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Superior Court of California
County of Los Angeles

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

b-308

ELLYN KRAMER, and WASEHUN
KIDANE, individuals, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

UBER TECHNOLOGIES, INC., a
Corporation; WMBE PAYROLLING INC.
d/b/a TARGETCW, a Corporation, and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: BC589891

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES, RESTITUTION, AND
INJUNCTIVE RELIEF:**

- (1) **FAILURE TO PAY MINIMUM WAGES
AND OVERTIME COMPENSATION IN
VIOLATION OF CAL. LAB. CODE §§
510, 1194, AND 1197;**
- (2) **FAILURE TO PAY WAGES OWED IN
VIOLATION OF CAL. LAB. CODE §§
201, 202, and 203;**
- (3) **FAILURE TO FURNISH ACCURATE
WAGE STATEMENTS IN VIOLATION
OF CAL. LAB. CODE § 226;**
- (4) **FAILURE TO REIMBURSE NECESSARY
BUSINESS EXPENSES IN VIOLATION
OF CAL. LAB. CODE § 2802;**
- (5) **FAILURE TO PROVIDE MEAL
PERIODS AND REST PERIODS IN
VIOLATION OF CAL. LAB. CODE §§
226.7 and 512;**

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- (6) FAILURE TO PROVIDE WRITTEN COMMISSION AGREEMENTS IN VIOLATION OF CAL. LAB. CODE § 2751;
 - (7) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200 et seq.; and
 - (8) PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004, CAL. LAB. CODE § 2698 et seq.
- DEMAND FOR JURY TRIAL**

Plaintiffs Ellyn Kramer and Wasehun Kidane (hereinafter “Plaintiffs”), by and through their attorneys of record, bring this action on behalf of themselves and all persons similarly situated, against Defendants Uber Technologies, Inc. and WMBE Payrolling, Inc. d/b/a Target CW (collectively, “Defendants”) on the following grounds:

INTRODUCTION

1. This class action is brought on behalf of all current and former employees of Defendants, in the state of California, who held the position of Brand Ambassador, and who were not compensated for overtime, were not paid all wages owed, did not receive accurate wage statements, were not reimbursed for necessary business expenses, were not provided with meal and rest periods, and were subject to unlawful commission policies and practices.

2. Plaintiffs seeks damages, injunctive relief, and restitutionary disgorgement, as well as reasonable attorneys’ fees and litigation costs, as provided under California law.

3. All allegations in this Complaint are based upon information and belief except for those allegations that specifically pertain to Plaintiffs, which are based on their own personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

JURISDICTION AND VENUE

4. Pursuant to Cal. Civ. Proc. Code § 382 and Cal. Bus. & Prof. Code § 17203, Plaintiffs brings this action on behalf of themselves, and on behalf of all persons within Subclass A

1 and Subclass B, as defined below.

2 5. The Court has jurisdiction over this action pursuant to Cal. Civ. Proc. Code § 410.10.
3 Defendants are licensed to do business, and are actually doing business, in the state of California.
4 The amount in controversy, exclusive of interest, costs, and attorneys' fees, exceeds the minimum
5 jurisdictional amount for this Court.

6 6. Venue is proper in this judicial district pursuant to Cal. Civ. Proc. Code § 395(a).
7 Defendants transact business in Los Angeles County, and are otherwise within this Court's
8 jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect
9 on Plaintiff Kramer and those similarly situated within Los Angeles County and the state of
10 California.

11 **CLASS DEFINITION**

12 7. This class action consists of two subclasses comprised of all current and former
13 employees of Defendants, in the state of California, who held the position of Brand Ambassador
14 during the period commencing on the date that is within four (4) years prior to the filing of this
15 Complaint and through the present date (hereinafter the "Class Period"). Subclass A and Subclass B
16 (collectively, the "Class") consist of those who were either jointly employed by Defendants, or
17 employed solely by Defendant Uber Technologies, Inc. To the extent that equitable tolling operates
18 to toll the claims by the Class against Defendants, the Class Period should be adjusted accordingly.

19 (a) Subclass A consists of all current and former employees, who were jointly
20 employed by Defendants Uber Technologies, Inc. (hereinafter "Uber") and
21 WMBE Payrolling, Inc. d/b/a Target CW (hereinafter "Target CW"), who
22 were not compensated for overtime, were not paid all wages owed, did not
23 receive accurate wage statements, were not reimbursed for necessary
24 business expenses, were not provided with meal and rest periods, and were
25 subject to unlawful commission policies and practices.

26 (b) Subclass B consists of all current and former employees, who were employed
27 by Uber, and who were not compensated for overtime, were not paid all
28 wages owed, did not receive accurate wage statements, were not reimbursed

1 for necessary business expenses, were not provided with meal and rest
2 periods, and were subject to unlawful commission policies and practices.

3 8. Members of the proposed Subclasses are all “employees” as the term is used in the
4 California Labor Code and the California Industrial Welfare Commission’s (hereinafter “IWC”)
5 applicable Wage Order regulating wages, hours, and working conditions in the state of California.

6 **THE PARTIES**

7 9. Plaintiff Ellyn Kramer, at all material times mentioned herein:

- 8 (a) Is a resident of Los Angeles County;
- 9 (b) Was employed by Defendants as a Brand Ambassador;
- 10 (c) Was paid a fixed amount for each individual she signed up to drive for Uber,
11 with a minimum draw, or pre-determined hourly rate, guaranteed;
- 12 (d) Was not compensated for overtime;
- 13 (e) Was not compensated for time spent picking up and returning promotional
14 materials and supplies from Uber;
- 15 (f) Was provided with inaccurate and/or incomplete wage statements;
- 16 (g) Was not reimbursed for expenses incurred in the discharge of her duties,
17 including mileage expenses and expenses associated with the use of her
18 personal cell phone;
- 19 (h) Was regularly denied meal and rest periods; and
- 20 (i) Was subject to unlawful commission policies and practices.

