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

LILIA GARCIA-BROWER, in her official
capacity as Labor Commissioner for the State
of California,

Plaintiff,

v.

UBER TECHNOLOGIES, INC., dba Uber
and Uber Eats; RASIER, LLC; RASIER-
CA, LLC; PORTIER, LLC; DOES 1-20,
inclusive,

Defendants.

CASE NO. RG20070281

Unlimited Jurisdiction

**FIRST AMENDED 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,
(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

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

THE PARTIES TO THIS ACTION

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

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

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

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

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

1 5. Uber’s dba “Uber Eats” is a division of Uber Technologies, Inc. that hires workers to
2 transport and deliver food to Uber’s customers on-demand. The Uber Eats division of Uber is based
3 in San Francisco, California and does business throughout the State of California, including but not
4 limited to Alameda County. The work performed by these Uber delivery workers – transporting and
5 delivering food – is central to Defendants’ transportation business. Defendants retain and/or
6 exercise substantial control over their delivery persons, with restrictions on when, where and how
7 the work may be performed.

8 6. At all relevant times herein, Plaintiff is informed and believes Defendant Rasier, LLC
9 is Uber’s wholly owned subsidiary, and is the parent company of Defendant Rasier-CA, LLC. Both
10 are Delaware limited liability companies. Rasier, LLC (“Rasier”) and Rasier-CA, LLC (“Rasier-
11 CA”) (collectively “Rasier defendants”) have their principal places of business in San Francisco,
12 California and conduct business throughout the State of California. Rasier operates under California
13 Entity Number 201323810228. Rasier-CA operates under California Entity Number 201326310085.
14 Drivers working for Uber’s passenger transportation service enter into contracts with the Rasier
15 defendants to provide transportation services for Uber.

16 7. At all relevant times herein. Plaintiff is informed and believes Defendant Portier, LLC
17 (“Portier”) is Uber’s wholly owned subsidiary that hires drivers to perform the work needed for
18 Uber’s food delivery services. Portier is a Delaware limited liability company, has its principal place
19 of business in San Francisco, California and conducts business throughout the State of California.
20 Portier operates under California entity number 2015010259. Portier shares the same business
21 address as Uber and the Rasier defendants—1455 Market Street, 4th floor, San Francisco, CA
22 94103. Workers for Uber enter into contracts with Portier to provide delivery services for Uber.

23 8. The true names or capacities of Defendants sued as Doe Defendants 1 through 20 are
24 unknown to Plaintiff. Plaintiff is informed and believes, and on that basis, alleges that each of the
25 Doe Defendants, their agents, employees, officers, and others acting on their behalf, are legally
26 responsible for the conduct alleged herein. Plaintiff will amend her complaint to set forth the true
27 names and capacities of the Doe Defendants and the allegations against them as soon as they are
28 ascertained.

1 9. Each of the Defendants was at all times mentioned herein an agent, partner, joint
2 venturer, and/or representative of each of the other Defendants and was at all times acting within
3 the scope of such relationship.

4 **JURISDICTION AND VENUE**

5 10. The Superior Court has personal jurisdiction over each defendant named above
6 because (1) each defendant is headquartered in or is a resident of the State of California, (2) each
7 defendant is authorized to and conducts business in and across the State of California, and (3) each
8 defendant otherwise has sufficient minimum contacts with and purposefully avails itself of the
9 markets of this State, thus rendering the Superior Court's jurisdiction consistent with traditional
10 notions of fair play and substantial justice. Uber, Rasier, Rasier-CA, and Portier all have their
11 principal places of business at 1455 Market Street, 4th floor, San Francisco, CA 94103. (Uber,
12 Rasier, and Rasier-CA are referred to as "Transportation Defendants"; Uber and Portier are referred
13 to as "Delivery Defendants." Transportation Defendants and Delivery Defendants are collectively
14 referred to as "Defendants.")

15 11. Venue is proper under Code of Civil Procedure § 395.5, because Defendants operate
16 in and thousands of the illegal acts described below occurred in the County of Alameda.

17 **BACKGROUND ALLEGATIONS**

18 12. Uber is a company that sells transportation. It used the motto "everyone's private
19 driver." From its start-up in 2009, when it "started as a way to tap a button to get a ride," Uber made
20 a calculated business decision to misclassify its drivers as independent contractors rather than
21 employees. At all times since the inception of the business, Transportation Defendants have
22 misclassified their drivers as a means of unlawfully depriving these workers of a broad array of
23 statutory protections applicable to employees, in direct contravention of California law.

24 13. Starting in or around 2014, Uber launched "Uber Fresh" to transport and deliver food
25 in Southern California. In 2015, Uber's "Uber Fresh" was renamed "Uber Eats." Uber offers a food
26 delivery service that provides on demand transport of food to Uber customers via delivery persons.
27 Without delivery workers to transport food, Uber's food delivery service would not exist. These
28 delivery workers may perform their delivery services by car, scooter, bicycle, or other mode of

1 transportation. At all times since the inception of the business, Delivery Defendants have
2 misclassified their delivery workers as a means of unlawfully depriving these workers of a broad
3 array of statutory protections applicable to employees, in direct contravention of California law.

4 14. To provide the on-demand transportation and delivery services marketed by
5 Defendants, and sold by Defendants to their customers, Defendants solicit and employ a massive
6 workforce of over 100,000 drivers and delivery workers throughout California for the purpose of
7 driving passengers and delivering food to Uber's customers. This driver and delivery workforce
8 performs the services for which customers pay Uber—transportation of people and food.

9 15. In an effort to obfuscate the basic and evident employment relationship between Uber
10 and its drivers providing transportation services to Uber customers, Uber created subsidiaries Rasier
11 and Rasier-CA to act as intermediaries between Uber and its drivers. Rasier-CA operates only in the
12 State of California.

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

21 17. The Rasier defendants manage drivers' contracts and tax forms, and act as
22 intermediary "straw men" to issue payments from Uber to its drivers under the name Rasier or
23 Rasier-CA. Despite the purported division between Uber and the Rasier defendants, Uber and the
24 Rasier defendants are a single business enterprise. The Rasier defendants are undercapitalized and
25 act only as shell companies to absorb Uber's liabilities. Uber controls the operations of Rasier and
26 Rasier-CA to such an extent that the Rasier defendants are mere instrumentalities of Uber.

27 18. Drivers have no ability to contact Rasier or Rasier-CA for basic issues like incorrect
28 compensation or technology issues with the app. Instead, if drivers have questions or problems, they

1 must contact Uber; Uber’s support team handles driver issues.

