1, 2020, the determination of whether a worker was an employee or an independent
2 contractor, for the purpose of those Labor Code requirements wholly unrelated to IWC orders, was
3 governed by *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341
4 (“*Borello*”), under which there is a rebuttable presumption of employee status, which may be
5 challenged by the hiring entity through a multi-factor test under which no one factor is necessarily
6 determinative, though certain factors are considered more significant than others. Even under
7 *Borello*, defendants’ drivers were employees rather than independent contractors.

8 66. Emergency Rule 9 of the California Rules of Court, as revised on May 29, 2020,
9 provides that notwithstanding any other law, the statutes of limitations for civil causes of action that
10 exceed 180 days are tolled from April 6, 2020 to October 1, 2020. The limitations periods for the
11 following causes of action are governed by this Emergency Rule.

12 **FIRST CAUSE OF ACTION: WILLFUL MISCLASSIFICATION OF EMPLOYEES AS**
13 **INDEPENDENT CONTRACTORS (Labor Code § 226.8)**

14 67. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

15 68. Under Labor Code § 226.8, it is unlawful for any person or employer to willfully
16 misclassify an employee as an independent contractor. The statute provides that a person or
17 employer found to have engaged in a pattern or practice of willful misclassification shall be subject
18 to a civil penalty of not less than \$10,000 and up to \$25,000 for each such violation, in addition to
19 other fines or penalties permitted by law.

20 69. At all times relevant herein, defendants have engaged in a continuing pattern and
21 practice of willfully misclassifying all their drivers as independent contractors, notwithstanding that
22 under California law, all of these drivers have been and are employees of defendants, thereby
23 violating Labor Code § 226.8.

24 70. Defendants are liable for civil penalties under Labor Code § 226.8 in the amount of
25 not less than \$10,000 for each of their drivers who has been misclassified as an independent
26 contractor.

27 71. Unless enjoined by this Court from misclassifying their drivers as independent
28 contractors, and from thereby denying these drivers the protections available to employees under the

1 Labor Code and IWC Wage Order 9-2001, defendants will continue to misclassify their drivers as
2 independent contractors and thereby continue to deny them the protections available to employees
3 under the Labor Code and IWC Wage Order 9-2001.

4 **SECOND CAUSE OF ACTION: FAILURE TO PAY NOT LESS THAN THE MINIMUM**
5 **WAGE FOR ALL HOURS WORKED (Labor Code § 1197; IWC Order 9-2001, § 4)**

6 72. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

7 73. Labor Code § 1197 and IWC Order 9-2001, § 4 require employers to pay their
8 employees not less than the applicable minimum wage for all “hours worked,” which includes all
9 time the employee is suffered or permitted to work, whether or not required to do so, and all time the
10 employee is subject to the employer’s control. (IWC Order 9-2001, § 2(H).) This compensable time
11 includes time spent transporting customer passengers, time spent traveling from one job location to
12 another during the course of a workday, time spent cleaning the vehicle to conform to defendant’s
13 requirements, or obtaining required tools, equipment and supplies including fuel necessary to
14 perform work, and on-call time during which the driver has signed in as “active” or “available” on
15 the Uber app during which the driver is required or expected to accept available on-demand
16 transportation jobs, or is subject to adverse employment consequences for declining to accept an
17 available job. The applicable minimum wage is the minimum wage required under state law, or the
18 minimum wage required under an applicable local ordinance, whichever is higher. Employers must
19 also pay separate hourly compensation for “non-productive” hours worked. Under California law,
20 the employer cannot average the total compensation for a workweek to determine whether its
21 minimum wage obligations were met. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 321-
22 325; *Gonzalez v. Downtown L.A. Motors, LP* (2013) 215 Cal.App.4th 36, 50-54.)

23 74. At all times relevant herein, each defendant employed 26 or more employees, and
24 thus, was subject to minimum wage requirements based on that number of employees. Defendants’
25 drivers worked the requisite number of hours required to trigger minimum wages required under
26 applicable local ordinances.