21 10. Plaintiff Wasehun Kidane, at all material times mentioned herein:

- 22 (a) Is a resident of Alameda County;
- 23 (b) Is employed by Defendants as a Brand Ambassador;
- 24 (c) Is allegedly paid a fixed amount for each individual he signs up to drive for
25 Uber, with a minimum draw, or pre-determined hourly rate, guaranteed;
- 26 (d) Is not compensated for overtime;
- 27 (e) Is not compensated for time spent picking up and returning promotional
28 materials and supplies from Uber;

1 (f) Is provided with inaccurate and/or incomplete wage statements;

2 (g) Is regularly denied meal and rest periods; and

3 (h) Is subject to unlawful commission policies and practices.

4 11. Defendant Uber is a San Francisco, California based technology company.

5 According to its web site (www.uber.com/business), Uber was founded in 2009 and operates in over
6 300 cities across 56 countries. Uber's primary technology is a smartphone application that connects
7 consumers in need of transportation with available drivers. Individuals are recruited to drive for
8 Uber through the company's web site and by Uber's Brand Ambassadors.

9 12. Defendant TargetCW is a San Diego, California based corporation specializing in
10 payroll and staffing services. TargetCW's web site (www.targetcw.com/services) claims that its
11 "comprehensive worldwide payrolling solution allows organizations to mitigate liability of their
12 contingent workforce including: workers compensation, unemployment claims, ACA compliant
13 health care benefits, paperless on-boarding, online time-keeping, and all tax withholdings and
14 reporting."

15 13. Plaintiffs and the other members of Subclass A are jointly employed by Defendants
16 Uber and TargetCW. While TargetCW provides wage statements to Subclass A, Plaintiffs are
17 informed and believe, and thereon allege that members of Subclass A were hired by Uber.
18 Moreover, Uber dictates their hours of employment, requires them to travel to and from an Uber
19 office facility, assigns them to work at a specific location, and directly controls the manner and
20 means by which their work is performed.

21 14. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate, or otherwise of defendants Does 1 through 50, are unknown to Plaintiffs,
23 who therefore sue these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474.
24 Plaintiffs will amend the complaint to allege the true names and capacities of Does 1 through 50
25 when they are ascertained.

26 15. At all times mentioned herein, acts alleged to have been done by Defendants are also
27 alleged to have been done by the unascertained defendants mentioned above, and by each of their
28 agents and employees who acted within the scope of their agency and/or employment.

1 16. At all times mentioned herein, the acts and omissions of each of the defendants
2 concurrently contributed to the various acts and omissions of each and every one of the other
3 defendants in proximately causing the wrongful conduct, harm, and damages alleged herein. Each
4 of the defendants approved of, condoned, and/or otherwise ratified each and every one of the acts or
5 omissions complained of herein.

6 **FACTUAL ALLEGATIONS**

7 17. Plaintiff Ellyn Kramer was employed by Defendants as a Brand Ambassador from
8 May 2015 to July 2015.

9 18. Plaintiff Wasehun Kidane was hired by Defendants in May 2015. He is currently
10 employed as a Brand Ambassador in the San Francisco Bay Area.

11 19. As a Brand Ambassadors, Plaintiffs are primarily tasked with promoting the Uber
12 brand and recruiting new drivers for the company. Plaintiffs are allegedly paid a fixed amount for
13 each driver they recruit, with a minimum draw, or pre-determined hourly rate, guaranteed.¹

14 20. Prior to beginning her shift, Plaintiff Kramer was frequently required by Uber to
15 drive to one of its Los Angeles-area offices to collect promotional materials and supplies, including
16 a cell phone and gift cards. This process took approximately 30 minutes.

17 21. Similarly, Plaintiff Kidane is frequently required by Uber to drive to its San
18 Francisco office to collect materials and supplies. This process generally takes approximately 30-40
19 minutes. In driving to Uber's San Francisco office from his home in Oakland, Plaintiff Kidane is
20 required to pay bridge tolls ranging from \$4 to \$6 each day.

21 22. After loading the materials into their cars, Uber then required Plaintiffs to drive to
22 the gas stations that it assigned them to work at for the day.

23 _____
24 ¹ While Defendants refer to these payments as “commissions,” they likely qualify as a piece-
25 rate rather than a commission. In order for an employee’s compensation to be deemed commission
26 wages under California law: (1) the employee must be involved principally in selling a product or
27 service; and (2) the amount of their compensation must be sufficiently related to the price of the
28 product or service. (*See Muldrow v. Surrex Solutions Corp.* (2012) 208 Cal. App. 4th 1381.) Here,
Plaintiffs are simply paid a fixed amount per driver they sign up. However, even if the payments
constitute commissions, Defendants violated Cal. Lab. Code § 2751 when they failed to set forth in
writing, the method by which commissions would be computed and paid.

1 23. Under Defendants' timekeeping policies and procedures, Plaintiffs shifts do not
2 begin until they arrive at their assigned location and set up a promotional booth. During their eight
3 hour shifts, Plaintiffs promote the Uber brand and pass out promotional materials in an effort to
4 recruit new drivers for Uber. If an individual is interested in driving for Uber, Plaintiffs input the
5 prospective driver's information into Uber's smart phone app. To ensure they are given credit for
6 each driver recruited, Plaintiffs are assigned a specific code to use. However, the codes frequently
7 do not work, and as a result, Plaintiffs do not receive credit for all of the drivers they recruit for
8 Uber.