2 19. Uber has been classified by the California Public Utilities Commission (CPUC) as a
3 transportation network company (TNC). The CPUC defines a TNC as “a company or organization
4 operating in California that provides transportation services using an online-enabled platform to
5 connect passengers with drivers using their personal vehicles.” The CPUC has also classified Uber
6 as a charter-party carrier (TCP), which includes passenger transportation. The CPUC has authorized
7 Uber and the Rasier defendants to provide services for “the transportation of persons by motor
8 vehicle for compensation, whether in common or contract carriage, over any public highway in this
9 state.” (Pub. Util. Code § 5360.) The transportation of passengers for compensation within
10 California requires operating authority from the CPUC, unless limited exemptions apply—such as
11 taxicab service (which is subject to local city and county regulation) and medical transportation
12 vehicles. (Public Utilities Code §§ 226 and 5353.)

13 20. On June 9, 2020, the CPUC issued a Scoping Memo and Ruling in Rulemaking 12-
14 12-001 and stated that, based upon the enactment of AB 5 (Labor Code § 2750.3, codification of the
15 “ABC” test), “for now, TNC drivers are presumed to be employees...”

16 21. Similarly, in an effort to obfuscate the basic and evident employment relationship
17 between Uber (dba Uber Eats) and its delivery workers, Uber created subsidiary Portier to act as
18 intermediary between Uber and its delivery workers. Portier “licenses” the smartphone technology
19 from Uber, and then “hires” the delivery workers on Uber’s behalf for food delivery services. Uber
20 incorrectly claims that, because of this scheme, it is the delivery workers alone who are providing
21 the on-demand food delivery services. Uber’s claim is specious because Uber and/or its subsidiary,
22 Portier, organize and control all of the activities necessary to Uber’s business. Portier furthers the
23 misclassification scheme by adding an additional layer to superficially distance Uber from its
24 delivery workers in an effort to obfuscate the evident conclusion that Uber’s delivery workers are its
25 employees, as a matter of law.

26 22. Plaintiff is informed and believes, and on the basis of said information and belief
27 alleges, that there is a unity of interest and operation between Uber, Rasier, Rasier-CA, Portier and
28 Does 1-20 such that their separate and independent classification is but a fiction and that each is the

1 alter-ego of the other.

2 23. By setting up the Rasier defendants and Portier as shell companies, and by
3 misclassifying their drivers and delivery workers, as independent contractors, Defendants have
4 engaged in a deliberate scheme to evade their obligations under California law – including, but not
5 limited to the obligation to pay their drivers and delivery workers no less than the applicable
6 minimum wage for all hours worked, to pay overtime compensation for overtime hours worked, to
7 provide paid, duty-free rest periods during the workday, to reimburse the drivers and delivery
8 workers for the cost of all equipment and supplies needed to perform their work and for work-related
9 personal vehicle mileage, to provide paid sick leave, to provide accurate itemized wage deduction
10 statements and other required notices containing required employment-related information, and to
11 timely pay all wages owed during each driver’s and delivery worker’s period of employment and
12 upon separation of employment.

13 24. Defendants’ unlawful business model, premised upon misclassification of employees
14 as independent contractors, is built upon the misconception that employees can be designated as
15 independent contractors and deprived of the benefits and security of the employment relationship if
16 certain words are used to misclassify the relationship in a contract between the worker and the hiring
17 entity.

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

24 26. Recognizing the serious problem of misclassification and the harms it inflicts on
25 workers, law-abiding businesses, taxpayers, and society as a whole, the California Legislature
26 enacted Assembly Bill 5, which took effect on January 1, 2020. (Assem. Bill No. 5, 2019-2020 Reg.
27 Sess. (“A.B. 5”).) A.B. 5 codified and extended the California Supreme Court’s unanimous decision
28 in *Dynamex Operations W., Inc. v. Superior Court* (2018) 4 Cal.4th 903 (“*Dynamex*”). California

1 law is clear: for the full range of protections afforded by the Industrial Welfare Commission
2 (“IWC”) wage orders, the Labor Code, and the Unemployment Insurance Code, workers are
3 generally presumed to be employees unless the hiring entity can overcome this presumption by
4 establishing *each* of the three factors in the strict “ABC” test: (A) the worker is free from the control
5 and direction of the hiring entity in connection with the performance of the work, both under the
6 contract for the performance of the work and in fact; (B) the worker performs work that is outside
7 the usual course of the hiring entity’s business; and (C) the worker is customarily engaged in an
8 independently established trade, occupation or business of the same nature as the work performed.
9 (Lab. Code § 2750.3(a)(1); *Dynamex, supra*, 4 Cal.5th at 957.)

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

14 28. On August 10, 2020, San Francisco Superior Court Judge Ethan Schulman issued an
15 Order granting the People of California and multiple City Attorneys’ Motion for Preliminary
16 Injunction against Uber Technologies, Inc. and Lyft, Inc., enjoining and restraining them and their
17 subsidiaries from misclassifying their drivers as independent contractors in violation of Labor Code
18 § 2750.3. (*People of California, et al. v. Uber Technologies, Inc. et al.*, San Francisco Superior
19 Court Case No. CGC-20-584402.) The preliminary injunction covers Uber and the Rasier
20 defendants’ “ride-hailing drivers.” It does not cover Portier or Uber’s delivery workers. On October
21 22, 2020, the First District Court of Appeal affirmed the trial court’s preliminary injunction.

22 29. Uber is a transportation company in the business of providing on-demand
23 transportation services to customers at prices largely controlled by Uber. The drivers and delivery
24 workers who perform this work are employees of Uber. The drivers and delivery workers perform
25 the very services that Uber sells to its customers – transportation of persons and delivery of food.
26 Uber publicly holds itself out to the public as providing transportation services in the form of on-
27 demand rides and food delivery services.

28 30. As noted by federal district court Judge Edward Chen in an order issued in 2015,

1 Uber's claim that it is not a transportation company is "fatally flawed." "Uber does not sell software;
2 it sells rides. Uber is no more a 'technology company' than Yellow Cab is a 'technology company'
3 because it uses CB radios to dispatch taxi cabs." (*O'Connor v. Uber Technologies, Inc.* (N.D. Cal.
4 2015) 82 F.Supp.3d 1133, 1141.)

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

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

20 33. The work that these drivers perform is central to the Rasier defendants' business. The
21 fact that the Rasier defendants use a cell phone or computer app as the instrumentality by which they
22 hire drivers, secure orders from customer passengers, communicate with drivers regarding customer
23 passenger orders, assign work to drivers, collect payments from customer passengers, and pay
24 drivers, does not transform them from a transportation business into anything else. Without the
25 drivers, the Rasier defendants' transportation business would not exist. The Rasier defendants
26 cannot overcome the presumption that all of their drivers are employees because they cannot
27 establish that any of their drivers "perform work that is outside the usual course of [their] business,"
28 as required under the "B prong" of the ABC test.

1 34. At all times relevant herein, Transportation Defendants require their drivers, as a
2 condition of employment, to enter into written agreements that, inter alia, restrict the manner in
3 which the drivers are to perform their work. These agreements, drafted by Transportation
4 Defendants, include standardized terms and conditions concerning the drivers' work and terms of
5 compensation.

6 35. Transportation Defendants determine which drivers are eligible to provide
7 transportation services.