27 75. Labor Code § 226.2 applies to employees who are paid on a piece-rate basis for any
28 work performed during a pay period, and requires that payment be made to such employees for

1 “non-productive time” on an hourly basis separate from the compensation derived through piece-rate
2 earnings, at an hourly rate that is not less than the applicable minimum wage. The statute defines
3 “non-productive time” as “time under the employer’s control, exclusive of rest and recovery periods,
4 that is not directly related to the activity being compensated on a piece-rate basis.”

5 76. At all times relevant herein, defendants have compensated their drivers for their
6 services on a piece-rate basis, with defendants paying the drivers a specified amount per ride, based
7 on the distance and/or time spent in transporting each passenger customer from pick-up to drop-off.
8 Defendants have not paid their drivers for those activities that constitute “non-productive time”
9 within the meaning of section 226.2, including travel time driving from one customer passenger’s
10 location to another, time spent waiting for a customer passenger to arrive at the designated pick-up
11 location, time spent cleaning the vehicle to conform to defendants’ requirements or procuring tools,
12 equipment or supplies including fuel necessary to perform work, and on-call time during which the
13 driver has signed in as “active” or “available” on the Uber app and is required or expected to accept
14 available transportation jobs, or is subject to adverse employment consequences for declining to
15 accept an available job. Defendants may not “borrow” wages paid to drivers for productive time to
16 meet defendants’ independent obligation to separately pay for all “non-productive,” uncompensated
17 hours worked. Such a scheme is in direct violation of *Armenta v. Osmose, Inc.* (2005) 135
18 Cal.App.4th 314.

19 77. Defendants’ failure to pay for the above-described non-productive time constitutes a
20 violation of Labor Code § 226.2, and a violation of the obligation to pay no less than the applicable
21 minimum wage for all hours worked, as specified at Labor Code § 1197, and IWC Order 9-2001, §
22 4(A). Under these provisions, defendants’ drivers are entitled to payment of the applicable
23 minimum wage for all such uncompensated time.

24 78. Defendants have unlawfully deducted wages from their drivers’ paychecks for
25 parking tickets, and provided notice to the drivers only after the time period to contest the citation
26 has expired. Such deductions are in violation of Labor Code §§ 223 and 224 and result in violations
27 of the requirement to pay the minimum wage.

28 79. Labor Code § 1194.2 provides that in any action filed by the Labor Commissioner

1 pursuant to Labor Code § 1193.6 to recover unpaid minimum wages owed to any employees, the
2 employees shall be entitled to recover, in addition to the unpaid minimum wages, liquidated
3 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

4 80. Defendants' drivers who are owed unpaid minimum wages stemming from
5 defendants' failure to pay wages for "non-productive time" within the meaning of Labor Code §
6 226.2, are therefore entitled to recover, in addition to the unpaid minimum wages, liquidated
7 damages from defendants pursuant to Labor Code § 1194.2.

8 81. Labor Code § 1197.1(a) provides for the imposition of civil penalties against an
9 employer or other person acting as an officer or agent of the employer, for paying less than the
10 applicable minimum wage for any hours worked by an employee. Section 1197.1 sets the amount
11 that must be awarded for an intentional initial violation at \$100 for each underpaid employee for
12 each pay period for which the employee was underpaid, in addition to an amount sufficient to
13 recover underpaid wages, liquidated damages pursuant to Labor Code § 1194.2, and any applicable
14 penalties pursuant to Labor Code § 203; and the amount that must be awarded for each subsequent
15 violation, whether intentional or not, at \$250 for each underpaid employee for each pay period for
16 which the employee was underpaid, in addition to an amount sufficient to recover underpaid wages,
17 liquidated damages pursuant to Labor Code § 1194.2, and any applicable penalties pursuant to Labor
18 Code § 203.

19 82. Defendants' failure to pay at least the applicable minimum wage to their drivers for
20 all hours worked, including "non-productive" hours worked, was intentional, within the meaning of
21 Labor Code § 1197.1(a), and subjects defendants to civil penalties as provided by that statute.