9 24. When Plaintiff Kramer first began her employment with Defendants, she was
10 required to record the hours she worked through TargetCW's web site only if the total amount she
11 would receive for recruiting new drivers would be less than minimum wage, based on the number of
12 hours she worked during the pay period. This not only required her to be familiar with California's
13 minimum wage law, but also to add up the number of drivers she recruited during the pay period,
14 multiply it by the amount she was supposed to receive for each driver she recruited, and divide it by
15 the total number of hours she worked during the same pay period. If she was misinformed or
16 miscalculated anything, she risked being under paid for the work she performed.

17 25. Eventually Defendants began using *When I Work* – a smart phone app that allows
18 Brand Ambassador's to record their hours in real time. However, the app was often non-functional
19 and Defendants stopped using it for a period of time.

20 26. Under Defendants' compensation policy, Plaintiffs are paid an hourly rate only if the
21 amount they earn for recruiting new drivers is less than minimum wage, based on the number of
22 hours they worked. However, because Plaintiffs are often unable to accurately record their hours,
23 Defendants determination as to whether or not they earned at least minimum wage is based on
24 inaccurate or incomplete timekeeping records.

25 27. Although Defendants provide Brand Ambassadors with cell phones to use for driver
26 sign ups, the phones are often not charged and/or in poor working condition. As a result, Plaintiffs
27 are frequently required to use their own cell phones to complete the driver registration process.

28 28. While Defendants have a policy that requires Brand Ambassadors to take meal and

1 rest periods, that policy is undermined by another policy, which prohibits Brand Ambassadors from
2 leaving their assigned work locations unattended. As such, during the course of their employment,
3 Plaintiffs are frequently denied meal and rest periods as required under California law. Moreover,
4 even when two Brand Ambassadors are assigned to the same location, they were discouraged from
5 taking meal and rest periods due to concerns about theft of supplies and promotional materials.

6 29. Once Plaintiffs finish their shifts, they are required to disassemble the table and load
7 any remaining supplies and promotional materials into their cars. Approximately two to three times
8 a week, Uber requires Plaintiffs to return the items to one of its office facilities.

9 30. Despite requiring Plaintiffs to pick-up and return supplies and promotional materials,
10 Defendants fail to compensate them for the time they spend driving to and from Uber's offices.
11 Similarly, although Plaintiffs are required to use their own vehicles for such work, Defendants fail
12 to reimburse them for the mileage and/or toll expenses they incur.

13 31. In addition, for pay periods where Plaintiffs are paid based on an hourly rate, the
14 wage statements provided by Defendants fail to include Plaintiffs' applicable hourly rate and the
15 total number of hours worked. Instead, the wage statements merely showed Plaintiffs' gross wages.
16 For pay periods where Plaintiffs are paid based on a purported commission or piece rate, the wage
17 statements provided by Defendants fail to include the total hours worked, the applicable piece rate,
18 and/or the number of units earned. Instead, regardless of how many drivers Plaintiffs recruit to drive
19 for Uber, their wage statements list the total amount earned as one unit.

20 32. As a result of Defendants' failure to provide accurate wage statements, Plaintiffs are
21 unable to determine if they have been paid for all work performed. More specifically, without
22 knowing the applicable piece rate and the number of units earned, Plaintiffs have no reasonable
23 means of determining whether they have received payment for each driver recruited.

24 33. Throughout the course of their employment, Defendants frequently change the terms
25 and conditions under which Plaintiffs will be paid for signing up a driver. For example, over a two
26 month period, Defendants changed the payment structure three times, and generally without notice.
27 Despite referring to the payments as commissions, changes to the payment structure were never
28 provided to Plaintiffs in writing as required under California law.

1 34. Plaintiff Kramer's employment with Defendants was terminated in July 2015 when
2 she began inquiring about unpaid wages and refused to sign a release and settlement agreement.
3 Moreover, although Plaintiff's termination was made effective on July 7, 2015, Plaintiff did not
4 receive her earned and unpaid wages until nine days later on July 16, 2015. Her final wage
5 statements, like previous wage statements, did not include the total hours worked.

6 35. Plaintiffs believe that they are jointly employed by Defendants. After applying for a
7 position as a Brand Ambassador, both were interviewed by Uber at one of its offices. Once hired,
8 Uber began determining their work schedules each week, and on each day that they work, Uber
9 requires them to pick up and return items to one of its facilities. Although their paychecks are issued
10 by TargetCW, all other aspects of Plaintiffs' employment is dictated by Uber.

11 **CLASS ALLEGATIONS**

12 36. Plaintiffs bring this action on behalf of themselves, and on behalf of all persons
13 within the defined Subclasses.

14 37. This class action meets the statutory prerequisites for the maintenance of a class
15 action, as set forth in Cal. Civ. Proc. Code § 382 and Cal. Civ. Code § 1781, in that:

- 16 (a) The persons who comprise the Class are so numerous that the joinder of all
17 such persons is impracticable and the disposition of their claims as a class
18 will benefit the parties and the Court;
- 19 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
20 are raised in this Complaint are common to the Class and will apply
21 uniformly to every member of the Class, and as a practical matter, be
22 dispositive of the interests of the other members not party to the adjudication;
- 23 (c) The parties opposing the Class have acted or have refused to act on grounds
24 generally applicable to the Class, thereby making final injunctive relief or
25 declaratory relief appropriate with respect to the Class as a whole; and
- 26 (d) Common questions of law and fact exist as to the members of the Class and
27 predominate over any question affecting only individual members, and a
28 class action is superior to other available methods for the fair and efficient

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adjudication of the controversy, including consideration of:

- i. The interests of Class members in individually controlling the prosecution or defense of separate actions;
- ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
- iii. The desirability or undesirability of concentrating the litigation of the claims in this particular forum; and
- iv. The likely difficulties in the managing a class action.