8 36. Transportation Defendants set the types of vehicles the drivers may drive and the
9 standards drivers must meet.

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

13 38. Transportation Defendants collect fare payments directly from customer passengers.
14 Defendants reserve the right to substantially increase the "service fee" charged to drivers during
15 times of high customer passenger demand.

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

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

25 41. Beginning in July 2020, Uber implemented a new policy, applicable to certain parts
26 of the State, allowing all drivers (not just those transporting passengers to or from airports) to
27 increase Uber's established base fare in 10% increments, up to five times above the base fare, and to
28 decrease the base fare in 10% increments down to one-half the base fare. Uber announced that this

1 policy will be extended to all of its drivers in California. Customers continue to have the right to
2 refuse to accept rides at above-base rates, and Uber continues to exercise complete control over the
3 assignment of drivers for passenger pickups. If anything, this change will likely result in a “race to
4 the bottom,” as drivers desperate for passenger customer fares are forced to reduce the amounts
5 charged to customers (and thus, the amounts received by the drivers from Uber as payment for the
6 rides). These changes are little more than cosmetic window-dressing by Transportation Defendants
7 to advance their meritless claims that the drivers are not employees.

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

12 43. Recent changes by Uber allow drivers the option of charging passengers based upon a
13 multiplier of the base fare set by Uber and within a range set by Uber. Drivers are also given the
14 option of purchasing a “Drive Pass” subscription that entitled the drivers to a certain number of
15 passenger trip requests within a seven-day period.

16 44. Transportation Defendants set the compensation that they pay their drivers for
17 transportation services provided to Transportation Defendants’ customer passengers.

18 45. Transportation Defendants handle claim and fare reconciliation, invoices and
19 resolution of customer passenger and driver complaints.

20 46. Transportation Defendants retain all control to resolve conflicts between drivers and
21 customer passengers, driver complaints, and compensation disputes.

22 47. Transportation Defendants monitor drivers’ work hours and log off drivers if they
23 have been providing transportation services for 12 hours, prohibiting drivers from providing
24 transportation services for six hours following the 12-hour period.

25 48. Transportation Defendants retain the right to dock a driver’s pay if a customer
26 passenger complains about the transportation service provided by the driver, such as an inefficient
27 route.

28 49. Transportation Defendants track drivers through their app. Drivers are required to

1 notify Transportation Defendants of the status of the transportation service, including accepting the
2 customer passenger's request, arrival to pick up at the customer passenger's location, start of the trip
3 and end of the trip. Transportation Defendants monitor and control the driver's behavior while using
4 the app.

5 50. Transportation Defendants set and enforce specific rules for drivers to control
6 customer passengers' ride experience. Transportation Defendants' detailed rules are designed to
7 protect, build and enhance the Uber reputation, brand and value. For example, drivers are given
8 instructions on vehicle cleanliness, music, and prohibited topics of conversation with customer
9 passengers.

10 51. Drivers may be suspended or terminated at Transportation Defendants' sole
11 discretion. Transportation Defendants may stop dispatching rides to a driver through the app if they
12 decide, again at their sole discretion, that a driver has acted inappropriately or violated one of its
13 rules or standards. Such consequences may be issued for driver behavior that Transportation
14 Defendants consider undesirable, such as refusing to accept or cancelling too many rides, refusing to
15 accept or cancelling rides to certain locations, inadequate passenger satisfaction ratings, and using
16 trip routes Transportation Defendants deem inefficient.

17 52. Transportation Defendants monitor and control their drivers through their customer
18 passengers rating system, which assesses drivers' performance. Transportation Defendants use these
19 ratings to discipline or terminate drivers.

20 53. Uber develops and makes use of algorithms to direct driver behavior. For example,
21 Uber periodically and unilaterally implements "surge pricing" to mobilize drivers to drive in
22 geographic areas and during times as needed to provide transportation services to Uber customer
23 passengers, and upon securing the services of a sufficient number of drivers to respond to customer
24 needs, Uber unilaterally cancels the "surge."

25 54. Transportation Defendants control driver behavior to deliver transportation services
26 to Uber's customer passengers through the mobile app technology.

27 55. Transportation Defendants instruct their drivers on the character and quality of on-
28 demand transportation services to be provided to customer passengers.

1 56. Transportation Defendants enforce their quality standards by controlling
2 compensation and threatening deactivation to achieve the on-demand transportation service that
3 Uber has promised its customer passengers.

4 57. In the event of noncompliance or customer complaints, Transportation Defendants
5 may exercise their right to terminate the driver.

6 58. Transportation Defendants constantly monitor, surveil and review drivers'
7 performances. Transportation Defendants track drivers' hours, locations, movements, quality of
8 service and other information while drivers are logged on to the Uber app. Transportation
9 Defendants use this data for their own business purposes, including to exercise control over their
10 drivers.

11 59. Transportation Defendants' agreements require drivers to acknowledge that a driver's
12 failure to accept Uber customer passenger requests for transportation creates a negative experience
13 for those customer passengers' use of Uber's mobile app, thereby discouraging drivers from
14 declining assignments to pick up customer passengers.

15 60. Transportation Defendants' agreements further require that drivers possess the
16 appropriate and current level of training, expertise and experience to provide transportation services
17 in a professional manner with due skill, care and diligence; and maintain high standards of
18 professionalism, service and courtesy. However, all such training is provided to drivers by
19 Transportation Defendants, and Transportation Defendants do not require drivers to possess any
20 experience or expertise upon commencing employment. The term of Transportation Defendants'
21 agreements with drivers is indefinite.

22 61. Transportation Defendants' drivers are subject to background and driving record
23 checks in order to remain eligible to provide transportation services to Uber passenger customers.

24 62. Both under their contracts with Transportation Defendants and in practice, none of
25 Transportation Defendants' drivers have ever been free from the control and direction of
26 Transportation Defendants in connection with the performance of their work for Transportation
27 Defendants. As such, Transportation Defendants cannot meet the requirements of the "A prong" of
28 the ABC test, and therefore cannot overcome the presumption that all of their drivers are employees,

1 not independent contractors.

2 63. Transportation Defendants' drivers are not engaged in an independently established
3 trade, occupation, or business of the same nature as the work they perform for each defendant.
4 Instead, drivers are transporting Uber's customer passengers to generate income for Transportation
5 Defendants.

6 64. There is no specialized skill required to transport Uber's passenger customers by
7 driving a vehicle.

8 65. Transportation Defendants do not require drivers to hold a special license, only a
9 driver's license is required.

10 66. Transportation Defendants' drivers are not required to hold the necessary licenses and
11 permits to operate an independent on-demand transportation trade, occupation or business, including
12 but not limited to operating authority from the CPUC or a local taxi authority for the transportation
13 of passengers for compensation within California, and in practice generally do not hold any business
14 licenses or take any steps to set up an independent business beyond driving for Transportation
15 Defendants.