22
23 **THIRD CAUSE OF ACTION: FAILURE TO PAY OVERTIME COMPENSATION FOR**
24 **OVERTIME HOURS WORKED (Labor Code § 510; IWC Order § 3(A))**

25 83. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

26 84. Labor Code § 510 and IWC Order 9-2001, § 3(A) require payment of overtime
27 compensation, at not less than one and one-half times the employee's regular rate of compensation,
28 for all hours worked in excess of 8 hours and up to 12 hours in any workday, for all hours worked in

1 excess of 40 hours in any workweek, and the first 8 hours worked on the seventh day of work in any
2 one workweek; and payment of overtime compensation at not less than twice the employee's regular
3 rate of compensation for all hours worked in excess of 12 hours in any workday.

4 85. At all relevant times herein, defendants have failed to pay overtime compensation to
5 their drivers who work more than 8 hours in a workday or 40 hours in a workweek or for any work
6 performed on the seventh day of work in any one workweek, thereby violating Labor Code § 510
7 and IWC Order 9-2001, § 3(A).

8 86. Defendants owe overtime compensation to their drivers who have performed
9 overtime work as provided by Labor Code § 510 and IWC Order 9-2001, § 3(A).

10 87. Labor Code § 558 provides for the imposition of a civil penalty as to "any employer
11 or other person acting on behalf of an employer who violates, or causes to be violated" Labor Code
12 § 510 or any provision regulating hours or days of work in any IWC order. Section 510 sets the
13 amount that must be awarded for an initial violation at \$50 for each underpaid employee for each
14 pay period for which the employee was underpaid in addition to an amount sufficient to recover
15 underpaid wages, and the amount that must be awarded for each subsequent violation at \$100 for
16 each underpaid employee for each pay period for which the employee was underpaid in addition to
17 an amount sufficient to recover underpaid wages.

18 88. As a consequence of defendants' failure to pay required overtime compensation to
19 their drivers, defendants are subject to civil penalties for violations committed as provided by Labor
20 Code § 558 and IWC Order 9-2001, § 20.

21 **FOURTH CAUSE OF ACTION: FAILURE TO PAY WAGES FOR REST PERIODS**
22 **(Labor Code § 226.2; IWC Order 9-2001, § 12(A))**

23 89. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

24 90. IWC Order 9-2001, § 12(A) requires every employer to authorize and permit
25 employees to take *paid* rest periods, with such rest periods expressly deemed to constitute "hours
26 worked." Under Section 12(A) of this IWC order, such "authorized rest period time shall be based
27 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
28 major fraction thereof," with no duty to provide a rest period to an employee whose daily work time

1 is less than three and one-half hours. Thus, one paid rest period must be made available to the
2 employee if the employee works at least three and one-half hours but not more than six hours in a
3 day, a second paid rest period must be provided to the employee if the employee works more than
4 six hours and up to 10 hours in a day, and a third paid rest period must be provided to the employee
5 if the employee works more than 10 hours and up to 14 hours in a day, etc. Section 12(A) of the
6 IWC Order expressly provides that these required rest periods “shall be counted as hours worked
7 from which there shall be no deduction from wages.” Because such rest periods are “counted as
8 hours worked,” they must be paid at not less than the minimum wage, in accordance with § 4(A) of
9 the Wage Order.

10 91. Labor Code § 226.2 requires employers to provide their employees who are
11 compensated on a piece-rate basis with separate hourly compensation for required rest periods, in an
12 amount not less than the higher of (a) the average hourly rate for each workweek under a formula set
13 out in the statute, or (b) the applicable minimum wage. Payment of piece-rate compensation does
14 not serve to provide any compensation for required rest periods.

15 92. At all times relevant herein, defendants have failed to provide any separate, hourly
16 compensation to their drivers for required rest periods. These required rest periods have been
17 completely uncompensated by defendants. As such, defendants violated the requirements set forth
18 in IWC Order 9-2001 and Labor Code § 226.2 that *paid* rest periods be made available to
19 employees.

20 93. As a consequence of defendants’ failure to pay their drivers for required rest periods,
21 each driver is entitled to payment of unpaid wages for each such required rest period, in an amount
22 not less than the higher of the applicable minimum wage, or the driver’s average hourly wage rate
23 under the formula set at Labor Code § 226.2.