38. The Court should permit this action to be maintained as a class action pursuant to Cal. Civ. Proc. Code § 382 and Cal. Civ. Code § 1781 because:

- (a) Questions of law and fact common to the Class are substantially similar and predominate over any questions affecting only individual members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of Class Members' claims;
- (c) The members of the Class are so numerous that it is impractical to bring all Class members before the Court;
- (d) Plaintiffs' claims are typical of the claims of the Class;
- (e) Class Members will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (f) There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties alleged, and in obtaining adequate compensation for the damages that Defendants' actions have inflicted upon the Class;
- (g) Plaintiffs can fairly and adequately protect the interests of the Class;
- (h) There is a community of interest in ensuring that the combined assets and available insurance of Defendants are sufficient to adequately compensate the members of the Class for the injuries sustained; and
- (i) Defendants have acted or refused to act on grounds generally applicable to

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the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

CAUSES OF ACTION

**FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES AND OVERTIME COMPENSATION
[Cal. Lab. Code §§ 510, 1194, and 1197]
(By Subclass A and Subclass B Against All Defendants)**

39. Plaintiffs reallege and incorporates by this reference, as though fully set forth herein, the proceeding paragraphs of this Complaint.

40. Plaintiffs and the other members of the Class, contend that Defendants willfully and intentionally violated the California Labor Code by failing to adequately compensate Class Members for all hours worked.

41. Cal. Lab. Code § 1197 provides: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

42. Under California law, an employer must pay each employee “not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” (*Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal. App. 4th 36, 44.)

43. Cal. Lab. Code § 510 provides that employees in California shall not be employed for more than eight (8) hours in any workday or forty (40) hours in a workweek, unless they receive additional compensation beyond their regular wages in the amounts specified by law. Specifically, Cal. Lab. Code § 510 (a) requires that:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. (Emphasis added.)

44. An employee may not waive his or her right to overtime compensation and any agreement by the employee to accept less than the statutorily required rate is unenforceable as a

1 matter of law. (*See Earley v. Superior Court* (2000) 79 Cal. App. 4th 1420, 1430.)

2 45. Under California law, employees must receive the minimum wage for each hour
3 worked during a payroll period, even if the agreed upon compensation exceeds the minimum wage
4 for the total hours worked. Using any method of compensation in which an employees' hours in a
5 given pay period are averaged to compute minimum wage obligations is in violation of California's
6 wage laws. (*See Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal. App. 4th 35; *Armenta v.*
7 *Osmose, Inc.* (2005) 135 Cal. App. 4th 314.)

8 46. Moreover, "employees must be directly compensated at least minimum wage for all
9 time spent on activities that do not allow them to directly earn wages." (*Balasanyan v. Nordstrom,*
10 *Inc.* (S.D. Cal. 2012) 913 F. Supp. 2d 1001, 1007 [applying California law].) When an employee is
11 compensated based on a commission or a piece-rate, the employee must be paid at least minimum
12 wage for any period of time that the employee is precluded from earning commissions or a piece-
13 rate. (*See id.* at 1006.)

14 47. Plaintiffs and the other members of the Class are paid a set amount for each person
15 they sign up to drive for Uber. Regardless of whether those wages constitute commissions or piece-
16 rate, California law makes it clear that they must be paid at least minimum wage for time spent
17 performing work that does not allow them to directly earn wages.

18 48. Before beginning their shifts, Class Members are frequently required to drive to an
19 Uber facility to collect supplies and promotional materials. Similarly, after completing their shifts,
20 Class Members are often required to return any remaining supplies and promotional materials.
21 During these time periods, Class Members are not able to perform work that allows them to earn
22 wages (i.e., to recruit drivers for Uber).

23 49. Despite requiring Class Members to pick-up and return any necessary supplies and
24 promotional materials, Defendants violate California law by failing to pay Class Members at least
25 minimum wage for the time they spend performing these tasks.

26 50. In addition, Defendants pay Class Members an hourly rate only if the amount they
27 earn for recruiting new drivers does not exceed minimum wage, based on the number of hours they
28 worked during the pay period. However, because Defendants' timekeeping policies and procedures

1 fail to accurately record the hours Class Members work, Defendants’ determination as to whether
2 Class Members earned at least minimum wage is based on inaccurate or incomplete records.

3 51. At all relevant times, Plaintiffs and the other members of the Class frequently work
4 more than eight (8) hours in a single workday and/or more than forty (40) hours in a workweek.
5 However, in violation of Cal. Lab. Code § 510, Defendants fail to compensate Class Members for
6 such overtime, or compensates them for fewer hours than they actually worked.

7 52. By virtue of Defendants’ unlawful failure to compensate Plaintiffs and the other
8 members of the Class for their overtime, Class Members have suffered, and will continue to suffer,
9 damages in amounts which are presently unknown to them, but which exceed the jurisdictional
10 limits of this Court and which will be ascertained according to proof at trial.

11 53. Cal. Lab. Code § 1194 provides:

12 [A]ny employee receiving less than the legal minimum wage or the
13 legal overtime compensation applicable to the employee is entitled to
14 recover in a civil action the unpaid balance of the full amount of this
minimum wage or overtime compensation, including interest thereon,
reasonable attorney’s fees, and costs of suit.