16 67. Both under their contracts with Uber, Rasier and/or Rasier-CA and in practice, none
17 of Transportation Defendants' transportation drivers are engaged in an independently established
18 trade, occupation, or business, and as such, Transportation Defendants cannot meet the requirements
19 of the "C prong" of the ABC test, and therefore cannot overcome the presumption that all of their
20 drivers are employees, not independent contractors.

21 68. Through the Uber Eats app, Uber provides food delivery services. Uber's food
22 delivery workers perform the core transportation function of Uber's business. While Uber is most
23 widely known for its transportation of passengers, Uber's transportation services include delivery of
24 food. Uber uses its food delivery business to increase the supply of drivers on its passenger
25 transportation network, and vice versa, by enticing drivers to continue working during lulls in
26 passenger demand by doing food delivery instead.

27 69. Uber and Portier are transportation companies in the business of providing customers
28 with transportation of food at a price controlled by the Delivery Defendants. The delivery workers

1 who perform this work are employees of the Delivery Defendants. The delivery workers provide the
2 Delivery Defendants' customers with the food delivery services that the Delivery Defendants sell.
3 By Uber's own definition in its agreement with delivery workers, delivery services require delivery
4 workers to possess a "mode of transportation" to deliver food to Uber customers.

5 70. The Delivery Defendants publicly hold themselves out to the public as providing food
6 delivery services.

7 71. The work that these delivery workers perform is central to Uber's business of
8 transporting persons and food. The fact that Uber uses a cell phone or the Uber Eats app as the
9 instrumentality by which it hires its delivery persons, secures food orders from Uber Eats customers,
10 communicates with its delivery workers regarding Uber Eats customer orders from various
11 restaurants, assigns work to its delivery workers, collects payments from Uber Eats customers, and
12 pays its delivery workers, does not transform Uber from a transportation and food delivery business
13 into anything else. Without the delivery workers, the rapidly growing Uber Eats division of Uber
14 would not exist. Uber cannot overcome the presumption that all of its delivery workers are
15 employees because it cannot establish that any of its delivery workers "perform work that is outside
16 the usual course of [Uber's] business," as required under the "B prong" of the ABC test.

17 72. The work that these delivery workers perform is central to Portier's business. The
18 fact that Portier uses a cell phone or the Uber Eats app as the instrumentality by which it hires
19 delivery workers, secures orders from customers, communicates with delivery workers regarding
20 Uber Eats customer orders, assigns work to delivery workers, collects payments from Uber Eats
21 customers, and pays delivery workers, does not transform Portier from a food delivery business into
22 anything else. Without the delivery workers, the Portier food delivery business would not exist.
23 Portier cannot overcome the presumption that all of their delivery workers are employees because
24 they cannot establish that any of their delivery workers "perform work that is outside the usual
25 course of [their] business," as required under the "B prong" of the ABC test.

26 73. At all times relevant herein, Delivery Defendants require their delivery workers, as a
27 condition of employment, to enter into written agreements that, inter alia, restrict the manner in
28 which the delivery workers are to perform their work. These agreements, drafted by Delivery

1 Defendants, include standardized terms and conditions concerning the delivery workers' work and
2 terms of compensation.

3 74. Delivery Defendants determine which delivery workers are eligible to provide food
4 delivery services.

5 75. Delivery Defendants unilaterally dictates the price paid to Uber Eats delivery
6 workers. Delivery Defendants permit their delivery workers to charge "*less* than the pre-arranged
7 delivery fee" or to "negotiate a delivery fee *less* than the pre-arranged delivery fee" set by Uber
8 and/or Portier. Delivery Defendants solely dictate the "delivery fee" which is either a base rate plus
9 mileage, or a flat fee depending upon the geographic territory. Mileage is determined "based on the
10 most efficient route" which fails to take into account inaccuracies, or impracticability, with Uber's
11 unilaterally selected route. Delivery Defendants systematically miscalculates the distance traveled
12 by its delivery workers, and thus, its payment to Uber delivery drivers is less than what Delivery
13 Defendants owes for the actual distance traveled for the delivery. Delivery Defendants also retain the
14 power to unilaterally reduce Uber Eats delivery workers' compensation through Uber Eats
15 promotions.

16 76. Delivery Defendants' service is dependent upon precise timing. To control all
17 necessary aspects of Uber's food delivery service, Delivery Defendants instruct the delivery worker
18 when to arrive at the restaurant, command delivery workers to wait for the food to be ready,
19 specifically instruct delivery workers on the route to promptly deliver the food to Uber customers,
20 and monitor delivery worker location at all times during this process. In short, Delivery Defendants
21 use the algorithm Uber designed to ensure that their delivery workers perform their services in the
22 manner desired by Delivery Defendants. Delivery Defendants monitor, manage, direct and control
23 their delivery workers through the Uber Eats app.

24 77. Delivery Defendants monitor delivery workers' work hours and log off delivery
25 workers if they have been providing delivery services for 12 hours, and prohibit delivery workers
26 from providing delivery services for six hours following the 12-hour period.

27 78. Delivery Defendants track delivery workers through their Uber Eats app. Delivery
28 workers are required to notify Delivery Defendants of the status of the delivery service, including

1 acceptance of an Uber Eats food delivery order, arrival to pick up food at the restaurant, waiting for
2 the food to be ready, time of departure from the restaurant with the customer's order and time of
3 completion of the food delivery. Delivery Defendants monitor and control the delivery workers'
4 behavior while using the Uber Eats app.

5 79. Delivery Defendants set and enforce specific rules for delivery workers to control
6 customers' Uber Eats on-demand food delivery experience. Delivery Defendants' detailed rules are
7 designed to protect, build and enhance the Uber and Uber Eats reputation, brand and value.

8 80. Delivery Defendants instruct their delivery workers on the character and quality of
9 on-demand transportation/delivery services to be provided to Uber customers.

10 81. Delivery Defendants monitor and control their delivery workers through their
11 customer rating system, which assesses delivery workers' performance. Delivery Defendants use
12 these ratings to discipline or terminate delivery workers.

13 82. Delivery Defendants constantly monitor, surveil and review delivery workers'
14 performances. Delivery Defendants track delivery workers' hours, locations, movements, quality of
15 service and other information while delivery workers are logged on to the Uber Eats app. Delivery
16 Defendants use this data for their own business purposes, including to exercise control over their
17 delivery workers.

18 83. Delivery Defendants control delivery workers' behavior to transport and deliver food
19 to Delivery Defendants' customers through the Uber Eats app technology. For example, Delivery
20 Defendants periodically and unilaterally implements "surge" pricing to mobilize delivery workers to
21 turn on the Uber Eats app and transport/deliver food to Delivery Defendants' customers, and upon
22 securing the services of a sufficient number of delivery workers to respond to customer needs,
23 Delivery Defendants unilaterally cancels the "surge."

24 84. Delivery Defendants set the compensation paid to their delivery workers.
25 Compensation to Uber Eats delivery workers is processed by and through Portier and Uber.
26 Delivery workers are required to appoint Portier as a "limited payment collection agent" as a
27 condition to delivering food to Uber customers.