24 94. As a further consequence of defendants’ failure to pay their drivers any wages for
25 their required rest periods, thereby violating the requirement set out in the Labor Code and IWC
26 Order for payment of not less than the minimum wage for all hours worked, defendants’ drivers are
27 entitled to liquidated damages under Labor Code § 1194.2 in an amount equal to the unpaid
28 minimum wages plus interest.

1 95. Defendants' failure to pay their drivers at least the applicable minimum wage for their
2 required rest periods was intentional, within the meaning of Labor Code § 1197.1, and subjects
3 defendants to civil penalties under that statute.

4 **FIFTH CAUSE OF ACTION: FAILURE TO PAY REST PERIOD PREMIUM PAY**
5 **(Labor Code § 226.7(c); IWC Order 9-2001, § 12(B))**

6 96. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

7 97. Labor Code § 226.7(c) provides that if an employer fails to provide an employee with
8 a rest period "in accordance with a state law, including ... an applicable ... order of the Industrial
9 Welfare Commission," the employer shall pay the employee one additional hour of pay at the
10 employee's regular rate of compensation for each workday that the rest period is not provided. A
11 similar requirement is set out at IWC Order 9-2001, § 12(B).

12 98. By failing to provide any compensation to their drivers for required rest periods,
13 defendants failed to provide rest periods "in accordance with ... [the] applicable ... order of the
14 Industrial Welfare Commission," as specified at IWC Order 9-2001, § 12(A).

15 99. As a consequence of defendants' failure to provide legally mandated, paid rest
16 periods to their drivers, defendants are subject to the premium pay provisions of Labor Code §
17 226.7(c) and IWC Order 9-200, § 12(B), under which defendants' drivers are entitled to payment of
18 one hour of rest period premium pay for each workday that a required paid rest period was not
19 provided. Defendants have failed to pay their drivers for legally mandated rest periods and therefore
20 owe each driver one hour of premium pay for each day in which three and one half hours or more
21 were worked.

22 100. Labor Code § 558 provides that any employer, or other person acting on behalf of an
23 employer, who violates or causes to be violated, a section of this chapter (Labor Code § 500, *et seq.*)
24 or any provision regarding hours and days of work in any order of the IWC shall be subject to a civil
25 penalty, in addition to the underpaid wages which must be paid to the affected employees. Similar
26 authorization for these civil penalties is found at IWC Order 9-2001, § 20.

27 101. The failure to pay employees required rest period premium pay subjects defendants to
28 civil penalties under Labor Code § 558 and IWC Order 9-2001, § 20.

1 **SIXTH CAUSE OF ACTION: FAILURE TO INDEMNIFY EMPLOYEES FOR**
2 **NECESSARY BUSINESS EXPENSES (Labor Code § 2802; IWC Order 9-2001, § 9)**

3 102. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

4 103. Labor Code § 2802 requires every employer to indemnify each of its employees for
5 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
6 of the employee's duties, or of his or her obedience to the directions of the employer. In accord,
7 IWC Order 9-2001, § 9 requires employers to pay for, or indemnify employees for tools or
8 equipment required or necessary for the performance of the job. Pursuant to Labor Code § 2804,
9 any contract or agreement, express or implied, made by any employee to waive the benefits of these
10 protections is null and void.

11 104. At all relevant times herein, in following the directions issued by defendants or in
12 order to carry out their job duties, defendants' drivers have been required to purchase various items
13 and services including but not limited to: (a) fuel, (b) vehicle, vehicle washes, supplies for vehicle
14 cleaning and maintenance, vehicle repair tools and supplies, (c) tolls, (d) insurance, including but not
15 limited to automobile insurance, to insure the activities of the driver while performing transportation
16 services for defendants, (e) cell phone and cell phone service in order to remain connected to the
17 Uber app through which the drivers receive job assignments, (f) taxes, (g) ancillary fees, and (h)
18 workers' compensation insurance. Defendants' drivers have been required to use their own vehicles
19 to drive from assignment to assignment during the workday, thus incurring expenses for the mileage
20 driven for these purposes, including but not limited to the cost of fuel, vehicle maintenance and
21 depreciation. Defendants knew that their drivers were incurring these business expenses. Uber's
22 drivers' business expenses were reasonable and incurred as the direct result of discharging their
23 duties to provide transportation services to Uber customer passengers and/or at the direction of
24 defendants.