15 54. Having received less than the legal minimum wage and/or applicable rate of
16 overtime compensation, Plaintiffs and the other members of the Class now seek to recover all wages
17 owed, as well as interest, reasonable attorneys’ fees and costs pursuant to Cal. Lab. Code § 1194.

18 **SECOND CAUSE OF ACTION**
19 **FAILURE TO PAY WAGES OWED**
20 **[Cal. Lab. Code §§ 201, 202, and 203]**
(By Subclass A and Subclass B Against All Defendants)

21 55. Plaintiffs reallege and incorporates by this reference, as though fully set forth herein,
22 the proceeding paragraphs of this Complaint.

23 56. Cal. Lab. Code § 201(a) states: “If an employer discharges an employee, the wages
24 earned and unpaid at the time of discharge are due and payable immediately.”

25 57. The term “wages” is defined in Cal. Lab. Code § 200(a) to include “all amounts for
26 labor performed by employees of every description, whether the amount is fixed or ascertained by
27 the standard of time, task, piece, commission basis, or other method of calculation.” Subsection (b)
28 further defines “labor” to include all “labor, work, or service whether rendered or performed under

1 contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is
2 performed personally by the person demanding payment.”

3 58. Under Cal. Lab. Code § 202(a):

4 If an employee not having a written contract for a definite period quits
5 his or her employment, his or her wages shall become due and payable
6 not later than 72 hours thereafter, unless the employee has given 72
7 hours previous notice of his or her intention to quit, in which case the
8 employee is entitled to his or her wages at the time of quitting.
9 Notwithstanding any other provision of law, an employee who quits
without providing a 72-hour notice shall be entitled to receive
payment by mail if he or she so requests and designates a mailing
address. The date of the mailing shall constitute the date of payment
for purposes of the requirement to provide payment within 72 hours of
the notice of quitting.

10 59. Cal. Lab. Code § 203 further provides:

11 If an employer willfully fails to pay, without abatement or reduction,
12 in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any
13 wages of an employee who is discharged or who quits, the wages of
14 the employee shall continue as a penalty from the due date thereof at
the same rate until paid or until an action therefor is commenced; but
the wages shall not continue for more than 30 days.

15 60. A number of Class Members, including Plaintiff Kramer, are no longer employed by
16 Defendants. To date however, Defendants have not paid the wages owed to them, as required under
17 California law. As a consequence of Defendants’ willful and deliberate refusal to tender such
18 wages, Plaintiff Kramer and the affected members of the Class are entitled to 30 days’ wages as a
19 waiting time penalty pursuant to Cal. Lab. Code § 203.

20 **THIRD CAUSE OF ACTION**
FAILURE TO FURNISH ACCURATE WAGE STATEMENTS
21 **[Cal. Lab. Code § 226]**
(By Subclass A and Subclass B Against All Defendants)

22 61. Plaintiffs reallege and incorporates by this reference, as though fully set forth herein,
23 the proceeding paragraphs of this Complaint.

24 62. Pursuant to Cal. Lab. Code § 226(a), an employer must provide each employee with
25 an “accurate itemized statement in writing showing [the] gross wages earned, . . . [the] total hours
26 worked by the employee, . . . the number of piece-rate units earned and any applicable piece rate if
27 the employee is paid on a piece-rate basis, . . . [and] all applicable hourly rates in effect during the
28 pay period and the corresponding number of hours worked at each hourly rate by the employee.”

1 63. Cal. Lab. Code § 226(e)(1) further provides:

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

9 64. Injury occurs where the employer fails to provide accurate information and the
10 employee cannot “promptly and easily determine” the total number of hours worked, the number of
11 piece-rate units earned and any applicable piece rate, or the “applicable hourly rates in effect during
12 the pay period and the corresponding number of hours worked at each hourly rate.” (Cal. Lab. Code
13 §§ 226(a)(9)-(e)(2)(B)(i).)

14 65. Cal. Lab. Code § 226(e)(2)(C) explains that the phrase “promptly and easily
15 determine” means that “a reasonable person would be able to readily ascertain the information
16 without reference to other documents or information.”

17 66. Although Plaintiffs and the other members of the Class are tasked with accurately
18 recording the hours they work and the number of drivers they recruit, the wage statements provided
19 by Defendants fail to include the total number of hours they worked, the number of piece-rate units
20 earned and any applicable piece rate, and/or any and all hourly rates in effect during the pay period.
21 As a result, Plaintiffs and the other members of the Class are unable to ascertain whether or not they
22 were paid for all work performed without referencing other documents or outside information.

23 67. Under California law, Class Members are deemed to have suffered injury as a result
24 of Defendants’ knowing and intentional failure to provide them with accurate wage statements.

25 68. Pursuant to Cal. Lab. Code § 226(e), Class Members are entitled to recover
26 liquidated damages in the amount of \$50.00 for the initial violation and \$100.00 for each
27 subsequent violation per employee, not to exceed \$4,000.00, as well as an award of costs and
28 reasonable attorneys’ fees.

 69. Additionally, pursuant to Cal. Lab. Code § 226(h), Plaintiffs and the other members
of the Class are entitled to, and do seek, injunctive relief to ensure that Defendants comply with Cal.
Lab. Code § 226.

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FOURTH CAUSE OF ACTION
FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES
[Cal. Lab. Code § 2802]
(By Subclass A and Subclass B Against All Defendants)

70. Plaintiffs reallege and incorporates by this reference, as though fully set forth herein, the proceeding paragraphs of this Complaint.

71. Cal. Lab. Code § 2802 provides that employers shall reimburse employees for all necessary expenses incurred in direct consequence of the discharge of their duties.

72. Section 2802 is subject to an anti-waiver provision. Specifically, Cal. Lab. Code § 2804 states in relevant part, that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void.”