28 85. Delivery Defendants handle claim and delivery fee reconciliation, invoices and

1 resolution of customer and delivery workers' complaints.

2 86. Delivery Defendants charge a "service fee" to delivery workers for providing food
3 delivery services to Uber customers. The "service fee" is unilaterally set by Uber and Portier, and
4 can be changed by them at any time.

5 87. Uber Eats delivery workers are assigned by Uber to customers. Customers cannot
6 request a specific delivery worker be assigned to handle their orders.

7 88. Delivery Defendants' agreements require delivery workers to acknowledge that their
8 failure to accept Uber customers' requests for food delivery creates a negative experience for those
9 customers' use of the Uber Eats app, thereby discouraging delivery workers from declining
10 assignments to pick up, transport and deliver food to Uber customers.

11 89. Delivery Defendants' agreements further require that delivery workers possess the
12 appropriate and current level of training, expertise and experience to provide delivery services in a
13 professional manner with due skill, care and diligence; and maintain high standards of
14 professionalism, service and courtesy. All training on the required professionalism, service and
15 courtesy is provided to Uber's delivery workers by Delivery Defendants, and Delivery Defendants
16 do not require delivery workers to possess any prior delivery experience or expertise upon
17 commencing employment. The term of Delivery Defendants' agreements with their delivery
18 workers is indefinite.

19 90. Delivery Defendants' delivery workers are subject to background and driving record
20 checks in order to remain eligible to provide transportation services to Uber customers.

21 91. Delivery Defendants enforce their quality standards by controlling compensation and
22 threatening deactivation to achieve the on-demand transportation/delivery service that Uber has
23 promised its customers.

24 92. Delivery Defendants maintains the right to suspend or terminate Uber Eats delivery
25 workers at their "sole discretion," based upon customer feedback, "disparagement of the company or
26 its affiliates," or delivery worker acts or omissions that "cause harm" to Uber or Portier's "brand,
27 reputation or business as determined by the company." Suspended or terminated delivery workers
28 are locked out of the Uber Eats app, without which they cannot perform delivery services for Uber.

1 93. Uber Eats delivery workers are monitored by Uber, may be suspended or terminated
2 for not accepting deliveries, canceling deliveries or failing to maintain a customer satisfaction rating
3 deemed sufficient by Uber, or engaging in any conduct that Uber determines to be grounds for
4 suspension or termination.

5 94. Both under their contracts with Delivery Defendants and in practice, none of Delivery
6 Defendants' delivery workers have ever been free from the control and direction of Delivery
7 Defendants in connection with the performance of their work for Delivery Defendants. As such,
8 Delivery Defendants cannot meet the requirements of the "A prong" of the ABC test, and therefore
9 cannot overcome the presumption that all of their delivery workers are employees, not independent
10 contractors. Delivery Defendants' delivery workers are not engaged in an independently established
11 trade, occupation, or business of the same nature as the work they perform for each defendant.
12 Instead, Delivery Defendants' delivery workers are transporting food from restaurants and delivering
13 it to Delivery Defendants' customers to generate income for Delivery Defendants.

14 95. There is no specialized skill required to transport food and deliver it to Delivery
15 Defendants' customers.

16 96. Delivery Defendants do not require their delivery workers to hold a special license;
17 only a driver's license is required.

18 97. Delivery Defendants' delivery workers are not required to hold the necessary licenses
19 and permits to operate an independent on-demand transportation and delivery trade, occupation or
20 business, and in practice generally do not hold any business licenses or take any steps to set up an
21 independent business beyond delivering food for Delivery Defendants.

22 98. Both under their contracts with Uber and/or Portier, and in practice, none of Delivery
23 Defendants' delivery workers are engaged in an independently established trade, occupation, or
24 business, and as such, Delivery Defendants cannot meet the requirements of the "C prong" of the
25 ABC test. Therefore, Delivery Defendants cannot overcome the presumption that all of their delivery
26 workers are employees, not independent contractors.

27 99. All Defendants are subject to IWC Wage Order 9-2001, which applies to the
28 "transportation industry." The transportation industry is defined in the order as "any industry,

1 business, or establishment operated for the purpose of conveying persons or property from one place
2 to another whether by rail, highway, air, or water, and all operations and services in connection
3 therewith; and also includes storing or warehousing of goods or property, and the repairing, parking,
4 rental, maintenance, or cleaning of vehicles.”

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

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

19 102. Labor Code requirements that are wholly unrelated to IWC wage order requirements
20 did not become subject to the ABC test until the effective date of AB 5, on January 1, 2020. Prior to
21 January 1, 2020, the determination of whether a worker was an employee or an independent
22 contractor, for the purpose of those Labor Code requirements wholly unrelated to IWC orders, was
23 governed by *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341
24 (“*Borello*”), under which there is a rebuttable presumption of employee status, which may be
25 challenged by the hiring entity through a multi-factor test under which no one factor is necessarily
26 determinative, though certain factors are considered more significant than others. Even under
27 *Borello*, Defendants’ drivers and delivery workers were employees rather than independent
28 contractors.

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

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

7 104. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

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

13 106. At all times relevant herein, Defendants have engaged in a continuing pattern and
14 practice of willfully misclassifying all their drivers and delivery workers as independent contractors,
15 notwithstanding that under California law, all of these drivers and delivery workers have been and
16 are employees of Defendants, thereby violating Labor Code § 226.8.

17 107. Defendants are liable for civil penalties under Labor Code § 226.8 in the amount of
18 not less than \$10,000 for each of their drivers and delivery workers who has been misclassified as an
19 independent contractor.

20 108. Unless enjoined by this Court from misclassifying their drivers and delivery workers
21 as independent contractors, and from thereby denying these drivers and delivery workers the
22 protections available to employees under the Labor Code and IWC Wage Order 9-2001, Defendants
23 will continue to misclassify their drivers and delivery workers as independent contractors and
24 thereby continue to deny them the protections available to employees under the Labor Code and
25 IWC Wage Order 9-2001.

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

28 109. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

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

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

24 112. Labor Code § 226.2 applies to employees who are paid on a piece-rate basis for any
25 work performed during a pay period, and requires that payment be made to such employees for
26 “non-productive time” on an hourly basis separate from the compensation derived through piece-rate
27 earnings, at an hourly rate that is not less than the applicable minimum wage. The statute defines
28 “non-productive time” as “time under the employer’s control, exclusive of rest and recovery periods,

1 that is not directly related to the activity being compensated on a piece-rate basis.”

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

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

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

27 116. Labor Code § 1194.2 provides that in any action filed by the Labor Commissioner
28 pursuant to Labor Code § 1193.6 to recover unpaid minimum wages owed to any employees, the

1 employees shall be entitled to recover, in addition to the unpaid minimum wages, liquidated
2 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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

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

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

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

24 120. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

25 121. Labor Code § 510 and IWC Order 9-2001, § 3(A) require payment of overtime
26 compensation, at not less than one and one-half times the employee's regular rate of compensation,
27 for all hours worked in excess of 8 hours and up to 12 hours in any workday, for all hours worked in
28 excess of 40 hours in any workweek, and for the first 8 hours worked on the seventh day of work in

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

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

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

10 124. 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.