25 105. Defendants have failed to indemnify their drivers for any of the above-listed incurred
26 necessary business expenses, thereby violating Labor Code § 2802 and IWC Order 9, § 9.
27 Defendants' drivers are entitled to indemnification from defendants for these expenses in accordance
28 with Labor Code § 2802 and IWC Order 9, § 9.

1 106. Labor Code § 2699(f) provides for a civil penalty for violations of “all provisions of
2 this code except those for which a civil penalty is specifically provided,” in the amount of \$100 for
3 each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved
4 employee per pay period for each subsequent violation. Defendants are subject to this civil penalty
5 for their violations of Labor Code § 2802.

6 107. Prior to filing this action, the Labor Commissioner served a written notice upon
7 defendants, by certified mail, of the allegations set out in this cause of action, and the facts and
8 theories in support of these allegations, pursuant to Labor Code §§ 2802 and 2699(f).

9 **SEVENTH CAUSE OF ACTION: FAILURE TO PROVIDE ITEMIZED**
10 **WAGE STATEMENTS (Labor Code § 226)**

11 108. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

12 109. Labor Code § 226(a) requires employers provide their employees, semi-monthly or at
13 the time of payment of wages, an accurate, written itemized wage statement showing: (1) gross
14 wages earned, (2) total hours worked, (3) the number of piece rate units earned and any applicable
15 piece rate if the employee is paid on a piece rate basis, (4) all deductions, (5) net wages earned, (6)
16 the inclusive dates of the period for which the employee is paid, (7) the name of the employee and
17 the last four digits of the employee’s social security number or some other employee identification
18 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable
19 hourly rates in effect during the pay period, and the corresponding number of hours worked at each
20 hourly rate.

21 110. Labor Code § 226(e) provides that an employee suffering injury as a result of a
22 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover
23 the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and
24 \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000 per
25 employee. Subdivision (e) further provides that an employee is deemed to suffer an injury for
26 purposes of this statute if the employer fails to provide a wage statement, or if the employer fails to
27 provide accurate and complete information as required by one or more of the nine items specified in
28 subdivision (a) and the employee cannot promptly and easily determine, from the provided wage

1 statement alone, gross or net wages paid during the pay period, or total hours worked by the
2 employee during the pay period, or the number of piece rate units earned and all applicable piece
3 rates, or all hourly rates in effect during the pay period and the number of hours worked at each
4 hourly rate.

5 111. At all relevant times herein, defendants failed to provide their drivers with any written
6 itemized wage deduction statements, or the wage deduction statements that were provided failed to
7 provide accurate and complete information as to one or more of the nine items specified in Labor
8 Code § 226(a), such that the drivers could not promptly and easily determine, from any such
9 provided wage statements, their total hours worked during the pay period, or the number of piece
10 rate units earned and all applicable piece rates, or all of the hourly rates that were in effect during the
11 pay period and the number of hours worked at each hourly rate.

12 112. Defendants' failure to comply with Labor Code § 226(a) has been knowing and
13 intentional, and as a consequence of said failure, all of defendants' drivers have suffered injury
14 within the meaning of Labor Code § 226(e), such that each of defendants' drivers are entitled to
15 liquidated damages in the amount of \$50 for the initial pay period of non-compliance, and \$100 for
16 each subsequent pay period of non-compliance, in an amount not to exceed \$4,000 per driver.

17 113. Defendants' failure to comply with Labor Code § 226(a) further subjects them to civil
18 penalties pursuant to Labor Code § 226.3.

19 114. Labor Code § 226.3 provides that an employer who violates Labor Code § 226(a)
20 shall be subject to a civil penalty in the amount of \$250 per employee per violation of an initial
21 citation and \$1,000 per employee per violation in a subsequent citation for which the employer fails
22 to provide the employee a wage statement or fails to keep the records required by Labor Code §
23 226(a). The civil penalties provided in this section are in addition to any other penalty provided by
24 law.