73. Under California law, employers have a duty of due diligence to determine whether or not employees have incurred expenses in the discharge of their duties, and to reimburse them for any necessary expenses. (*See Stuart v. RadioShack* (N.D. Cal. 2009) 641 F. Supp. 2d 901 [“*Stuart*”].) When employees are required to make work-related calls on their personal cell phones, the employer must reimburse employees a reasonable percentage of their cell phone bills. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1140 [“*Cochran*”].) The California Supreme Court has made it clear that the purpose of Cal. Lab. Code § 2802 is “to prevent employers from passing their operating expenses on to their employees.” (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 562.)

74. Before driving to their assigned work locations, Class Members are frequently required to drive to one of Uber’s office facilities to collect all necessary supplies and promotional materials. After finishing their shifts, Class Members are often required to return any remaining materials to an Uber facility. As such, Defendants require Plaintiffs and the other members of the Class to incur necessary expenses associated with using their personal vehicles for business-related travel.

75. In addition, Defendants frequently require Class Members to use their personal cell phones to sign up drivers and to complete the driver registration process. Under *Cochran* and *Stewart*, Defendants are liable for a reasonable percentage of Class Members’ cell phone bills

1 because Defendants knew or should have known that Class Members were required to use their
2 personal cell phones to perform work-related tasks.

3 76. Despite the clear language of Cal. Lab. Code § 2802, and despite knowing that Class
4 Members incur necessary expenses, Defendants maintain a policy that fails to reimburse Class
5 Members for such expenses. As a result, Plaintiffs and the other members of the Class are forced to
6 bear Defendants' operating costs. (*See Gattuso v. Harte-Hanks Shoppers, Inc., supra*, 42 Cal. 4th at
7 562.)

8 77. Under Cal. Lab. Code § 2802(b)-(c), Plaintiffs and the other members of the Class
9 are entitled to recover the full amount of the expenses incurred, interest thereon, reasonable
10 attorneys' fees, and costs of suit.

11 **FIFTH CAUSE OF ACTION**
12 **FAILURE TO PROVIDE MEAL PERIODS AND REST PERIODS**
13 **[Cal. Lab. Code §§ 226.7 and 512]**
14 **(By Subclass A and Subclass B Against All Defendants)**

15 78. Plaintiffs reallege and incorporates by this reference, as though fully set forth herein,
16 the proceeding paragraphs of this Complaint.

17 79. Under Cal. Lab. Code § 512, an employer may not employ a person for a period of
18 more than five (5) hours without a meal period of at least 30 minutes.

19 80. IWC Wage Order 12, § 12 further provides:

20 Every employer shall authorize and permit all employees to take rest
21 periods, which insofar as practicable shall be in the middle of each
22 work period. The authorized rest period time shall be based on the total
23 hours worked daily at the rate of ten (10) minutes net rest time per four
24 (4) hours or major fraction thereof . . . Authorized rest period time shall
25 be counted as hours worked for which there shall be no deduction from
26 wages.

27 81. Pursuant to Cal. Lab. Code § 226.7:

28 (a) No employer shall require any employee to work during any meal or
rest period mandated by an applicable order of the Industrial
Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest
period in accordance with an applicable order of the Industrial
Welfare Commission, the employer shall pay the employee one
additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest period is not
provided.

1 82. Under California law, the meal period requirement is generally satisfied if the
2 employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is
3 relieved of all duty for the entire period. (*See Brinker Restaurant Corp. v. Superior Court* (2012) 53
4 Cal. 4th 1004, 1036 [citing DLSE Opn. Letter No. 1996.07.12 (July 12, 1996) p. 1].)

5 83. By maintaining a policy that prohibits Class Members from leaving their assigned
6 locations, Defendants violate Cal. Lab. Code § 226.7 and the applicable Wage Order because they
7 fail to provide Class Members with adequate meal and rest periods and fail to provide Class
8 Members with one hour of additional wages for each work day that they are not provided with an
9 adequate meal and rest period.

10 84. As a result of Defendants’ unlawful conduct, Plaintiffs and the other members of the
11 Class, have been deprived of wages owed to them. Pursuant to Cal. Lab. Code §1194(a), Class
12 Members are entitled to recover unpaid wages premiums, interest thereon, reasonable attorneys’
13 fees, and costs of suit.

14 **SIXTH CAUSE OF ACTION**
15 **FAILURE TO PROVIDE WRITTEN COMMISSION AGREEMENTS**
16 **[Cal. Lab. Code § 2751]**
(By Subclass A and Subclass B Against All Defendants)

17 85. Plaintiffs reallege and incorporates by this reference, as though fully set forth herein,
18 the proceeding paragraphs of this Complaint.

19 86. Defendants purport to pay Class Members a “commission” for each driver they sign
20 up to drive for Uber. However, such payments likely qualify as a piece-rate rather than a
21 commission. In order for an employee’s compensation to be deemed commission wages under
22 California law: (1) the employee must be involved principally in selling a product or service; and
23 (2) the amount of their compensation must be sufficiently related to the price of the product or
24 service. (*See Muldrow v. Surrex Solutions Corp.* (2012) 208 Cal. App. 4th 1381.) Here, Uber pays
25 Plaintiffs a fixed amount per driver they sign up, regardless of how frequently or infrequently the
26 individual drives for Uber.

27 87. Even if Class Members’ wages do constitute commissions, Defendants violated Cal.
28 Lab. Code § 2751 when they failed to set forth in writing, the method by which commissions would

1 be computed and paid.