18 125. As a consequence of Defendants' failure to pay required overtime compensation to
19 their drivers and delivery workers, Defendants are subject to civil penalties for violations committed
20 as provided by Labor 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))**

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

24 127. 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.

10 128. 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.

15 129. At all times relevant herein, Defendants have failed to provide any separate, hourly
16 compensation to their drivers and delivery workers for required rest periods. Defendants have
17 provided no compensation to their drivers and delivery workers for these required rest periods. As
18 such, Defendants violated the requirements set forth in IWC Order 9-2001 and Labor Code § 226.2
19 that *paid* rest periods be made available to employees.

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

25 131. As a further consequence of Defendants’ failure to pay their drivers and delivery
26 workers any wages for their required rest periods, thereby violating the requirement set out in the
27 Labor Code and IWC Order for payment of not less than the minimum wage for all hours worked,
28 Defendants’ drivers and delivery workers are entitled to liquidated damages under Labor Code §

1 1194.2 in an amount equal to the unpaid minimum wages plus interest.

2 132. Defendants' failure to pay their drivers and delivery workers at least the applicable
3 minimum wage for their required rest periods was intentional, within the meaning of Labor Code §
4 1197.1, and subjects Defendants to civil penalties under that statute.

5 **FIFTH CAUSE OF ACTION: FAILURE TO PAY REST PERIOD PREMIUM PAY**

6 **(Labor Code § 226.7(c); IWC Order 9-2001, § 12(B))**

7 133. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

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

13 135. By failing to provide any compensation to their drivers and delivery workers for
14 required rest periods, Defendants failed to provide rest periods "in accordance with ... [the]
15 applicable ... order of the Industrial Welfare Commission," as specified at IWC Order 9-2001, §
16 12(A).

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

25 137. Labor Code § 558 provides that any employer, or other person acting on behalf of an
26 employer, who violates or causes to be violated, a section of this chapter (Labor Code § 500, *et seq.*)
27 or any provision regarding hours and days of work in any order of the IWC shall be subject to a civil
28 penalty, in addition to the underpaid wages which must be paid to the affected employees. Similar

1 authorization for these civil penalties is found at IWC Order 9-2001, § 20.

2 138. The failure to pay employees required rest period premium pay subjects Defendants
3 to civil penalties under Labor Code § 558 and IWC Order 9-2001, § 20.

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

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

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

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

1 Defendants.

2 142. Defendants have failed to indemnify their drivers and delivery workers for any of the
3 above-listed incurred necessary business expenses, thereby violating Labor Code § 2802 and IWC
4 Order 9, § 9. Defendants' drivers and delivery workers are entitled to indemnification from
5 Defendants for these expenses in accordance with Labor Code § 2802 and IWC Order 9, § 9.

6 143. Labor Code § 2699(f) provides for a civil penalty for violations of "all provisions of
7 this code except those for which a civil penalty is specifically provided," in the amount of \$100 for
8 each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved
9 employee per pay period for each subsequent violation. Defendants are subject to this civil penalty
10 for their violations of Labor Code § 2802.

11 144. Prior to filing this action, the Labor Commissioner served a written notice upon
12 Defendants, by certified mail, of the allegations set out in this cause of action, and the facts and
13 theories in support of these allegations, pursuant to Labor Code §§ 2802 and 2699(f).

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

16 145. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

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

26 147. Labor Code § 226(e) provides that an employee suffering injury as a result of a
27 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover
28 the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and

1 \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000 per
2 employee. Subdivision (e) further provides that an employee is deemed to suffer an injury for
3 purposes of this statute if the employer fails to provide a wage statement, or if the employer fails to
4 provide accurate and complete information as required by one or more of the nine items specified in
5 subdivision (a) and the employee cannot promptly and easily determine, from the provided wage
6 statement alone, gross or net wages paid during the pay period, or total hours worked by the
7 employee during the pay period, or the number of piece rate units earned and all applicable piece
8 rates, or all hourly rates in effect during the pay period and the number of hours worked at each
9 hourly rate.

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

18 149. Defendants' failure to comply with Labor Code § 226(a) has been knowing and
19 intentional, and as a consequence of said failure, all of Defendants' drivers and delivery workers
20 have suffered injury within the meaning of Labor Code § 226(e), such that each of Defendants'
21 drivers and delivery workers are entitled to liquidated damages in the amount of \$50 for the initial
22 pay period of non-compliance, and \$100 for each subsequent pay period of non-compliance, in an
23 amount not to exceed \$4,000 per driver or delivery worker.

24 150. Defendants' failure to comply with Labor Code § 226(a) further subjects them to civil
25 penalties pursuant to Labor Code § 226.3.

26 151. Labor Code § 226.3 provides that an employer who violates Labor Code § 226(a)
27 shall be subject to a civil penalty in the amount of \$250 per employee per violation of an initial
28 citation and \$1,000 per employee per violation in a subsequent citation for which the employer fails

1 to provide the employee a wage statement or fails to keep the records required by Labor Code §
2 226(a). The civil penalties provided in this section are in addition to any other penalty provided by
3 law.

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

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

7 153. In 2014, the State Legislature enacted the Healthy Workplaces, Healthy Families Act
8 of 2014 (“HWHF Act”), under which any employee who, on or after July 1, 2015, works in
9 California for the same employer for 30 or more days within a year of commencement of
10 employment is entitled to paid sick days as specified at Labor Code §§ 246-246.5. The HWHF Act
11 further requires, at Labor Code §§ 246(i), 247 and 247.5, that every employer maintain records of
12 hours worked and paid sick leave accrued and used by its employees, conspicuously display certain
13 information about employee’s rights to paid sick leave, and provide such information to its
14 employees on itemized wage statements each time wages are paid. The HWHF Act further requires
15 an employer to issue timely payment for sick leave no later than the payday for the next regular
16 payroll period after sick leave was taken, pursuant to Labor Code § 246(n).

17 154. In September 2020, the State Legislature passed AB 1867, which amended the
18 HWHF Act to add sections 248 and 248.1 to the Labor Code. The Governor signed the legislation
19 into law on September 9, 2020, and the amendments took immediate effect.

20 155. Labor Code section 248 requires hiring entities in the food sector, including food
21 delivery businesses, with 500 or more employees nationwide to provide covered workers with
22 supplemental paid sick leave for COVID-19 related reasons. Pursuant to Labor Code section 248(e),
23 hiring entities were required to provide covered food sector workers, including food delivery
24 workers, with supplemental paid sick leave beginning on April 16, 2020.