25 **EIGHTH CAUSE OF ACTION: FAILURE TO COMPLY WITH PAID SICK LEAVE**
26 **REQUIREMENTS (Labor Code §§ 245-249)**

27 115. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

28 116. In 2014, the State Legislature enacted the Healthy Workplaces, Healthy Families Act

1 of 2014 (“HWHF Act”), under which any employee who, on or after July 1, 2015, works in
2 California for the same employer for 30 or more days within a year of commencement of
3 employment is entitled to paid sick days as specified at Labor Code §§ 246-246.5. The HWHF Act
4 further requires, at Labor Code § 247.5, that every employer maintain records of hours worked and
5 paid sick leave accrued and used by its employees, and provide such information to its employees on
6 itemized wage statements each time wages are paid, and not less than twice per month.

7 117. Defendants have never provided for the accrual of paid sick time to their drivers, have
8 never provided paid sick days to their drivers, and have never provided their drivers with the
9 information required by Labor Code § 247.5, thereby violating requirements of the HWHF Act.

10 118. Labor Code § 248.5(c) states that where the Labor Commissioner files a civil action
11 to secure compliance with the HWHF Act, the Labor Commissioner is entitled to recover the costs of
12 investigating and remedying the violation, with the violating employer subject to an order to pay the
13 State a sum of not more than \$50 for each day a violation occurs or continues for each employee
14 whose rights under the HWHF Act were violated. The Labor Commissioner has incurred and
15 continues to incur such costs, thereby subjecting defendants to liability under this provision,

16 119. Labor Code § 248.5(e) provides that in any action brought by the Labor
17 Commissioner against an employer or other person violating the HWHF Act, available relief shall
18 include the payment of liquidated damages for each employee in the amount of \$50 for each day that
19 the employee’s rights under the HWHF Act were violated, up to a maximum of \$4,000 per
20 employee.

21 120. As a consequence of defendants’ violations of the HWHF Act, defendants are liable
22 for liquidated damages payable to their drivers, in the amounts specified in Labor Code § 248.5(e).

23 **NINTH CAUSE OF ACTION: FAILURE TO TIMELY PAY EARNED WAGES UPON**
24 **SEPARATION OF EMPLOYMENT (Labor Code §§ 201, 202, 203)**

25 121. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

26 122. Labor Code § 201 requires an employer that discharges an employee to pay all earned
27 and unpaid wages to such employee immediately upon discharge. Labor Code § 202 requires an
28 employer to pay all earned and unpaid wages to an employee who quits within 72 hours of quitting,

1 unless the employee provided 72 hours prior notice of intention to quit, in which case the earned and
2 unpaid wages must be paid to the employee at the time of quitting.

3 123. Labor Code § 203(a) provides that an employer that willfully fails to pay a separated
4 employee all earned and unpaid wages in accordance with Sections 201 or 202 shall be required to
5 pay a penalty to such employee in an amount equal to the employee's per diem wage rate multiplied
6 by 30 days, unless all required wages were paid within 30 days of the date the wages were due under
7 Sections 201 or 202 (in which case the Section 203 penalties only run from the date the wages were
8 due until the date they were paid), or unless the action to recover the wages is filed within 30 days of
9 the date the wages were due under Sections 201 or 202 (in which case the Section 203 penalties only
10 run from the date the wages were due until the date the lawsuit was filed). Under Labor Code §
11 203(b), suit may be filed for penalties due under the statute at any time before expiration of the
12 statute of limitations on an action for wages on which the penalties arose.

13 124. Defendants' failure to timely pay their drivers their earned wages, including
14 minimum wages, rest period wages, rest period premium wages, and/or overtime wages required
15 under IWC Wage Order 9-2001, in a timely manner upon separation from employment as required
16 by Labor Code §§ 201 and 202, was willful within the meaning of Labor Code § 203. Defendants
17 are therefore subject to statutory penalties pursuant to Labor Code § 203, as to all drivers who
18 separated from employment with defendants.