2 88. Cal. Lab. Code § 2751(a) provides:

3 Whenever an employer enters into a contract of employment with an
4 employee for services to be rendered within this state and the
5 contemplated method of payment of the employee involves commissions,
the contract shall be in writing and shall set forth the method by which
the commissions shall be computed and paid.

6 89. Cal. Lab. Code § 2751(b) also states, “The employer shall give a signed copy of the
7 contract to every employee who is a party thereto and shall obtain a signed receipt for the contract
8 from each employee.”

9 90. A “contract of employment” is defined as “a contract by which one, who is called the
10 employer, engages another, who is called the employee, to do something for the benefit of the
11 employer or a third person.” (Cal. Lab. Code § 2750.)

12 91. Defendants not only failed to memorialize their alleged commission plan in writing,
13 but also failed to obtain signed acknowledgments from Class Members. As such, Defendants
14 violated Cal. Lab. Code § 2751.

15 **SEVENTH CAUSE OF ACTION**
16 **UNFAIR COMPETITION**
17 **[Cal. Bus. & Prof. Code § 17200 et seq.]**
18 **(By Subclass A and Subclass B Against All Defendants)**

19 92. Plaintiffs reallege and incorporates by this reference, as though fully set forth herein,
20 the proceeding paragraphs of this Complaint.

21 93. As codified in Cal. Bus. & Prof. Code § 17200 et seq., California’s Unfair
22 Competition Law (“UCL”) broadly prohibits “any unlawful, unfair or fraudulent business act or
23 practice.” (Cal. Bus. & Prof. Code § 17200.)

24 94. The UCL permits a cause of action to be brought if a practice violates some other
25 law. In effect, the “unlawful” prong of the UCL makes a violation of the underlying law a per se
26 violation of Cal. Bus. & Prof. Code § 17200. (*Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel.*
27 *Co.* (1999) 20 Cal. 4th 163, 180.) Virtually any law or regulation—federal or state, statutory or
28 common law—can serve as predicate for a § 17200 “unlawful” violation. (*See Farmers Ins. Exch. v.*
Sup. Ct. (1992) 2 Cal. 4th 377, 383.)

1 95. Under the UCL, a practice may be “unfair” even if not specifically proscribed by
2 some other law. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal. 4th 1134, 1143
3 [internal citations omitted].) According to the California Supreme Court, the “unfair” standard is
4 intentionally broad to allow courts maximum discretion in prohibiting new schemes to defraud.
5 (*Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, *supra*, 20 Cal. 4th 163, 180-81.)

6 96. A business act or practice is deemed “fraudulent” under Cal. Bus. & Prof. § 17200
7 where “members of the public are likely to be deceived.” (*Blakemore v. Superior Court* (2005) 129
8 Cal. App. 4th 36, 49.) That is, a showing of actual deception, reasonable reliance, or damages is not
9 required. (*Id.*) The “fraudulent” prong of the UCL can be used to attack the deceptive manner in
10 which otherwise lawful contract terms are presented to an individual. (*See Boschma v. Home Loan*
11 *Ctr., Inc.* (2011) 198 Cal. App. 4th 230, 253.) Even a true statement may be unlawful under § 17200
12 if it is “couched in such a manner that it is likely to mislead or deceive . . . , such as by failure to
13 disclose other relevant information.” (*Id.*)

14 97. As set forth in the preceding paragraphs, Defendants’ business practices violate all
15 three prongs of California’s UCL.

16 98. For example, Defendants violate Cal. Lab. Code § 2802, and thus engages in an
17 unlawful business practice under Cal. Bus. & Prof. § 17200, by failing to reimburse Class Members
18 for expenses they necessarily incur in the discharge of their duties. Similarly, Defendants’ failure to
19 provide Class Members with accurate wage statements is unlawful under the California Labor
20 Code, and thus a per se violation of the UCL. (*See Cel-Tech Commc’ns, Inc. v. Los Angeles*
21 *Cellular Tel. Co.*, *supra*, 20 Cal. 4th at 180.)

22 99. Defendants violate the unfair prong of the UCL by constantly changing the terms and
23 conditions under which Class Members will be paid for signing up a driver, often without warning.
24 This is precisely the sort of scheme to defraud that Cal. Bus. & Prof. Code § 17200 seeks to
25 prohibit. (*See Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, *supra*, 20 Cal.4th 163, 181
26 [“When a scheme is evolved which on its face violates the fundamental rules of honesty and fair
27 dealing, a court of equity is not impotent to frustrate its consummation because the scheme is an
28 original one . . . ”].)

1 100. Finally, Defendants’ practice of providing Class Members with inaccurate and
2 incomplete wage statements is not only unlawful, but constitutes a fraudulent business practice
3 under the UCL. This is particularly true as Plaintiffs and the other members of the Class are likely
4 to be, and actually are deceived, as to their earned wages. More specifically, Class Members have
5 no reasonable means of determining whether or not they were paid for all work performed.

6 101. As a direct and proximate result of Defendants’ unlawful, unfair, and fraudulent
7 business practices, Plaintiffs and the other members of the Class have suffered injury-in-fact and
8 have lost wages and reimbursements rightfully owed to them.

9 102. Through their unlawful, unfair, and fraudulent conduct, Defendants reaped, and
10 continue to reap, benefits and profits at the expense of Class Members. Pursuant to Cal. Bus. &
11 Prof. Code § 17203, Defendants should be enjoined from this activity and made to disgorge all ill-
12 gotten gains and restore to Plaintiffs and the other members of the Class, the wages and
13 reimbursements wrongfully withheld from them.

14 103. Moreover, the unlawful, unfair, and fraudulent conduct alleged herein is continuing,
15 and there is no indication that Defendants will refrain from such activity in the future. Plaintiffs
16 believe and allege that if Defendants are not enjoined from the conduct described herein, they will
17 continue to violate California laws and public policy. Accordingly, Plaintiffs request the Court issue
18 a preliminary and permanent injunction.