25 156. Hiring entities in the food sector are required to provide covered workers timely
26 payment of supplemental paid sick leave and notice of the availability of supplemental paid sick
27 leave. Food sector hiring entities are also required to keep records of used and available
28 supplemental paid sick leave. Labor Code section 248(d) incorporates the requirements of section

1 246(n) to provide payment for sick leave taken no later than the payday for the next regular payroll
2 period after the sick leave was taken; of section 247 to provide notice to employees of supplemental
3 paid sick leave; and of section 247.5 to keep records of used and available supplemental paid sick
4 leave.

5 157. Delivery Defendants employ 500 or more employees nationwide. At all relevant
6 times, Delivery Defendants have been “hiring entities” within the meaning of Labor Code section
7 248(a)(3) and their delivery workers have been “food sector workers” within the meaning of Labor
8 section 248(a)(2).

9 158. Labor Code section 248.1 requires non-food sector employers with 500 or more
10 employees to provide covered employees with supplemental paid sick leave for COVID-19 related
11 reasons. Pursuant to Labor Code section 248.1(e), non-food sector employers with 500 or more
12 employees were required to provide supplemental paid sick leave to covered employees beginning
13 on September 19, 2020.

14 159. Non-food sector employers with 500 or more employees are required to provide
15 covered employees timely payment of supplemental paid sick leave, notice of the availability of
16 supplemental paid sick leave, and to provide a wage statement or other writing on the employee’s
17 designated pay date indicating the amount of available supplemental paid sick leave. Non-food
18 sector employers with 500 or more employees are also required to keep records of used and available
19 supplemental paid sick leave. Labor Code section 248.1(d) incorporates the requirements of section
20 246(i) to provide a wage statement or other writing indicating the amount of available supplemental
21 paid sick leave; section 246(n) to provide payment for sick leave taken no later than the payday for
22 the next regular payroll period after the sick leave was taken; of section 247 to provide notice to
23 employees of supplemental paid sick leave; and of section 247.5 to keep records of used and
24 available supplemental paid sick leave.

25 160. Transportation Defendants employ 500 or more employees nationwide. At all
26 relevant times, Transportation Defendants have been “hiring entities” within the meaning of Labor
27 Code section 248.1(a)(3) and their drivers have been “covered workers” within the meaning of Labor
28 Code section 248.1(a)(2).

1 161. Defendants have never provided for the accrual of paid sick time or supplemental
2 paid sick leave to their drivers and delivery workers, have never provided paid sick days or
3 supplemental paid sick leave to their drivers and delivery workers. Defendants have also failed to
4 comply with the requirements to provide notice to their drivers and delivery workers of paid sick
5 leave or supplemental paid sick leave required by section 247 and to provide a wage statement or
6 other writing to their drivers indicating the amount of available paid sick leave or supplemental paid
7 sick leave required by section 246(i). Defendants have never provided their drivers and delivery
8 workers with the information required by Labor Code § 247.5, thereby violating requirements of the
9 HWHF Act.

10 162. Labor Code § 248.5(b) provides, generally, that if Labor Code § 248.5(a) is violated
11 appropriate relief includes, but is not limited to, payment of the sick days unlawfully withheld and
12 payment of an additional sum in the form of an administrative penalty. If paid sick days were
13 unlawfully withheld, three times the amount of paid sick days withheld are owed to the employee, or
14 two hundred and fifty dollars (\$250), whichever is greater but not to exceed an aggregate of four
15 thousand dollars (\$4,000). If the violation results in harm to the employee or person, the
16 administrative penalty shall include fifty dollars (\$50) for each day or portion thereof that the
17 violation occurs or continued, not to exceed an aggregate penalty of four thousand dollars (\$4,000).

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

24 164. Labor Code § 248.5(e) provides that in any action brought by the Labor
25 Commissioner against an employer or other person violating the HWHF Act, available relief shall
26 include the payment of liquidated damages for each employee in the amount of \$50 for each day that
27 the employee's rights under the HWHF Act were violated, up to a maximum of \$4,000 per
28 employee.

1 165. As a consequence of Defendants' violations of the HWHF Act, Defendants are liable
2 for liquidated damages payable to their drivers and delivery persons, in the amounts specified in
3 Labor Code § 248.5(e).

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

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

7 167. Labor Code § 201 requires an employer that discharges an employee to pay all earned
8 and unpaid wages to such employee immediately upon discharge. Labor Code § 202 requires an
9 employer to pay all earned and unpaid wages to an employee who quits within 72 hours of quitting,
10 unless the employee provided 72 hours prior notice of intention to quit, in which case the earned and
11 unpaid wages must be paid to the employee at the time of quitting.

12 168. Labor Code § 203(a) provides that an employer that willfully fails to pay a separated
13 employee all earned and unpaid wages in accordance with Sections 201 or 202 shall be required to
14 pay a penalty to such employee in an amount equal to the employee's per diem wage rate multiplied
15 by 30 days, unless all required wages were paid within 30 days of the date the wages were due under
16 Sections 201 or 202 (in which case the Section 203 penalties only run from the date the wages were
17 due until the date they were paid), or unless the action to recover the wages is filed within 30 days of
18 the date the wages were due under Sections 201 or 202 (in which case the Section 203 penalties only
19 run from the date the wages were due until the date the lawsuit was filed). Under Labor Code §
20 203(b), suit may be filed for penalties due under the statute at any time before expiration of the
21 statute of limitations on an action for wages on which the penalties arose.

22 169. Defendants' failure to timely pay their drivers and delivery workers their earned
23 wages, including minimum wages, rest period wages, rest period premium wages, and/or overtime
24 wages required under IWC Wage Order 9-2001, in a timely manner upon separation from
25 employment as required by Labor Code §§ 201 and 202, was willful within the meaning of Labor
26 Code § 203. Defendants are therefore subject to statutory penalties pursuant to Labor Code § 203,
27 as to all drivers and delivery workers who separated from employment with Defendants.

28 ///

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

3 170. Plaintiff incorporates by reference all of the allegations set forth herein above.

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

9 172. Pursuant to Labor Code § 210, the failure to pay wages to employees as required by
10 Labor Code § 204 subjects the person or entity that failed to pay such wages to a civil penalty of
11 \$100 for each failure to pay each employee for any initial non-willful and non-intentional violation,
12 and a civil penalty of \$200 plus 25 percent of the amount unlawfully withheld from each employee
13 for each failure to pay each employee for any willful or intentional violation or any subsequent non-
14 willful and non-intentional violation.

15 173. Defendants' failure to pay required minimum wages, rest period wages, rest period
16 premium pay, and overtime wages to their drivers and delivery workers on the pay days for which
17 such wages were due under Labor Code § 204 violated the requirements of that statute, and these
18 violations were willful or intentional, thereby subjecting Defendants to civil penalties under Labor
19 Code § 210.

20 174. Prior to filing this action, the Labor Commissioner made a written demand upon
21 Defendants for payment of amounts due for civil penalties under Labor Code §§ 204 and 210.

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

24 175. Plaintiff incorporates by reference all of the allegations set forth hereinabove.