19 **TENTH CAUSE OF ACTION: FAILURE TO TIMELY PAY EARNED WAGES**
20 **DURING EMPLOYMENT (Labor Code §§ 204, 210)**

21 125. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

22 126. Labor Code § 204 requires that during the course of an employee's employment, all
23 wages earned are due and payable on the regularly scheduled payday, and no less frequently than
24 twice per month, with labor performed between the 1st and 15th days of any month to be paid not
25 later than the 26th of the month, and labor performed between the 16th and last day of the month to be
26 paid not later than the 10th day of the following month.

27 127. Pursuant to Labor Code § 210, the failure to pay wages to employees as required by
28 Labor Code § 204 subjects the person or entity that failed to pay such wages to a civil penalty of

1 \$100 for each failure to pay each employee for any initial non-willful and non-intentional violation,
2 and a civil penalty of \$200 plus 25 percent of the amount unlawfully withheld from each employee
3 for each failure to pay each employee for any willful or intentional violation or any subsequent non-
4 willful and non-intentional violation.

5 128. Defendants' failure to pay required minimum wages, rest period wages, rest period
6 premium pay, and overtime wages to their drivers on the pay days for which such wages were due
7 under Labor Code § 204 violated the requirements of that statute, and these violations were willful
8 or intentional, thereby subjecting defendants to civil penalties under Labor Code § 210.

9 129. Prior to filing this action, the Labor Commissioner made a written demand upon
10 defendants for payment of amounts due for civil penalties under Labor Code §§ 204 and 210.

11 **ELEVENTH CAUSE OF ACTION: FAILURE TO PROVIDE NOTICE OF**
12 **EMPLOYMENT-RELATED INFORMATION (Labor Code § 2810.5 and § 2699(f))**

13
14 130. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

15 131. Labor Code § 2810.5(a)(1) requires an employer, at the time of hiring, to provide
16 each employee written notice, in the language the employer normally uses to communicate
17 employment-related information to the employee, containing the following information:

- 18 (a) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week,
19 salary, piece, commission, or otherwise, including any rates for overtime, as
20 applicable;
- 21 (b) Allowances, if any, claimed as part of the minimum wage, including meal or lodging
22 allowances;
- 23 (c) The regular payday designated by the employer in accordance with the requirements
24 of this code;
- 25 (d) The name of the employer, including any "doing business as" names used by the
26 employer;
- 27 (e) The physical address of the employer's main office or principal place of business, and
28 a mailing address, if different;

- 1 (f) The telephone number of the employer;
- 2 (g) The name, address, and telephone number of the employer's workers' compensation
3 insurance carrier;
- 4 (h) That an employee: may accrue and use sick leave; has a right to request and use
5 accrued paid sick leave; may not be terminated or retaliated against for using or
6 requesting the use of accrued paid sick leave; and has the right to file a complaint
7 against an employer who retaliates;
- 8 (i) Any other information the Labor Commissioner deems material and necessary.

9 132. Labor Code § 2810.5(b) further mandates that employers "notify" their employees "in
10 writing of any changes to the information set forth in the notice within seven calendar days after the
11 time of the changes."

12 133. At all times relevant herein, defendants failed to provide their drivers with the
13 employment-related information required from employers at the time of hire, including but not
14 limited to their rates of pay, whether paid by the hour, shift, day, week, salary, piece, commission, or
15 otherwise, and all required information regarding paid sick leave.

16 134. At all times relevant herein, defendants failed to provide their drivers written notice
17 of any changes to the employment-related information required under Labor Code § 2810.5(a)(1),
18 including but not limited to their rates of pay.

19 135. Defendants' failure to provide their drivers notice of the required employment-related
20 information in Labor Code § 2810.5(a)(1), and provide its drivers timely notice of any changes in the
21 employment-related information, such as rates of pay, constitutes a violation of Labor Code §
22 2810.5(a) and (b).

23 136. Defendants' violation of Labor Code § 2810.5(a) and (b) thereby subjects defendants
24 to civil penalties under Labor Code § 2699(f).

25 137. Prior to filing this action, the Labor Commissioner served a written notice upon
26 defendants, by certified mail, of the allegations set out in this cause of action, the facts and theories
27 in support of these allegations, pursuant to Labor Code §§ 2810.5 and 2699(f).