19 **EIGHTH CAUSE OF ACTION**
20 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**
21 **[Cal. Lab. Code § 2698 et seq.]**
(By Plaintiffs, In Their Representative Capacities, Against All Defendants)

22 104. Plaintiffs reallege and incorporates by this reference, as though fully set forth herein,
23 the proceeding paragraphs of this Complaint.

24 105. Cal. Lab. Code § 2698 et seq., also known as the Private Attorney General Act of
25 2004 (“PAGA”), expressly provides that any provision of the California Labor Code allowing for a
26 civil penalty to be assessed and collected by the Labor and Workforce Development Agency
27 (“LWDA”), or any of its departments, divisions, commissions, boards agencies or employees, for a
28 violation of the Labor Code, may be recovered through a civil action brought by an aggrieved

1 employee on behalf of himself or herself, and other current or former employees. These penalties
2 are in addition to any other relief available under the Labor Code, and pursuant to § 2699(i), must
3 be allocated 75 percent to the LWDA and 25 percent to the aggrieved employees.

4 106. Plaintiffs and the other members of the Class are aggrieved employees within the
5 meaning of Cal. Lab. Code § 2699(c), in that they are all current or former employees of
6 Defendants, and Defendants have committed one or more violations against them.

7 107. As set forth above, Defendants have committed, and continue to commit, numerous
8 violations for which the Labor Code entitles Plaintiffs, as private attorneys general, to recover, on
9 behalf of themselves, all aggrieved employees, and the general public, interest, attorneys' fees and
10 costs, as well as all statutory penalties against Defendants, for violations of Cal. Lab. Code §§ 203,
11 226, 226.3, 558, 1197.1, 2699(a), and 2699(f).

12 108. Cal. Labor Code § 2699(f) provides in pertinent part:

13 For all provisions of this code except those for which a civil penalty is
14 specifically provided, there is established a civil penalty for a violation
of these provisions as follows:

15 . . .

16 (2) If, at the time of the alleged violation, the person employs one or
17 more employees, the civil penalty is one hundred dollars (\$100) for
18 each aggrieved employee per pay period for the initial violation and
two hundred dollars (\$200) for each aggrieved employee per pay
period for each subsequent violation.

19 109. Plaintiff Kramer has complied with the procedures specified in Cal. Lab. Code §
20 2699.3. A letter was sent to the LWDA by certified mail on July 31, 2015, giving notice of Plaintiff
21 Kramer's PAGA claims. A copy was simultaneously sent by certified mail to Defendants through
22 their agents for service of process.

23 110. The LWDA had until September 2, 2015 to provide notice of whether it intended to
24 investigate the alleged violations. As of the date of this First Amended Complaint, the LWDA has
25 not provided notice of whether it intends to investigate the alleged violations. Therefore, under Cal.
26 Lab. Code § 2699.3, Plaintiff Kramer has the right to pursue her claims under PAGA on behalf of
27 herself and all other aggrieved current and former employees.

28 111. In addition, a letter was sent to the LWDA by certified mail on September 2, 2015,

1 giving notice of Plaintiff Kidane’s PAGA claims. A copy was simultaneously sent by certified mail
2 to Defendants through their agents for service of process.

3 112. The LWDA has until October 5, 2015 to provide notice of whether it intends to
4 investigate the alleged violations.

5 **PRAYER FOR RELIEF**

6 Plaintiffs and the other members of the Class pray for judgment against Defendants and in
7 favor of the Class as follows:

- 8 1. That the Court determine this action may be maintained as a class action with the
9 named Plaintiffs as Class Representatives;
- 10 2. For the attorneys appearing on the above caption to be named Class Counsel;
- 11 3. For nominal, actual, and compensatory damages;
- 12 4. For restitution of all monies, wages, expenses, and benefits due to Plaintiffs and the
13 other members of the Class;
- 14 5. For disgorged profits from Defendants’ unfair and unlawful business practices;
- 15 6. For all interest accrued to date pursuant to Cal. Lab. Code § 218.6;
- 16 7. For waiting time penalties pursuant to Cal. Lab. Code § 203;
- 17 8. For costs of suit and expenses incurred herein pursuant to Cal. Lab. Code §§ 218.5
18 and 1194;
- 19 9. For reasonable attorneys’ fees pursuant to Cal. Lab. Code §§ 218.5 and 1194, and
20 Cal. Civ. Proc. Code § 1021.5;
- 21 10. For civil penalties pursuant to Cal. Lab. Code § 2698 et seq.;

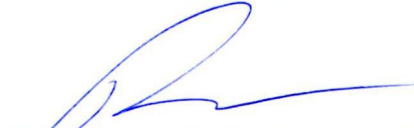
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- 11. For appropriate equitable relief;
- 12. For appropriate declaratory relief; and
- 13. For all such other and further relief the Court may deem just and proper.

Dated: September 2, 2015

CLARK & TREGLIO



R. Craig Clark
James M. Treglio

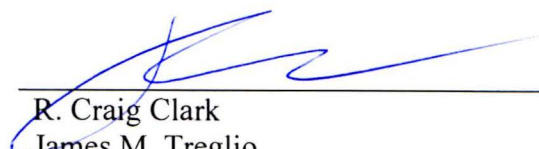
Attorneys for Plaintiffs and the Putative Class

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all issues triable to a jury.

Dated: September 2, 2015

CLARK & TREGLIO



R. Craig Clark
James M. Treglio

Attorneys for Plaintiffs and the Putative Class