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

28 (a) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week,

1 salary, piece, commission, or otherwise, including any rates for overtime, as
2 applicable;

3 (b) Allowances, if any, claimed as part of the minimum wage, including meal or lodging
4 allowances;

5 (c) The regular payday designated by the employer in accordance with the requirements
6 of this code;

7 (d) The name of the employer, including any "doing business as" names used by the
8 employer;

9 (e) The physical address of the employer's main office or principal place of business, and
10 a mailing address, if different;

11 (f) The telephone number of the employer;

12 (g) The name, address, and telephone number of the employer's workers' compensation
13 insurance carrier;

14 (h) That an employee: may accrue and use sick leave; has a right to request and use
15 accrued paid sick leave; may not be terminated or retaliated against for using or
16 requesting the use of accrued paid sick leave; and has the right to file a complaint
17 against an employer who retaliates;

18 (i) Any other information the Labor Commissioner deems material and necessary.

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

22 178. At all times relevant herein, Defendants failed to provide their drivers and delivery
23 workers with the employment-related information required from employers at the time of hire,
24 including but not limited to their rates of pay, whether paid by the hour, shift, day, week, salary,
25 piece, commission, or otherwise, and all required information regarding paid sick leave.

26 179. At all times relevant herein, Defendants failed to provide their drivers and delivery
27 workers written notice of any changes to the employment-related information required under Labor
28 Code § 2810.5(a)(1), including but not limited to their rates of pay.

1 180. Defendants' failure to provide their drivers and delivery workers notice of the
2 required employment-related information in Labor Code § 2810.5(a)(1), and provide its drivers and
3 delivery workers timely notice of any changes in the employment-related information, such as rates
4 of pay, constitutes a violation of Labor Code § 2810.5(a) and (b).

5 181. Defendants' violation of Labor Code § 2810.5(a) and (b) thereby subjects Defendants
6 to civil penalties under Labor Code § 2699(f).

7 182. Prior to filing this action, the Labor Commissioner served a written notice upon
8 Defendants, by certified mail, of the allegations set out in this cause of action, the facts and theories
9 in support of these allegations, pursuant to Labor Code §§ 2810.5 and 2699(f).

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff Lilia García-Brower, in her official capacity as Labor
12 Commissioner for the State of California, prays for the following relief:

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

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

27 (a) Unpaid wages owed to Defendants' drivers and delivery workers, and interest thereon
28 pursuant to Labor Code §§ 218.6 and 1194, as follows:

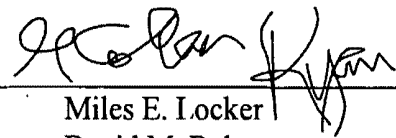
- 1 (i) Minimum wages pursuant to Labor Code § 1197 and IWC Order 9-2001 § 4;
- 2 (ii) Rest period wages pursuant to Labor Code § 226.2 and IWC Order 9-2001 §
- 3 12(A), and rest period premium wages pursuant to Labor Code § 226.7 and IWC Order 9-2001 §
- 4 12(B); and
- 5 (iii) Overtime wages pursuant to Labor Code § 510 and IWC Order 9-2001 § 3(A);
- 6 (b) Liquidated damages owed to Defendants' drivers and delivery workers pursuant to Labor
- 7 Code § 1194.2;
- 8 (c) Unreimbursed business expenses incurred by Defendants' drivers and delivery workers
- 9 and interest thereon, pursuant to Labor Code § 2802 and IWC Order 9-2001 § 9;
- 10 (d) Liquidated damages for Defendants' failure to provide their drivers and delivery workers
- 11 with complete and accurate itemized wage statements, pursuant to Labor Code § 226(e);
- 12 (e) Liquidated damages and administrative penalties for Defendants' failure to comply with
- 13 paid sick leave law requirements and compensation to the State for the costs of investigating and
- 14 remedying the violations, pursuant to Labor Code § 248.5;
- 15 (f) Statutory penalties owed to Defendants' drivers and delivery workers for failure to timely
- 16 pay wages upon separation from employment, pursuant to Labor Code § 203;
- 17 (g) Civil penalties payable to the State, for the following violations:
- 18 (i) Pursuant to Labor Code § 226.8, for Defendants' willful misclassification of
- 19 employees as independent contractors;
- 20 (ii) Pursuant to Labor Code § 1197.1, for Defendants' minimum wage violations;
- 21 (iii) Pursuant to Labor Code § 558 and § 20 of IWC Order 9-2001, for Defendants'
- 22 overtime and rest period violations; and
- 23 (iv) Pursuant to Labor Code § 210, for Defendants' failure to pay minimum wages,
- 24 rest period wages, rest period premium pay, and overtime wages to their drivers and delivery
- 25 workers on the pay days when such wages were due under Labor Code § 204;
- 26 (v) Pursuant to Labor Code § 226.3, for Defendants' failure to provide employees
- 27 with wage statements that comply with the requirements of Labor Code § 226(a);
- 28 (vi) Pursuant to Labor Code § 2699(f), for Defendants' failure to reimburse their

1 drivers and delivery workers for necessary business expenses as required by Labor Code § 2802; and
2 (vii) Pursuant to Labor Code § 2699(f), for Defendants' failure to provide their
3 drivers and delivery workers notice of the required employment-related information in Labor Code §
4 2810.5(a) and (b).

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

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

8
9 Dated: November 6, 2020

10 

11 _____
12 Miles E. Locker
13 David M. Balter
14 Kristin M. Garcia
15 M. Colleen Ryan
16 Alec L. Segarich

17 Attorneys for the State Labor Commissioner
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PROOF OF SERVICE

Lilia Garcia-Brower, Labor Commissioner v. Uber Technologies, Inc., et al.
Alameda County Superior Court Case No: RG20070281

I, Joanne M. LeDuc, do hereby declare that I am employed in the county of San Francisco, over 18 years of age, not a party to the within action, and that I am employed at and my business address is 455 Golden Gate Avenue, 9th Floor, San Francisco, California, 94102.

On November 6, 2020, I served the following document(s):

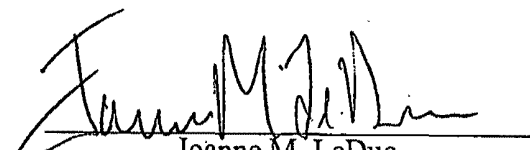
1. **FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF, DAMAGES AND PENALTIES FOR (1) WILLFUL MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS, (2) FAILURE TO PAY MINIMUM WAGE, (3) FAILURE TO PAY OVERTIME WAGES, (4) FAILURE TO PAY WAGES FOR REST PERIODS, (5) FAILURE TO PAY REST PERIOD PREMIUM PAY, (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, (11) FAILURE TO PROVIDE NOTICE OF EMPLOYMENT INFORMATION.**

X by e-mail, addressed as follows:

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	Dtom@gibsondunn.com

I declare under penalty of perjury, under the laws of the State of California that the above is true and correct.

Executed this 6th day of November, 2020, at San Francisco, California.


Joanne M. LeDuc