28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff Lilia Garcia-Brower, in her official capacity as Labor
3 Commissioner for the State of California, prays for the following relief:

4 1. Entry of an order, pursuant to Labor Code §§ 226.8 and 1194.5, enjoining defendants,
5 and their officers, directors, managers and agents from misclassifying defendants' drivers as
6 independent contractors, and from failing to provide them with the protections available to
7 employees under the Labor Code and IWC Order 9-2001, and requiring defendants to post, on their
8 Internet Web sites and on their app a notice that sets forth that: (a) the court has found that
9 defendants have committed serious violations of the law by engaging in the willful misclassification
10 of employees, (b) Defendants have changed their business practices in order to avoid committing
11 further violations of the law prohibiting the misclassification of employees as independent
12 contractors, (c) any employee who believes that he or she is being misclassified as an independent
13 contractor may contact the Office of the State Labor Commissioner at a specified mailing address,
14 email address, and telephone number, and (d) this notice is being posted pursuant to a court order;

15 2. Entry of judgment, in favor of Plaintiff in the amounts set forth below, or according
16 to proof:

17 (a) Unpaid wages owed to defendants' drivers, and interest thereon pursuant to Labor Code
18 §§ 218.6 and 1194, as follows:

19 (i) Minimum wages pursuant to Labor Code § 1197 and IWC Order 9-2001 § 4;

20 (ii) Rest period wages pursuant to Labor Code § 226.2 and IWC Order 9-2001
21 § 12(A), and rest period premium wages pursuant to Labor Code § 226.7 and IWC Order 9-2001
22 § 12(B); and

23 (iii) Overtime wages pursuant to Labor Code § 510 and IWC Order 9-2001 § 3(A);

24 (b) Liquidated damages owed to defendants' drivers pursuant to Labor Code § 1194.2;

25 (c) Unreimbursed business expenses incurred by defendants' drivers and interest thereon,
26 pursuant to Labor Code § 2802 and IWC Order 9-2001 § 9;

27 (d) Liquidated damages for defendants' failure to provide their drivers with complete and
28 accurate itemized wage statements, pursuant to Labor Code § 226(e);

1 (e) Liquidated damages for defendants' failure to comply with paid sick leave law
2 requirements and compensation to the State for the costs of investigating and remedying the
3 violations, pursuant to Labor Code § 248.5(c) and (e);

4 (f) Statutory penalties owed to defendants' drivers for failure to timely pay wages upon
5 separation from employment, pursuant to Labor Code § 203;

6 (g) Civil penalties payable to the State, for the following violations:

7 (i) Pursuant to Labor Code § 226.8, for defendants' willful misclassification of
8 employees as independent contractors;

9 (ii) Pursuant to Labor Code § 1197.1, for defendants' minimum wage violations;

10 (iii) Pursuant to Labor Code § 558 and § 20 of IWC Order 9-2001, for defendants'
11 overtime and rest period violations; and

12 (iv) Pursuant to Labor Code § 210, for defendants' failure to pay minimum wages,
13 rest period wages, rest period premium pay, and overtime wages to their drivers on the pay days
14 when such wages were due under Labor Code § 204;

15 (v) Pursuant to Labor Code § 226.3, for defendants' failure to provide employees
16 with wage statements that comply with the requirements of Labor Code § 226(a);

17 (vi) Pursuant to Labor Code § 2699(f), for defendants' failure to reimburse their
18 drivers for necessary business expenses as required by Labor Code § 2802; and

19 (vii) Pursuant to Labor Code § 2699(f), for defendants' failure to provide their drivers
20 notice of the required employment-related information in Labor Code § 2810.5(a) and (b).

21 3. An order granting Plaintiff her costs, and reasonable attorneys' fees in accordance
22 with Labor Code §§ 226(e), 248.5(e), 1193.6, and 2802; and

23 4.. Such other and further relief as the Court deems just and proper.

24
25 Dated: August 5, 2020

26 

27 Miles E. Locker
28 Attorney for the State Labor Commissioner